



United States Department of the Interior

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

IN REPLY REFER TO:
BIA FOIA 2014 00437

Cheryl Schmit, Director
Stand Up For California
P. O. Box 355
Penryn, CA 95663

FEB - 3 2014

Dear Ms. Schmit:

By your January 19, 2014 letter, you submitted a request under the Freedom of Information Act seeking a copy of the Administrative Record transmitted to the Board of Indian Appeals concerning a decision regarding the Big Sandy Land Consolidation Plan. In response to your request, a copy of the entire record is enclosed.

The enclosure consists of 152 pages, however, there was no search time involved as this is a new appeal case with the record readily available. As an "Other" requestor, you are entitled to the first 100 copies free of charge. As the subject record has already been made available at no cost to other parties, the fees for providing the enclosures is waived pursuant to 43 CFR § 2.56(1).

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways.

Office of Government Information Services
National Archives & Records Administration
(OGIS) 8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov; Web: <http://ogis.archives.gov>
Telephone: 202-741-5770; Facsimile: 202-741-5769
Toll-free: 1-877-684-6448.

Questions regarding this response may be directed to Carmen Facio, Realty Officer, (916) 978-6062, or to Doug Garcia, FOIA Coordinator, (916) 978-6052.

Sincerely,


Regional Director

Enclosures

cc: Doug Garcia, FOIA Coordinator

**TAKE PRIDE
IN AMERICA** 

PACIFIC REGIONAL OFFICE
BUREAU OF INDIAN AFFAIRS
BIG SANDY BAND'S LAND CONSOLIDATION PLAN
ADMINISTRATIVE RECORD

1. November 21, 2012 submission of request for approval of the Big Sandy Land Consolidation Plan by Fredericks, Peebles & Morgan, LLP, on behalf of the Big Sandy Band (submission includes a Tribal Resolution & the Land Consolidation Area Boundary map).
2. Emails between December 28, 2012 and January 7, 2013 and submission of
 - (1) Copy of the November 21, 2012 submission of the Land Consolidation Plan (copy not included here, see item #1 above);
 - (2) the December 3, 2012 memo to Paula Hart & Maria Wiseman of BIA Indian Gaming from Fredericks, Peebles & Morgan;
 - (3) October 12, 2012 Internal Memo to Big Sandy from Fredericks, Peebles & Morgan;
 - (4) the September 6, 2006 memorandum to the National Indian Gaming Commission Chairman from John R. Hay, Staff Attorney, subject: Gaming by the Big Sandy Rancheria on the McCabe Allotment.
3. January 7, 2013 emails between Maria Wiseman, Karen Koch, et al., Re submission by Big Sandy.
4. January 8, 2013 emails between Maria Wiseman, Karen Koch, and Carmen Facio.
5. Emails between January 22 & January 23, 2013 between Carmen Facio, Paula Eagle Tail, Amy Dutschke, Troy Burdick & Kevin Bearquiver.
6. Emails between January 28 & January 29, 2013 between Paula Hart, Maria Wiseman & Carmen Facio.
7. January 31, 2013 email from Harold Hall to Carmen Facio with attached Re McCabe Allotment history.
8. January 31, 2013 letter to the Big Sandy Chairperson from the Regional Director re concerns about the area to be designated under the Plan.
9. February 1, 2013 email from Carmen Facio to Paula Hart and Maria Wiseman transmitting a copy of the Region's January 31, 2013 letter to Big Sandy.
10. February 5, 2013 letter to the Regional Director from the Central California Agency Acting Superintendent transmitting the Big Sandy ILCA plan (plan copy not included here, see item #1 above).
11. Emails of February 7 and February 13, 2013 between Amy Dutschke & Chairperson Liz Kipp, et al., re meeting to discuss the Land Consolidation Plan.
12. February 20, 2013 meeting notes by Carmen Facio with attached attendance roster and drafts of amended Land Consolidation Plan & Tribal Resolutions.
13. Emails between March 29, 2013 & May 7, 2013 between Liz Kip & Amy Dutschke Re status of Plan review.
14. June 24, 2013 emails between Liz Kipp & Amy Dutschke, et al., re submission of the amended ILCP Ordinance and Resolution.
15. July 18, 2013 email from Amy Dutschke to Carmen Facio.

16. Emails of July 24 and 25 between Liz Kipp & Amy Dutschke, et al., Re status of Plan review.
17. Emails between July 29 & August 2, 2013 between Liz Kipp and Amy Dutschke, et al., Re status of Plan review.
18. Emails of August 14 & August 15, 2013 between Liz Kipp & Carmen Facio.
19. August 15, 2013 email from Maria Wiseman to Carmen Facio re email from Liz Kipp (email includes September 10, 2013 note).
20. October 1, 2013 emails between Liz Kipp & Amy Dutschke re status of decision on Plan.
21. Supplemental documents reviewed prior to decision, consisting of:
 - (1) Sections 2203 and 2204 of the Indian Land Consolidation Act;
 - (2) IBIA decision @ 18 IBIA 156 (02/20/1990) [IBIA 89-48-A], Absentee Shawnee Tribe v. Anadarko Area Director;
 - (3) BIA GIS map of Indian lands in Fresno County (includes off-reservation public domain lands).
22. November 7, 2013 Acting Regional Director's decision with copies of mail receipts.

////

Attachment No. 1



FREDERICKS PEEBLES & MORGAN LLP
ATTORNEYS AT LAW

STEVEN J. BLOXHAM
2020 L STREET, SUITE 250
Sacramento, CA 95811
T: (916) 441-2700
F: (916) 441-2067
E: sbloxham@ndnlaw.com
www.ndnlaw.com

November 21, 2012

Reg Dir _____
Dep RD Trust _____
Dep RD IS _____
Route RPM
Response Required of
Due Date 11/30/12
Memo _____ Ltr _____
Fax _____

VIA CERTIFIED MAIL #
70092820000233178422

Honorable Amy Dutschke
Regional Director
United States Department of the Interior
Bureau of Indian Affairs
Pacific Region Office
2800 Cottage Way
Sacramento, CA 95825

VIA CERTIFIED MAIL #
70092820000233178415

Honorable Troy Burdick
Superintendent
United States Department of the Interior
Bureau of Indian Affairs
Central California Agency
650 Capital Mall, Suite 8-500
Sacramento, CA 95814

RE: Request for Approval of Big Sandy Rancheria Band of Western Mono Indians Land Consolidation Plan

Dear Regional Director Dutschke and Superintendent Burdick:

On October 31, 2012, the governing body of the Big Sandy Rancheria Band of Western Mono Indians ("Tribe"), its Tribal Council, ratified Resolution No. 1012-07. Resolution No. 1012-07 adopted a Tribal Land Consolidation Plan pursuant to the Indian Land Consolidation Act ("ILCA"), 25 U.S.C. § 2201 et seq. The Tribe respectfully requests that the Bureau review and approve the Tribe's Land Consolidation Plan pursuant to 25 U.S.C. § 2203.

I have enclosed a true and complete copy the Tribe's Land Consolidation Plan, along with its supporting resolution, Resolution No. 1012-07. Please direct all correspondence regarding the Land Consolidation Plan to me by phone at (916) 441-2700 or at the following address:

Steven J. Bloxham
Fredericks Peebles & Morgan LLP
2020 L Street, Suite 250
Sacramento, CA 95811

RECEIVED-BIA
2012 NOV 23 PM 4: 00
PACIFIC REGIONAL
OFFICE

received
RES 11-30-12

Hon. A. Dutschke
Hon. T. Burdick
November 21, 2012
Page 2 of 2

In addition, please send a copy of all correspondence to the Tribe's Chairperson at the following address:

Elizabeth D. Kipp, Chairperson
Tribal Council
Big Sandy Band of Western Mono Indians
37387 Auberry Mission Road
Auberry, CA 93602

Please contact me if you have any questions or need anything further.

Very truly yours,

FREDERICKS PEEBLES & MORGAN LLP



Steven J. Bloxham
Attorneys for the Big Sandy Band of Western
Mono Indians

SJB:se
Enclosures

Cc: Daniel G. Shillito, Regional Solicitor, Pacific Southwest Region, U.S. Department
of the Interior, Office of the Solicitor



Ordinance No. 1012-01

Tribal Land Consolidation Plan

The Tribal Council of the Big Sandy Rancheria Band of Western Mono Indians ("Big Sandy Rancheria" or "Tribe"), empowered by the Constitution and Bylaws of the Big Sandy Rancheria Band of Western Mono Indians ("Big Sandy Rancheria Constitution and Bylaws"), hereby enacts this Tribal Land Consolidation Plan for the purpose of eliminating fractionation of the Big Sandy lands and the consolidation of tribal landholdings.

1. Section 1: Declarations

- a. Citation: This Ordinance may be cited as the Big Sandy Rancheria Land Consolidation Plan.
- b. Purpose: The purpose of the Big Sandy Land Consolidation Plan is to provide authority to consolidate and augment the Big Sandy land base, in accordance with the provisions of the Indian Land Consolidation Act, 25 U.S.C. §§ 2201, et seq. ("ILCA"). Further authority for taking land and improvements into trust for the Big Sandy Rancheria under this plan is provided by the Indian Finance Act (codified at 25 U.S.C. § 1466), 25 U.S.C. § 463 (a), 25 U.S.C. § 465, and the Federal Property and Administrative Services Act of 1949, as amended (codified at 40 U.S.C. § 483 (a)).

Acquisitions of land under this Plan shall conform to the policies, priorities, and procedures of the Big Sandy Rancheria unless otherwise expressly stated in this Plan or any amendment thereto approved by the Big Sandy Tribal Council or a duly authorized committee. Lands so acquired will be administered for economic, industrial, residential, recreation, and other purposes as set forth by the Big Sandy Tribal Council and its duly authorized committees.

- c. Authority: This Ordinance is enacted pursuant to the inherent sovereign powers of the Big Sandy Rancheria Band of

Western Mono Indians, and by the Tribal Council's authority pursuant to Article VI, Section 1 and Article XI, Section 1 of the Tribe's Constitution.

- d. Sovereign Immunity: Nothing in this Ordinance shall constitute or be construed to constitute a waiver of the sovereign immunity from suit of either the Tribe or any entity of the Tribe.

2. Section 2: Land Consolidation Area

- a. The land acquisition and consolidation area includes all lands, including federally administered and public domain lands, within:
 - i. The boundaries of the Big Sandy Rancheria;
 - ii. Big Sandy "Indian Country" as defined by 18 U.S.C. § 1151;
 - iii. The aboriginal land area of the Big Sandy Rancheria Band of Western Mono Indians;
 - iv. All lands subject to the jurisdiction of the Tribe, as defined in the Constitution of the Big Sandy Band of Western Mono Indians, including all those lands as shown on the map of Fresno County Tract No. 2060 recorded at pages 89, 90, and 91 in volume 22 of plates, Fresno County Records, and to all Indian country (as now defined by 18 U.S.C. § 1151) held by or for the Tribe or any member of the Tribe, wherever located; and
 - v. Such other lands designated on the map attached as Figure "A" to Big Sandy Tribal Council Resolution No. 1012-07.
- b. Any land consolidation plans approved previously by the Bureau of Indian Affairs on behalf of the Big Sandy Rancheria shall be deemed to be incorporated herein, and may be amended by the Big Sandy Tribal Council or its duly authorized committees.

3. Section 3: Operational Policy and Procedure

- a. Tracts and properties within the land consolidation area will be continually monitored to identify available acquisitions. Close contact will be maintained with Realty personnel of the Bureau of Indian Affairs, Pacific Region for identification of individual allotted and restricted heirship lands or minerals or water rights, with the Big Sandy's preferential rights being exercised during the sale process.
- b. Specific proposals for acquisition and consolidation that are found to be in the best interests of the Tribe will be developed by the Big Sandy Tribal Council. The Big Sandy Tribal Council will enact resolutions to effect such transaction and, if necessary, authorize the Bureau of Indian Affairs to accomplish any federal actions needed to effect such transaction.
- c. An interest bearing trust account shall be established by the Secretary of the Interior or his or her delegate pursuant to 25 U.S.C. § 2203(a)(4). All proceeds derived from the sale of land or interests in land pursuant to this Plan shall be deposited into this account and utilized only for the purposes of land consolidation.
- d. An appraisal of value will be developed in accordance with the established standards of the appraisal profession by the Big Sandy Tribal Council and utilized as a guide in all acquisitions, disposals, exchanges, and other proposals for land consolidation.

4. Section 4: Purchase, sale, or exchange of interests

The Big Sandy Tribal Council may sell, exchange, purchase, or acquire any Big Sandy Rancheria trust or restricted or unrestricted lands, or interests in such lands, for the purpose of eliminating undivided fractional interests in Big Sandy Rancheria trust or restricted lands, or consolidation of Big Sandy Rancheria land holdings. Any such purchase, sale, or exchange shall conform to the following conditions:

- a. The sale price paid or exchange value received by the Big Sandy Rancheria for land or interests in land covered by this section shall deviate by no more than ten percent (10%) of the fair market value;

- b. If the Big Sandy Rancheria land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the Big Sandy Rancheria may accept the land exchange or give or receive cash in such exchange to equalize the values of the property exchanged;
 - c. Proceeds from the sale of land or interests in land or proceeds received by the Big Sandy Rancheria to equalize an exchange made pursuant to this Section shall be deposited into the account established pursuant to Section 3(c) above, and additional monies may be deposited in said account as authorized by the Big Sandy Tribal Council;
 - d. The Big Sandy Rancheria may reserve the mineral and water rights to such sold or exchanged land; and
 - e. The Big Sandy Rancheria may purchase less than the whole estate.
5. Section 5: Purchase of undivided fractional interests
- a. The Big Sandy Rancheria may purchase, at no less than the fair market value, part or all of the interests in any tract of trust or restricted land within the land consolidation area described in Section 2 above with the consent of the majority of the owners of such tract or allotment as required by 25 U.S.C. § 2204, under the following conditions:
 - i. Any Indian person owning an undivided interest, and in actual use and possession of such tract for at least three consecutive years preceding the Big Sandy Rancheria's offer may purchase such tract by matching the Tribe's offer;
 - ii. If at any time within five years following the date of acquisition of such land by an individual under subsection (i) above, such property is offered for sale or a petition is filed with the Bureau of Indian Affairs for removal of the property from trust or restricted status, the Big Sandy Rancheria shall have 90 days from the date it is notified of such offer or petition to acquire such property by paying to the owner the fair market value.
 - b. The Big Sandy Rancheria may purchase, at no less than fair market value, part or all of the interests in any tract of trust or

restricted land from willing sellers and shall acquire pursuant to the Indian Land Consolidation Act any de minimis undivided fractionated interests in allotments subject to the escheat provision of the Indian Land Consolidation Act (25 U.S.C. § 2206).

- c. All sales that comply with this Plan and with Tribal and federal law shall be executed by the Bureau of Indian Affairs. Appeals of Bureau of Indian Affairs actions shall be pursuant to Title 25 Code of Federal Regulations, Part 2.

6. Section 6: Public purpose; U.S. acceptance of trust allotments

- a. It is hereby declared that the acquisition by the Big Sandy Rancheria of trust allotments or of interests in trust allotments within the land consolidation area described in Section 2 above is required in the public interest and constitutes a public purpose under the laws of the Big Sandy Rancheria and under this Plan.
- b. Upon the approval of the Chairperson of the Big Sandy Tribal Council or his or her duly authorized delegate, and notwithstanding any provision of law of the Big Sandy Rancheria to the contrary, the United States is authorized and directed to accept deeds of trust allotments or interest in trust allotments from any allottee or heir who owns any interest in such allotment and who has deeded such allotment or interest in such allotment or portion thereof to the United States in trust for the Big Sandy Rancheria.
- c. No taxes shall be paid by the Big Sandy Rancheria on any lands acquired pursuant to this Ordinance

CERTIFICATION

We, the undersigned duly elected officials of the Big Sandy Rancheria Band of Western Mono Indians, certify that this Tribal Council Ordinance No. 1012-01 was adopted at a duly called meeting on October 31, 2012 with a vote of 4 for, 0 against, and 0 abstaining.



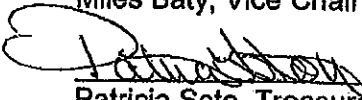
Elizabeth D. Kipp, Chairperson



Miles Baty, Vice Chair



Regina Riley, Secretary



Patricia Soto, Treasurer



Amy Hutchins, Member at Large



Tribal Council Resolution No. 1012-07

Resolution for the adoption of a Tribal Land Consolidation Plan

- WHEREAS** the Big Sandy Rancheria Band of Western Mono Indians ("Tribe") is a federally recognized Indian Tribe with the rights, benefits, privileges and immunities attendant thereto; and
- WHEREAS** the Tribe is organized under the Constitution of the Big Sandy Rancheria Band of Western Mono Indians, as amended ("constitution"), approved by the Department of the Interior on April 1, 2004; and
- WHEREAS** pursuant to Article III of the Constitution, the governing body of the Tribe is a five member Tribal Council; and
- WHEREAS** pursuant to Article VI of the constitution, the Tribal Council has the power and responsibility to, among other things: (1) promulgate and enforce ordinances; (2) initiate, approve, grant or reject any acquisition, disposition, lease, or encumbrance of Tribal lands or property; (3) to manage, protect and preserve all Tribal lands, minerals, wildlife and other natural resources of the Big Sandy Rancheria; (4) initiate and administer land development projects for the entire Rancheria; (5) promulgate and enforce resolutions or ordinances, providing for the manner of making, holding and revoking assignments of Big Sandy Rancheria land; (6) promote the health, education and general welfare of the members of the tribe; (7) encourage and foster arts, crafts, traditions and culture of the tribe; (8) administer charity and other services as may contribute to the social and economic advancement of the tribe and its members; and (9) create and regulate subordinate organizations and to delegate such organizations any of its powers; and
- WHEREAS** pursuant to Article I of the Constitution, the jurisdiction of the Tribe extends to all those lands as shown on the map of Fresno County Tract No. 2060 recorded at pages 89, 90, and 91 in volume 22 of plates, Fresno County Records, and to all Indian country (as now

defined by 18 U.S.C. § 1151) held by or for the Tribe or any member of the Tribe, wherever located; and
WHEREAS certain land within the Tribe's jurisdiction have become fractionated over time; and

WHEREAS fractionated lands are present within the "land consolidation area," reflected on the map that is attached hereto as Exhibit A, that includes: the boundaries of the Big Sandy Rancheria; Big Sandy "Indian Country" as defined by 18 U.S.C. § 1151; the aboriginal land area of the Big Sandy Rancheria Band of Western Mono Indians; all lands subject to the jurisdiction of the Tribe as described in the Constitution of the Big Sandy Band of Western Mono Indians, and such other lands as designated in Exhibit A; and

WHEREAS the Tribe recognizes the need to implement a Land Consolidation Plan in order to eliminate fractionation of Big Sandy lands and consolidate tribal landholdings, by authorizing the Tribe to consolidate and augment the Big Sandy land base in accordance with the provisions of the Indian Land Consolidation Act, 25 U.S.C. § 2201, et seq. ("ILCA").

THEREFORE BE IT RESOLVED that the Big Sandy Rancheria Tribal Council does hereby adopt the Land Consolidation Plan, Ordinance No. 1012-01, a true and complete copy of which is attached hereto as Exhibit B; and

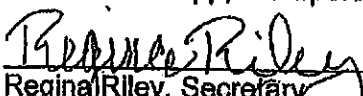
THEREFORE BE IT FURTHER RESOLVED that the Chairperson of the Tribal Council shall submit this plan to the Bureau of Indian Affairs for approval.

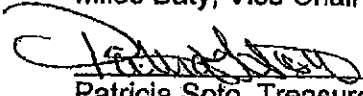
CERTIFICATION

We, the undersigned duly elected officials of the Big Sandy Rancheria Band of Western Mono Indians, certify that this Tribal Council Resolution No. 1012-07 was adopted at a duly called meeting on October 31, 2012 with a vote of 4 for, 0 against, and 0 abstaining.


Elizabeth D. Kipp, Chairperson


Miles Baty, Vice Chair

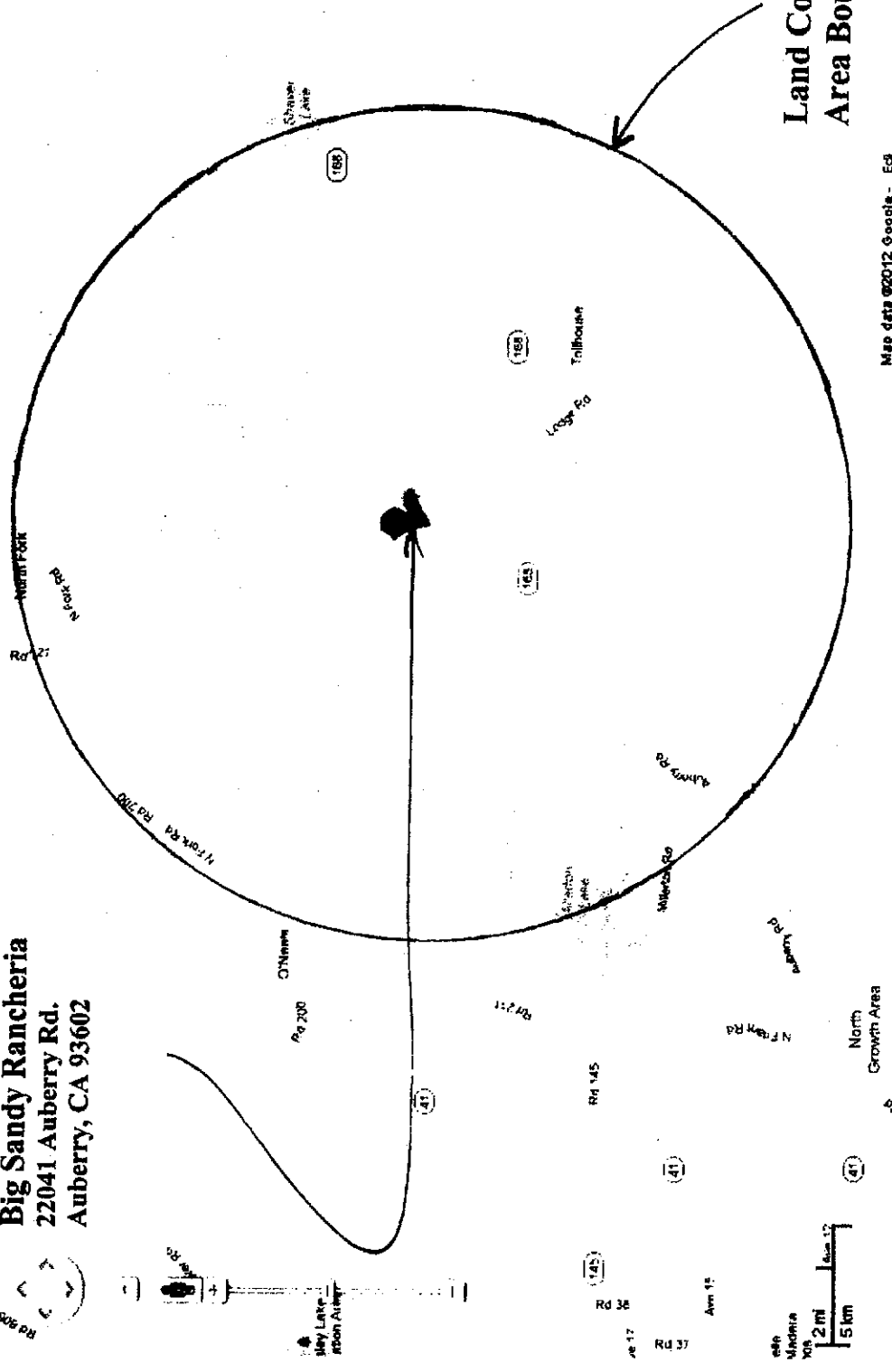
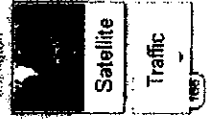

Regina Riley, Secretary


Patricia Soto, Treasurer


Amy Hutchins, Member at Large

EXHIBIT A

Big Sandy Rancheria
22041 Auberry Rd.
Auberry, CA 93602



**Land Consolidation
Area Boundary**

Map data ©2012 Google - E6

Attachment No. 2



FW: Indian Land Consolidation Plan- Big Sandy Rancheria

Dutschke, Amy <Amy.Dutschke@bia.gov>
To: "Facio, Carmen" <Carmen.Facio@bia.gov>

Mon, Jan 7, 2013 at 9:09 AM

Do we have any information on this? Liz wants to have a call concerning this.

From: Liz Kipp [mailto:LKipp@bsrnation.com]
Sent: Friday, January 04, 2013 4:39 PM
To: Dutschke, Amy
Subject: FW: Indian Land Consolidation Plan- Big Sandy Rancheria

Here is the information.

From: Sally Eredia [mailto:SEredia@ndnlaw.com]
Sent: Friday, December 28, 2012 4:26 PM
To: Liz Kipp; Richard Johnson
Cc: John Peebles
Subject: Indian Land Consolidation Plan

Please see the attached documents per John Peebles' request.

Thank you.

Sally Eredia, Legal Assistant

FREDERICKS PEEBLES & MORGAN LLP

2020 L Street, Suite 250

Sacramento, CA 95811

T: (916) 441-2700


F: (916) 441-2067


www.ndnlaw.com



FREDERICKS PEEBLES & MORGAN LLP
ATTORNEYS AT LAW

3 attachments

 **20121121 BSR ILCA - SJB to Dutschke & Burdick - Req Approval BSR ILCA.pdf**
3594K

 **20121203 BSR - FPM memo to Hart & Wiseman, DOI re Tribal Acquisition of Member Allotment to ILCA.pdf**
361K

 **20121012 Memo to BSR re ILCA and NEPA (FPM).pdf**
1545K



FREDERICKS PEEBLES & MORGAN LLP
ATTORNEYS AT LAW

STEVEN J. BLOXHAM
2020 L STREET, SUITE 250
Sacramento, CA 95811
T: (916) 441-2700
F: (916) 441-2067
E: sbloxham@ndnlaw.com
www.ndnlaw.com

November 21, 2012

VIA CERTIFIED MAIL #
70092820000233178422

Honorable Amy Dutschke
Regional Director
United States Department of the Interior
Bureau of Indian Affairs
Pacific Region Office
2800 Cottage Way
Sacramento, CA 95825

VIA CERTIFIED MAIL #
70092820000233178415

Honorable Troy Burdick
Superintendent
United States Department of the Interior
Bureau of Indian Affairs
Central California Agency
650 Capital Mall, Suite 8-500
Sacramento, CA 95814

**RE: Request for Approval of Big Sandy Rancheria Band of Western Mono
Indians Land Consolidation Plan**

Dear Regional Director Dutschke and Superintendent Burdick:

On October 31, 2012, the governing body of the Big Sandy Rancheria Band of Western Mono Indians ("Tribe"), its Tribal Council, ratified Resolution No. 1012-07. Resolution No. 1012-07 adopted a Tribal Land Consolidation Plan pursuant to the Indian Land Consolidation Act ("ILCA"), 25 U.S.C. § 2201 et seq. The Tribe respectfully requests that the Bureau review and approve the Tribe's Land Consolidation Plan pursuant to 25 U.S.C. § 2203.

I have enclosed a true and complete copy the Tribe's Land Consolidation Plan, along with its supporting resolution, Resolution No. 1012-07. Please direct all correspondence regarding the Land Consolidation Plan to me by phone at (916) 441-2700 or at the following address:

Steven J. Bloxham
Fredericks Peebles & Morgan LLP
2020 L Street, Suite 250
Sacramento, CA 95811

Hon. A. Dutschke
Hon. T. Burdick
November 21, 2012
Page 2 of 2

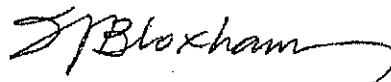
In addition, please send a copy of all correspondence to the Tribe's Chairperson at the following address:

Elizabeth D. Kipp, Chairperson
Tribal Council
Big Sandy Band of Western Mono Indians
37387 Auberry Mission Road
Auberry, CA 93602

Please contact me if you have any questions or need anything further.

Very truly yours,

FREDERICKS PEEBLES & MORGAN LLP



Steven J. Bloxham
Attorneys for the Big Sandy Band of Western
Mono Indians

SJB:se
Enclosures

Cc: Daniel G. Shillito, Regional Solicitor, Pacific Southwest Region, U.S. Department
of the Interior, Office of the Solicitor



FREDERICKS PEEBLES & MORGAN LLP
ATTORNEYS AT LAW

TO: Paula Hart, Bureau of Indian Affairs, Indian Gaming Division
Maria Wiseman, Bureau of Indian Affairs, Indian Gaming Division

FROM: Fredericks Peebles & Morgan LLP on behalf of Big Sandy Rancheria Band of Western Mono Indians

DATE: December 3, 2012

RE: Tribal acquisition of Member of Allotment Pursuant to the Indian Land Consolidation Act

QUESTIONS PRESENTED

This memorandum addresses the legal basis for conveying individually-owned trust land from a tribal member to the Big Sandy Rancheria Band of Western Mono Indians ("Big Sandy Rancheria" or the "Tribe") under the Indian Land Consolidation Act ("ILCA") or via a trust to trust transfer as a mandatory acquisition/transfer. This memorandum also discusses the application of one or more categorical exclusions under the National Environmental Protection Act ("NEPA").

The land at issue in this matter involves a land allotment held in trust by the United States for an enrolled member of the Tribe. The allotment is located within the aboriginal territory of the Tribe, but outside the immediate exterior boundaries of what is currently recognized as the main body of the reservation. Although the land is located outside the immediate exterior boundaries of the reservation, the land is under the jurisdiction of the Tribe.¹ The transaction contemplated would be a trust to trust transfer as the property is currently held in trust for the beneficial use of the tribal member. This transfer could occur through a standard trust to trust process or specifically under the ILCA in accordance with an approved Indian lands consolidation plan (ILCP).

SHORT ANSWERS

(1) The purchase by the Tribe of an individual allotment held in trust that is under the Tribe's jurisdiction is authorized by the ILCA, so long as the owners of the majority interest in the land consent to the sale and the owners are paid not less than the fair market value of the land. In this

¹ See Indian lands opinion issued by the National Indian Gaming Commission ("NIGC") regarding McCabe Allotment as Indian lands dated September 6, 2006.

Attorney Work Product – Privileged & Confidential

case the Tribe has the consent of the individual and the land is under the jurisdiction of the Tribe as confirmed by the September 2006 Indian Lands Opinion (Indian Lands Opinion).²

(2) If the purchase is in accordance with an ILCP adopted by the Tribe and approved by the Secretary of the Interior, the purchase and transfer would not need to be specifically approved by the Secretary,³ and an environmental impact statement would not apply to the purchase or transfer of land in accordance with the plan. The Tribe may adopt and submit for approval an ILCP. The Department of the Interior ("DOI") has prepared draft regulations for implementation of the ILCA, however no final regulations have been adopted to date. The draft regulations may provide some guidance as to what should be included in a proposed ILCP.⁴

(3) Approval by the Secretary of an ILCP may be subject to a "Categorical Exclusion", in which case no environmental review would be required for approval of the plan. The plan would identify the area of land at issue and provide for a mechanism to consolidate lands within the reservation and lands within close proximity to the reservation with the Tribe as the beneficial owner of the consolidated lands.

(4) A Categorical Exclusion is particularly compelling where, as in this case, the subsequent action that may cause a significant impact to the environment does not require federal approval after transfer of the land. In other words the use contemplated by the Tribe after transfer is currently an allowable use that would not specifically require a discretionary federal approval if conducted by the current beneficial owner. The change is merely a change as to the beneficial owner of the land. There are also strong arguments to support a finding that a trust to trust transfer either under the ILCA or without specific utilization of the Act's provision also qualifies for one or more Categorical Exclusions.⁵

(5) In addition to the support for application of one or more Categorical Exclusions, section 2209 of the ILCA states "Title to any land acquired under this chapter by any Indian or Indian tribe shall be taken in trust by the United States for that Indian or Indian tribe." The inclusion of the word "shall" makes the action of taking the land in trust (or in this case transferring the beneficial use of the trust land from an individual to the Tribe) a mandatory acquisition or mandatory transfer of title that would not trigger NEPA.

DISCUSSION

² See *id.* and 25 U.S.C. §§ 2201--2219.

³ See 25 U.S.C. § 2204 (b)(3).

⁴ The draft regulations state a plan must include: a brief statement as to how the plan will be in the best interests of the tribe and eliminate fractionated interests or consolidate landholdings, include an appropriate tribal supporting resolution, and describe a geographical land consolidation area and map identifying which land is subject to the plan. However, these regulations have not been adopted. The BIA will consider other internal department guidance such as the DOI Departmental Manual RE: NEPA Process, Indian Affairs Manual Regarding NEPA process, 43 C.F.R. § 46.210 and 46.215, as well as the ICLP Program guidance set out in the Indian Affairs Manual.

⁵ Regardless of whether Ms. Esteves and the Tribe seek a transfer specifically in accordance with provisions of the ILCA, the policy of the United States to promote tribal self-sufficiency and self-determination, consolidate Indian land holdings and reverse the effects of the allotment era would still need to be considered for any trust to trust transfer.

I. Background – Indian Lands Opinion Regarding Gaming by Big Sandy on the McCabe Allotment

The National Indian Gaming Commission (“NIGC”) determined the McCabe Allotment constitutes Indian lands under the Indian Gaming Regulatory Act (“IGRA”) by memorandum dated September 6, 2006 (“Indian Lands Opinion”). The McCabe Allotment is a 40.82-acre parcel of land located approximately twelve (12) miles from the Big Sandy Rancheria. The Big Sandy Rancheria is located near Auberry, California, approximately thirty-five (35) miles northeast of Fresno, California. The Allotment was allotted out of the public domain to Mary McCabe, a member of the Tribe, in 1920. The Allotment was immediately placed in trust by the Federal government for the benefit of Ms. McCabe. The Allotment has been held in trust continuously up to the present, and the current, sole beneficial owner of the Allotment is Sherrill McCabe-Esteves, a member of the Tribe.

The Constitution of the Big Sandy Band of Western Mono Indians (“Constitution”) provides the Tribe maintains jurisdiction over all lands as shown on the map of Fresno County Tract No. 2060 recorded at pages 89 – 91 in volume 22 of plats, Fresno County Records, and over all Indian country held by, or for the benefit of any member of the Tribe wherever located, including the McCabe Allotment. Tribal Ordinance No. 1204-01 “Tribal Jurisdiction and Government Services Ordinance” affirms the Tribe’s ongoing obligation to provide governmental services and programs to all Indian lands of the Tribe or any Tribal member and all Tribal members located within or outside the Big Sandy Rancheria. The Tribe provides governmental services to the Allotment in the form of Tribally and U.S. Department of Housing and Urban Development (“HUD”)-funded housing services, housing and facility maintenance, and social, welfare and property maintenance services.⁶

The IGRA provides Class III gaming activities conducted by a tribe shall be lawful only on “Indian lands” pursuant to a Tribal ordinance or resolution authorizing such gaming that is adopted by the governing body of the tribe exercising jurisdiction over such Indian lands. The gaming activities must also be conducted pursuant to a tribal-state compact. *See*, 25 U.S.C. § 2710(d)(1)(A)(C).

The IGRA defines “Indian lands” as all lands within the exterior boundaries of an Indian reservation and any lands held in trust by the United States for the benefit of any Indian tribe or individual, or any land held by an Indian tribe or individual subject to restrictions by the United States against alienation, over which the tribe exercises governmental power. *Id.* at § 2703(4). The code of federal regulations promulgated by the NIGC to implement the provisions of the IGRA define Indian lands as land within the limits of an Indian reservation or lands over which a tribe exercises governmental power that is either held in trust by the United States for the benefit

⁶ The sworn statement by Ms. McCabe states the Tribe provides governmental services in the form of inspection by tribal patrol officers, fence repair, maintenance, monitoring for un-permitted grazing and general supervision. The sworn statement by Ric Contreras, then-Tribal Administrator, recounted a situation wherein he undertook efforts to seal off unpermitted grazing on the Allotment. The sworn statement of Dan Lewis, tribal security officer, stated he regularly visited and inspected the Allotment for any trespassers, squatters and any damage or removal of objects from the land. *See*, McCabe Allotment Indian lands Opinion, September 6, 2006 at 6.

of any Indian tribe or individual, or subject to restrictions by the United States against alienation. 25 C.F.R. § 502.12.

The Allotment is located outside the exterior boundaries of the Big Sandy Rancheria. Accordingly, in order to qualify as Indian lands under the IGRA, the Tribe must demonstrate the land is held in trust by the U.S. for the benefit of the Tribe or an individual tribal member, and that it exercises jurisdiction and governmental power over the land. The NIGC determined the Tribe satisfied all three criteria.

The Allotment has been held in trust by the U.S. continuously since 1920 for the benefit of McCabe family members, up to the present beneficial owner Sherrill McCabe-Esteves. Thus, the first criterion is satisfied. The NIGC determined the Tribe exercised jurisdiction over the Allotment for the following reasons. First, tribes are presumed to possess jurisdiction within Indian country. Indian country includes, among other qualifying lands, Indian allotments the title to which has not been extinguished. The NIGC compared the status of the McCabe Allotment to an allotment known as the Sampson Johns Allotment owned by a member of the Quinault tribe and located within twelve (12) miles from the Quinault reservation. The Office of the Solicitor determined that the Sampson Johns Allotment qualified as Indian lands for the purposes of the IGRA.⁷ Similarly, the NIGC determined, the McCabe Allotment is "owned by a tribal member who[m] is a descendant of the original allottee's family and the allotment has been held in trust continuously since 1920 and is located within 12 miles of the Tribe's Rancheria. Therefore, we can conclude that the Tribe has jurisdiction over the land." *See*, Indian Lands Opinion at 5.

Finally, the NIGC determined the Tribe exercises governmental authority over the McCabe Allotment. The NIGC relied on the governmental services factor in support of its determination the Tribe exercises governmental authority over the McCabe Allotment, including: tribally and HUD-funded housing services, housing and facility maintenance, social, welfare and property maintenance services, security patrols, fence repairs, and inspections for un-permitted grazing, squatters, trespassers and any damage or removal of objects from the land, among other services.

Accordingly, the NIGC determined the McCabe Allotment qualifies as Indian lands under the IGRA because: (1) it is held in trust by the U.S. for the benefit of an individual; (2) the Tribe exercises jurisdiction over the land; and (3) the Tribe exercises governmental authority over the land.

II. Indian Land Consolidation Act

The ILCA, 25 U.S.C. § 2201 *et seq.*, provides a mechanism by which an Indian tribe can acquire individually-owned allotted land within the boundaries of the tribe's reservation or under the jurisdiction of the tribe through purchase or exchange. Depending upon whether the Indian tribe has an approved ILCP provided for under the ILCA, the acquisition may or may not require approval by the Secretary of the Interior.

⁷ See Sampson Johns Allotment a "Indian Land" under IGRA, issued September 1996 by the NIGC.

The terms and conditions under which purchases and exchanges may be made are contained in two sections of the ILCA. Subsection (a)(1) of section 2204 of the ILCA provides in part:

Subject to subsection (b) of this section, any Indian tribe may purchase, at not less than fair market value and with the consent of the owners of the interests, part or all of the interests in--

*(A) any tract of trust or restricted land within the boundaries of the reservation of the tribe; or (B) land that is otherwise subject to the jurisdiction of the tribe.*⁸

(Emphasis added.) Subsection (b)(3) of section 2204 further provides that:

the approval of the Secretary shall be required for a land sale initiated under this section, except that such approval shall not be required with respect to a land sale transaction initiated by an Indian tribe that has in effect a land consolidation plan that has been approved by the Secretary under section 2203 of this title.

25 U.S.C. § 2204 (emphasis added). Adoption by Indian tribes and approval by the Secretary of Land Consolidation Plans is authorized by section 2203 of the ILCA. Subsection (a) of section 2203 provides in part:

*Notwithstanding any other provision of law, any tribe, acting through its governing body, is authorized, with the approval of the Secretary to adopt a land consolidation plan providing for the sale or exchange of any tribal lands or interest in lands for the purpose of eliminating undivided fractional interests in Indian trust or restricted lands or consolidating its tribal landholdings*⁹

Finally, subsection (b) of section 2203 provides in part that:

⁸ Subsection (a)(2)(a) requires that the purchase have the consent of "the owners of undivided interests equal to at least 50 percent of the undivided interest in the tract."

⁹ The following conditions apply to the adoption of a Land Consolidation Plan:

- (1) except as provided by subsection (c) of this section, the sale price or exchange value received by the tribe for land or interests in land covered by this section shall be no less than within 10 per centum of the fair market value as determined by the Secretary;
- (2) if the tribal land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the tribe may accept or give cash in such exchange in order to equalize the values of the property exchanged;
- (3) any proceeds from the sale of land or interests in land or proceeds received by the tribe to equalize an exchange made pursuant to this section shall be used exclusively for the purchase of other land or interests in land;
- (4) the Secretary shall maintain a separate trust account for each tribe selling or exchanging land pursuant to this section consisting of the proceeds of the land sales and exchanges and shall release such funds only for the purpose of buying lands under this section; and
- (5) any tribe may retain the mineral rights to such sold or exchanged lands and the Secretary shall assist such tribe in determining the value of such mineral rights and shall take such value into consideration in determining the fair market value of such lands.

The Secretary must execute such instrument of conveyance needed to effectuate a sale or exchange of tribal lands made pursuant to an approved tribal land consolidation plan unless he makes a specific finding that such sale or exchange is not in the best interest of the tribe or is not in compliance with the tribal land consolidation plan.

25 U.S.C. § 2203 (emphasis added).

Therefore a Tribe may purchase individually-owned trust land with the consent of the owners at a price that is not less than the fair market value of the land. Approval of the Secretary of the Interior is required, unless the sale is in accordance with an approved ILCP. If a sale is made pursuant to an approved ILCP, the approval of the Secretary is not required. In addition, if the sale is made pursuant to an approved Plan, the Secretary is required to execute the deed of conveyance unless he determines the sale is not in the best interest of the tribe, or that the sale is not in compliance with the Plan. Section 2209 of the act states, "Title to any land acquired under this chapter by any Indian or Indian tribe shall be taken in trust by the United States for that Indian or Indian tribe."

The ILCA promotes the consolidation of Indian lands and encourages the return of individual allotments, or fractionated interest in such allotments to tribal governments. The ICLA declares that it is the policy of the United State government to promote tribal self-sufficiency and self-determination as well as to reverse the effects of the allotment policy on Indian tribes. Therefore the law was clearly intended to effectuate a process to consolidate fractional interests and return individual land holdings to tribal governments in a manner that enhances tribal sovereignty.¹⁰

Where approval by the Secretary under the ICLA is required the National Environmental Policy Act ("NEPA") may be triggered. However, strong legal argument allowing for application of categorical exclusions, or ministerial approvals for allowing transfer from an allottee to the tribe exists.

III. National Environmental Policy Act

Under section 102 of NEPA, 42 U.S.C. § 4332 the federal agencies must factor environmental considerations into their discretionary decision-making. Section 102 requires federal agencies to "implement 'to the fullest extent possible' methods and procedures designed to accord environmental factors appropriate consideration."¹¹ However, the Council on Environmental Quality ("CEQ") regulations provide that some types of actions which are not expected to significantly affect the environment can be "categorically excluded" from NEPA compliance. The Department of the Interior listing of Categorical Exclusions is published in the

¹⁰ See ILCA Amendments of 2000, Pub. L. 106-462, § 102, 114 Stat. 1992.

¹¹ See generally, Mark A. Chertock, Overview of the National Environmental Policy Act: Environmental Impact Assessment and Alternatives.

Department's regulations, 43 CFR § 46.210. In addition, the Bureau of Indian Affairs ("BIA") has a supplemental list of Categorical Exclusions, currently published in the DOI Department Manual, 516 DM 10. The BIA also received a nation-wide Categorical Exclusion Exception Review ("CEER") for land purchases and consolidation of fractionated interest of Indian land. This nation-wide CEER allows the department to move forward with accepting title to land on behalf of tribes under the ILCA without conducting a review each time it allows for purchase and consolidation of Indian land so long as language documenting the CEER is included in each deed. The last sentence of this language states, "[a]ny future change in land use that requires a major federal action would require future NEPA review." NEPA applies only to federal actions, and therefore the BIA correctly advises that "[a]ny proposed tribal actions that do not require BIA or other Federal approval, funding or 'actions' are not subject to the NEPA process." 516 DM 10.3(A)(2)(b).

In this case the BIA will need to approve either a Land Consolidation Plan for the Tribe or the individual trust to trust transfer. There is no federal action required for subsequent proposed uses on the property. This action to transfer title in itself does not have a significant effect on the environment. The subsequent action of developing the land may have an effect, however if there is no federal action, only tribal action, the BIA would have no authority to approve or disapprove of development that is consistent with the current allowable activities on the land. The BIA has, as evidenced by the Department Manual, considered land transfers categorically excluded from NEPA. Additionally, if a federal action is considered mandatory (required by statute or court order), rather than discretionary NEPA review is not triggered.¹²

a. Applicability of NEPA to Land Transfers Under the ILCA

One BIA Categorical Exclusion is specifically relevant to the conveyance of trust land: "Land Conveyance and Other Transfers. Approvals or grants of conveyances and other transfers of interests in land *where no change in land use is planned.*" 516 DM § 10.5(I) (emphasis added). Accordingly, even without an ILCP in place, the land at issue can be sold to the Tribe in accordance with the ILCA without an EIS. With an approved ILCP in place, the tribal member could also sell the land to the Tribe without the approval of the Secretary therefore not triggering NEPA.

An ILCP does not need to be extensive or complicated. Several individual plans that have been adopted by other tribes are relatively short and to the point. While the DOI has yet to adopt regulations governing land transactions under the ILCA, in December 2005 the Department developed a Preliminary Draft of proposed regulations that provides reasonable guidance as to an approval process for a Land Consolidation Plan. Section 152.102 of the Preliminary Draft regulations explains that:

A tribal land consolidation plan is a plan for eliminating fractionation and/or consolidating tribal landholdings. The plan identifies any lands or interests owned by the tribe, for sale or exchange consistent with the tribe's plan to eliminate fractionation and/or consolidate tribal landholdings. A tribal land

¹² See *Sierra Club v. Babbitt*, 65 F.3d 1502, 1512 (9th Cir. 1995).

consolidation plan may identify any trust, restricted, or unrestricted fee lands for purchase with the proceeds derived from such sales or exchanges, so long as such lands are located within or contiguous to the tribe's reservation boundaries, or otherwise subject to tribal jurisdiction.

(Emphasis added.) Section 152.103 of the Preliminary Draft regulations specifies that:

A tribal land consolidation plan must include:

- (a) a general description or a specific identification of both the lands and interests to be conveyed and the lands and interests to be purchased with the sale proceeds;
- (b) maps that depict the lands to be conveyed and the interests to be purchased;
- (c) a brief explanation as to how the plan will facilitate the elimination of fractionation and/or the consolidation of tribal landholdings; and
- (d) appropriate supporting tribal resolutions.

The next section (152.104) cautions that "[a] tribal land consolidation plan may not authorize land sales or other types of land transactions that are prohibited by the tribe's constitution or other governing document."

First, approval of an ILCP does not come within the express terms of any of the listed DOI or BIA categorical exclusions. However, approval of a Plan is similar to other types of actions that are subject to categorical exclusion. Although approval of a Plan is not approval of a conveyance, the categorical exclusion for Land Conveyances and Other Transfers most closely applies. The ILCP approval process should be considered similar to cases where the Secretary approves conveyances of individually-owned land out of trust status, which are considered to be categorically excluded from NEPA review regardless of the use after the land is taken out of trust. This case, the transfer of one trust interest from an individual Indian to an Indian tribe, should be considered in the same manner when the Secretary has no approval authority for subsequent development (approval belongs with another entity -- in this case the Tribe). This is consistent with the DOI Departmental Manual in that "[a]ny proposed tribal actions that do not require BIA or other Federal approval, funding or 'actions' are not subject to the NEPA process." 516 DM 10.3(A)(2)(b).

Second, despite extensive research we have found no reported decisions on the question of whether a NEPA review is required for approval of an ILCP. Similarly, a search of the Federal Register database has found no notices of Secretarial approvals of individual tribal land consolidation plans. This lack of reported case decisions and federal register notices is consistent with the proposition that ILCP approvals do not trigger NEPA review.

b. Mandatory Acquisition

"Federal actions" under NEPA do not include actions mandated by law.¹³ The ILCA sets forth a strong federal policy promoting consolidation of fractionated interests or ownership of trust land to be transferred to tribal governments. The legislation proclaims it to be the policy of the United States to promote tribal self-sufficiency and self-determination. Section 2209 of the Act states that, "Title to any land acquired under this chapter by an Indian or Indian tribe *shall* be taken in trust by the United States for that Indian or Indian tribe." The use of the word "shall" implicates a mandatory obligation of the United States to accept land acquired under the Act on behalf of the Tribe. Here the land is already in trust and DOI would be required to take the land on behalf of Big Sandy in accordance with the ILCA. Once the land is transferred there is no subsequent approval by the Secretary required for the Tribe to develop the land in accordance with the IGRA. Case law is clear that NEPA does not apply to federal nondiscretionary action or agency inaction (e.g., where no approval by the Secretary is required).¹⁴ Just as the Court in *Sierra Club v. Babbitt* found no benefit from NEPA compliance where the BLM's ability to modify or stop the Project was limited to specific conditions in the right-of-way agreement, the DOI cannot apply NEPA to an action limited under the provisions of the ILCA to either take the land into trust on behalf of the Tribe or approve a Land Consolidation Plan. In approving the Plan NEPA cannot be triggered by a potential future tribal action that does not require any discretionary action ("inaction") by the DOI. If this were the case it would allow the DOI through NEPA review to bootstrap Secretarial approvals to tribal action that is otherwise not subject to DOI approval.

The statements of purpose in ILCA indicate that the statute was not solely intended to address fractionated interests in Indian lands. For example, Congress stated in the Statute's preamble that its purpose was "[t]o authorize the purchase, sale, and exchange of lands by Indian tribes . . . and for other purposes." P.L. 97-459 (Jan 12, 1983). This statement conspicuously fails to limit Indian tribes' purchase, sales, and exchanges to fractionated lands. Moreover, in 25 U.S.C. § 2203, Congress expressly contemplated that Tribal Land Consolidation Plans would be used both to eliminate undivided fractional interests and to consolidate tribal landholdings. This indicates that Congress did not intend to limit ILCA to lands with fractionalized interests. The legislative history of the Act demonstrates intent to reverse the negative impacts of the allotment era and allow tribes to reacquire and consolidate tribal land holdings.

California tribes faced even more egregious decimation of tribal land holdings during the termination era, where many reservations were abolished through distribution of tribal lands in fee to individuals by the United States. Many of the stipulated entry of judgments that restored tribal status to California tribes contained language that supports the same intent set forth in the legislative history of the ILCA to restore tribal land holdings. This interpretation is supported by the Stipulated Judgments in *San Joaquin or Big Sandy Band of Indians v. James Watt*, No. C-80-

¹³ See *Sierra Club v. Babbitt*, 65 F.3d 1502, 1512 (9th Cir. 1995).

¹⁴ See *Sierra Club v. Pensfold*, 857 F. 2d 1307, 1314 (9th Cir. 1988) (holding that BLM's review of certain mining operation for statutory and regulatory compliance is insufficient to trigger NEPA); *State of Alaska v. Andrus*, 591 F.2d 537, 540-41 (9th Cir. 1979) (holding that governmental inaction does not trigger NEPA); *Molokai Homesteaders Coop. Ass'n v. Morton*, 506 F. 2d 572, 580 (9th Cir. 1974) (refusing to characterize the "right of the federal government to object to violations of its loan agreements, or its determination not to object" as federal action); *Goos v. ICC*, 911 F.2d 1283, 1293-95 (8th Cir. 1990) (collecting cases demonstrating the inapplicability of NEPA to nondiscretionary federal action).

3787-MHP (N.D. Cal.), *Hardwick v. United States*, No. C-79-1710-SW (N.D. Cal), and *Table Mountain Rancheria v. Watt*, No. C-80-4595-MHP (N.D. Cal.). The Stipulation for Entry of Judgment in each of these three cases is substantially similar. Concerning tribal lands, the Stipulations state that the exterior boundaries of each Tribe shall be reestablished, along with the status of said lands as Indian country within the meaning of 18 U.S.C. § 1151.

The Stipulations also provide that, within a specified time period after the Stipulation, each Tribe shall convey communally-owned property to the United States, which will be held in trust for the Tribe. The *Big Sandy* and *Table Mountain* Stipulations both provide that the Tribe will convey all communally-owned lands within one year. The *Tillie Hardwick* Stipulation affords each of those Tribes two years.

In addition to communally-owned lands, the Stipulations provide that individual plaintiff class members who own fee interest of land from the distribution at the Tribe's termination, "or the Indian heir(s), devisee(s) or successor(s) in interest to such class member," may elect to convey such land to the United States "title to any Rancheria lands owned by *him/her*" to be held in trust, and furthermore may designate for whom the land shall be held in trust. Pursuant to the authority conferred by [ILCA], Public Law No. 97-459 . . . title so conveyed shall be accepted and held by the United States in trust for such Indian class member(s) or entity as the grantor(s) may specify." As shown by the language quoted above, the Stipulations contemplate the conveyance of land either by single or multiple owners. The fact that the Stipulations incorporate the authority granted to the Secretary in ILCA indicates a United States acknowledgment that ILCA provides for consolidation of single-owner tribal lands as well as fractionated lands.

It is worth noting that, while the Stipulations require the Tribes to convey communally-owned lands to the United States within a certain time period, there is "nothing in the stipulated judgment which places a time limitation on requests to restore individually owned lands to trust status." See *Santana and Buck v. Sacramento Area Director*, 33 IBIA135, 141 (1999). Accordingly, as the IBIA concluded, "there [is] no such deadline" for a plaintiff class member or successor interest to convey land to the United States at any time and specify for whom the land shall be held in trust under the Stipulations. *Id.*

"Title to any land acquired under [ILCA] by any Indian or Indian tribe shall be taken in trust by the United States for that Indian or Indian tribe." 25 U.S.C. § 2209. Due to the mandatory language of section 2209, it is likely that the taking of title in trust under the ILCA would be considered a mandatory trust or in this case mandatory trust transfer. It is important to note that the McCabe allotment is listed in the Big Sandy Distribution Plan and therefore the distributee or his successor would have the right to request land to be taken into trust or transfer land to the Tribe as the beneficial owner of the trust land.

Under the NEPA regulations, there are two types of acquisitions contemplated: mandatory and discretionary acquisitions. See 25 C.F.R. Part 151. For discretionary trust acquisitions, the Secretary must consider various factors in evaluating whether to accept land in trust for the Indian or Indian tribe. See 25 C.F.R. §§ 151.10 & 151.11. However, if the trust

acquisition is mandatory, then the Secretary is not required to consider the factors enumerated in the regulations.

“Where there is no ambiguity in the words [of a statute] there is no room for construction. The case must be a strong one indeed, which would justify a court in departing from the plain meaning of words ... in search of an intention which the words themselves did not suggest.” *City of Roseville v. Norton*, 219 F. Supp. 2d 130, 158 (D.D.C. 2002) (internal quotation marks and citations omitted). The plain language of 25 U.S.C. § 2209 states that, for any lands acquired under ILCA, the Secretary is mandated to take the land in trust for that Indian or Indian tribe. In addition, if a Tribe has an approved ICLP, the Secretary must take all necessary action to effectuate the sale or exchange of the land, as long as the transaction is consistent with the ILCP and does not harm the best interest of the Tribe. 25 U.S.C. § 2203(b).

This construction is consistent with previous decisions of federal courts and the Interior Board of Indian Appeals (“IBIA”) that have considered trust acquisitions pursuant to an Indian tribe’s restoration act. For example, in *Sault Ste. Marie Tribe of Lake Superior Chippewa Indians v. United States*, 78 F.Supp.2d 699 (W.D. Mich. 1999), the district court considered a Tribe’s Restoration Act, which stated:

The Secretary shall acquire real property in Emmet and Charlevoix Counties for the benefit of the Little Traverse Bay Bands. The secretary shall also accept any real property located in those counties for the benefit of the Little Traverse Bay Bands if conveyed or otherwise transferred to the Secretary, if at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages or taxes owed.

25 U.S.C. § 1300k-4(a). The Secretary of the Interior had interpreted this statute as requiring the mandatory acceptance of property into trust, despite the language allowing room to not take the land into trust where there are adverse legal claims on such property. The United States District Court for the Western District of Michigan upheld the Secretary’s interpretation, finding that it was not arbitrary and capricious. *Sault Ste. Marie Tribe*, 78 F.Supp.2d at 705

In *Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians v. Portland Area Director*, 27 IBIA 48 (1994), the IBIA considered a Restoration Statute similar to that of the Sault Ste Marie Tribe, and found that, through the statute, Congress mandated the acquisition, and therefore the BIA was not required to comply with NEPA prior to taking land into trust pursuant to the Tribe’s Restoration Act.

Accordingly, the plain language of ILCA indicates that land taken into trust under an ILCP approved under ILCA is a mandatory acquisition. Additionally land taken into trust or transferred to the Tribe by an individual consistent with the Entry of Stipulated Judgment that allows for the plaintiff class, or Indian successors to the plaintiff class to convey lands to the United States to be held in trust for the benefit of the individual or an entity specified by the Indian (the “Tribe”). See Entry of Stipulated Judgment *San Joaquin or Big Sandy Band of Indians v. James Watt*, No. C-80-3787-MHP (N.D.Cal.).

IV. Conclusion

In conclusion, this memorandum sets forth several arguments that support an expedited transfer of the beneficial ownership of the McCabe allotment from the individual allottee to the Tribe. There are strong public policy reasons to maintain tribal lands under tribal ownership. These reasons include reversing the negative impacts of allotment on tribal communities; promoting consolidation of Indian land holdings and returning ownership of tribal lands to Indian tribes; preventing future fractionated interest in tribal trust land; and promoting strong self-reliant Indian communities. The ILCA, the three Stipulated Judgments referenced above, and case law support the Tribe's position that the McCabe allotment should be transferred to the Tribe consistent with federal law, and existing allowable uses of property. A trust to trust transfer under the ILCA consistent with the Stipulated Judgment and federal law will promote economic development and tribal self-sufficiency for Big Sandy.



FREDERICKS PEBBLES & MORGAN LLP
ATTORNEYS AT LAW

INTERNAL MEMORANDUM

TO: Big Sandy Rancheria Band of Western Mono Indians
FROM: Fredericks Pebbles & Morgan LLP
DATE: October 12, 2012
RE: Indian Land Consolidation Act and the National Environmental Policy Act

QUESTIONS PRESENTED

This memorandum addresses the question of whether it is feasible to convey individually-owned trust land from a tribal member to the Big Sandy Rancheria Band of Western Mono Indians ("Big Sandy Rancheria" or the "Tribe") under the Indian Land Consolidation Act ("ILCA") without triggering an environmental review under the National Environmental Policy Act ("NEPA").

The land at issue in this matter involves a land allotment held in trust by the United States for Sherrill Esteves, an enrolled member of the Tribe. The allotment is located within the aboriginal territory of the Tribe, but outside the immediate exterior boundaries of what is currently recognized as the main body of the reservation. Although the land is located outside the immediate exterior boundaries of the reservation, the land is under the jurisdiction of the Tribe.¹ The transaction contemplated would be a trust to trust transfer as the property is currently held in trust for the beneficial use of the tribal member. This transfer could occur specifically under the ILCA.

SHORT ANSWERS

(1) The purchase by the Tribe of an individual allotment held in trust that is under the Tribe's jurisdiction is authorized by the ILCA, so long as the owners of the majority interest in the land consent to the sale and the owners are paid not less than the fair market value of the land. In this case there is only one individual with interest in the McCabe allotment, Sherrill Esteves. The Tribe has the consent of the individual and the land is under the jurisdiction of the Tribe.²

¹ See Indian lands opinion issued through a memorandum from the National Indian Gaming Commission ("NIGC") regarding McCabe Allotment as Indian lands dated September 6, 2006.

² See *id.* and 25 U.S.C. §§ 2201—2219.

(2) If the purchase is in accordance with a Land Consolidation Plan adopted by the Tribe and approved by the Secretary of the Interior, the purchase would not need to be approved by the Secretary,³ and NEPA would not apply to the purchase or transfer of land in accordance with the plan. The Tribe may adopt and submit for approval an ILCP. The Department of the Interior ("DOI") has prepared draft regulations for implementation of the ILCA, however no final regulations have been adopted to date. The draft regulations may provide some guidance as to what should be included in a proposed ILCP.⁴

(3) There is not a definitive determination as to whether approval by the Secretary of a Land Consolidation Plan would require compliance with NEPA. The situation at hand is a case of first impression for the DOI, in that there is a known proposed use for a parcel of the land that would be included in the Plan that could be considered a "change of use" that may trigger review under NEPA. However, preliminary indications are that such approval would be subject to a "Categorical Exclusion" from NEPA, in which case no environmental review would be required for approval of the plan. This argument is particularly compelling where, as in this case, the subsequent action that may cause a significant impact to the environment does not require federal approval after transfer of the land. There are also strong arguments to support a finding that a trust to trust transfer either under the ILCA or without specific utilization of the Act's provision also qualifies for a Categorical Exclusion.⁵

(4) In addition to the support for application of a categorical exclusion, section 2209 of the ILCA states "Title to any land acquired under this chapter by any Indian or Indian tribe shall be taken in trust by the United States for that Indian or Indian tribe." The inclusion of the word "shall" makes the action of taking the land in trust (or in this case transferring the beneficial use of the trust land from an individual to the Tribe) a mandatory acquisition that would not trigger NEPA.

DISCUSSION

I. Indian Land Consolidation Act

The Indian Land Consolidation Act ("ILCA"), 25 U.S.C. § 2201 *et seq.*, provides a mechanism by which an Indian tribe can acquire individually-owned allotted land within the boundaries of the tribe's reservation or under the jurisdiction of the tribe through purchase or exchange. Depending upon whether the Indian tribe has an approved Land Consolidation Plan

³ See 25 U.S.C. § 2204 (b)(3).

⁴ The draft regulations state a plan must include: a brief statement as to how the plan will be in the best interests of the tribe and eliminate fractionated interests or consolidate landholdings, include an appropriate tribal supporting resolution, and describe a geographical land consolidation area and map identifying which land is subject to the plan. However, these regulations have not been adopted. The BIA will consider other internal department guidance such as the DOI Departmental Manual RE: NEPA Process, Indian Affairs Manual Regarding NEPA process, 43 C.F.R. § 46.210 and 46.215, as well as the ICLP Program guidance set out in the Indian Affairs Manual.

⁵ Regardless of whether the Ms. Esteves and the Tribe seek a transfer specifically in accordance with provisions of the ILCA, the policy of the United States to promote tribal self-sufficiency and self-determination, consolidate Indian land holdings and reverse the effects of the allotment era would still need to be considered for any trust to trust transfer.

provided for under the ILCA, the acquisition may or may not require approval by the Secretary of the Interior.

The terms and conditions under which purchases and exchanges may be made are contained in two sections of the ILCA. Subsection (a)(1) of section 2204 of the ILCA provides in part:

Subject to subsection (b) of this section, any Indian tribe may purchase, at not less than fair market value and with the consent of the owners of the interests, part or all of the interests in--

*(A) any tract of trust or restricted land within the boundaries of the reservation of the tribe; or (B) land that is otherwise subject to the jurisdiction of the tribe.*⁶

(Emphasis added.) Subsection (b)(3) of section 2204 further provides that:

the approval of the Secretary shall be required for a land sale initiated under this section, except that such approval shall not be required with respect to a land sale transaction initiated by an Indian tribe that has in effect a land consolidation plan that has been approved by the Secretary under section 2203 of this title.

25 U.S.C. § 2204 (emphasis added). Adoption by Indian tribes and approval by the Secretary of Land Consolidation Plans is authorized by section 2203 of the ILCA. Subsection (a) of section 2203 provides in part:

*Notwithstanding any other provision of law, any tribe, acting through its governing body, is authorized, with the approval of the Secretary to adopt a land consolidation plan providing for the sale or exchange of any tribal lands or interest in lands for the purpose of eliminating undivided fractional interests in Indian trust or restricted lands or consolidating its tribal landholdings*⁷

⁶ Subsection (a)(2)(a) requires that the purchase have the consent of "the owners of undivided interests equal to at least 50 percent of the undivided interest in the tract."

⁷ The following conditions apply to the adoption of a Land Consolidation Plan:

- (1) except as provided by subsection (c) of this section, the sale price or exchange value received by the tribe for land or interests in land covered by this section shall be no less than within 10 percent of the fair market value as determined by the Secretary;
- (2) if the tribal land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the tribe may accept or give cash in such exchange in order to equalize the values of the property exchanged;
- (3) any proceeds from the sale of land or interests in land or proceeds received by the tribe to equalize an exchange made pursuant to this section shall be used exclusively for the purchase of other land or interests in land;
- (4) the Secretary shall maintain a separate trust account for each tribe selling or exchanging land pursuant to this section consisting of the proceeds of the land sales and exchanges and shall release such funds only for the purpose of buying lands under this section; and

Finally, subsection (b) of section 2203 provides in part that:

The Secretary must execute such instrument of conveyance needed to effectuate a sale or exchange of tribal lands made pursuant to an approved tribal land consolidation plan unless he makes a specific finding that such sale or exchange is not in the best interest of the tribe or is not in compliance with the tribal land consolidation plan.

25 U.S.C. § 2203 (emphasis added).

Therefore a Tribe may purchase individually-owned trust land with the consent of the owners at a price that is not less than the fair market value of the land. Approval of the Secretary of the Interior is required, unless the sale is in accordance with an approved Land Consolidation Plan. If a sale is made pursuant to an approved Land Consolidation Plan, the approval of the Secretary is not required. In addition, if the sale is made pursuant to an approved Plan, the Secretary is required to execute the deed of conveyance unless he determines the sale is not in the best interest of the tribe, or that the sale is not in compliance with the Plan.

The ILCA promotes the consolidation of Indian lands and encourages the return of individual allotments, or fractionated interest in such allotments to tribal governments. The ICLA declares that it is the policy of the United State government to promote tribal self-sufficiency and self-determination as well as to reverse the effects of the allotment policy on Indian tribes. Therefore the law was clearly intended to effectuate a process to consolidate fractional interests and return individual land holdings to tribal governments in a manner that enhances tribal sovereignty.⁸

Where approval by the Secretary under the ICLA is required the National Environmental Policy Act ("NEPA") may be triggered. A further discussion as to whether and if so to what extent NEPA applies to Secretarial approvals under the ILCA is set forth below.

II. National Environmental Policy Act

Under section 102 of NEPA, 42 U.S.C. § 4332 the federal agencies must factor environmental considerations into their discretionary decision-making. Section 102 requires federal agencies to "implement 'to the fullest extent possible' methods and procedures designed to accord environmental factors appropriate consideration."⁹ This goal is primarily achieved under section 102 through preparing an Environmental Impact Statement ("EIS") as part of the decision-making process whenever a federal agency or official proposes to take "a major Federal

(5) any tribe may retain the mineral rights to such sold or exchanged lands and the Secretary shall assist such tribe in determining the value of such mineral rights and shall take such value into consideration in determining the fair market value of such lands.

⁸ See ILCA Amendments of 2000, Pub. L. 106-462, § 102, 114 Stat. 1992.

⁹ See generally, Mark A. Chertock, Overview of the National Environmental Policy Act: Environmental Impact Assessment and Alternatives.

action significantly affecting the quality of the human environment[.]” However, under applicable regulations issued by the Council on Environmental Quality (“CEQ”), a less-detailed study known as an Environmental Assessment (“EA”) may be performed in order to determine whether a proposed action will significantly affect the environment. If it is determined as a result of preparing an EA that the proposed action will not significantly affect the environment, the federal agency or official may issue a Finding of No Significant Impact (“FONSI”), and may proceed to take the proposed action without any further environmental study or documentation.

The CEQ regulations provide that some types of actions which are not expected to significantly affect the environment can be “categorically excluded” from NEPA compliance. The Department of the Interior listing of Categorical Exclusions is published in the Department’s regulations, 43 CFR § 46.210. In addition, the Bureau of Indian Affairs (“BIA”) has a supplemental list of Categorical Exclusions, currently published in the DOI Department Manual, 516 DM 10. NEPA applies only to federal actions, and therefore the BIA correctly advises that “[a]ny proposed tribal actions that do not require BIA or other Federal approval, funding or ‘actions’ are not subject the NEPA process.” 516 DM 10.3(A)(2)(b).

In this case the BIA will need to approve either a Land Consolidation Plan for the Tribe or the individual trust to trust transfer. There is no federal action required for subsequent proposed uses on the property. This action to transfer in itself does not have a significant effect on the environment. The subsequent action of developing the land may have an effect, however if there is no federal action, only tribal action, the BIA should not be able to bootstrap its obligation to further federal policy to conduct a lengthy review of a project that it otherwise would have no authority approval or disapprove. The BIA has, as evidenced by the Department Manual, considered land transfers categorically excluded from NEPA. Therefore, NEPA should not apply to such subsequent action, and the transfer should fall within a Categorical Exclusion. Additionally, if a federal action is considered mandatory (required by statute), rather than discretionary NEPA review is not triggered.¹⁰

a. Applicability of NEPA to Land Transfers Under the ILCA

One BIA Categorical Exclusion is specifically relevant to the conveyance of trust land: “Land Conveyance and Other Transfers. Approvals or grants of conveyances and other transfers of interests in land *where no change in land use is planned.*” 516 DM § 10.5(I) (emphasis added). Accordingly, even without a Land Consolidation Plan in place, the land at issue can be sold to the Tribe in accordance with the ILCA and no review under NEPA would be required, so long as no change in land use is planned. With an approved Land Consolidation Plan in place, the tribal member could sell the land to the Tribe without the approval of the Secretary, and no review under NEPA would be required as to the specific land transfer, even if there were a change in land use planned.

A Land Consolidation Plan does not need to be extensive or complicated. Several individual plans that have been adopted by other tribes are relatively short and to the point. While the DOI has yet to adopt regulations governing land transactions under the ILCA, in

¹⁰ See *Sierra Club v. Babbitt*, 65 F.3d 1502, 1512 (9th Cir. 1995).

December 2005 the Department developed a Preliminary Draft of proposed regulations that provides reasonable guidance as to an approval process for a Land Consolidation Plan. Section 152.102 of the Preliminary Draft regulations explains that:

A tribal land consolidation plan is a plan for eliminating fractionation and/or consolidating tribal landholdings. The plan identifies any lands or interests owned by the tribe, for sale or exchange consistent with the tribe's plan to eliminate fractionation and/or consolidate tribal landholdings. A tribal land consolidation plan may identify any trust, restricted, or unrestricted fee lands for purchase with the proceeds derived from such sales or exchanges, so long as such lands are located within or contiguous to the tribe's reservation boundaries, or otherwise subject to tribal jurisdiction.

(Emphasis added.) Section 152.103 of the Preliminary Draft regulations specifies that:

A tribal land consolidation plan must include:

- (a) a general description or a specific identification of both the lands and interests to be conveyed and the lands and interests to be purchased with the sale proceeds;
- (b) maps that depict the lands to be conveyed and the interests to be purchased;
- (c) a brief explanation as to how the plan will facilitate the elimination of fractionation and/or the consolidation of tribal landholdings; and
- (d) appropriate supporting tribal resolutions.

The next section (152.104) cautions that "[a] tribal land consolidation plan may not authorize land sales or other types of land transactions that are prohibited by the tribe's constitution or other governing document."

At present, there has not been a definitive determination as to whether the Secretary would need to comply with NEPA in order to approve a Land Consolidation Plan adopted by the Tribe. However, we have a good indication that the DOI would consider approval of a Land Consolidation Plan to be subject to a Categorical Exclusion.

First, approval of a Land Consolidation Plan does not come within the express terms of any of the listed DOI or BIA Categorical Exclusions. However, approval of a Plan is similar to other types of actions that are subject to Categorical Exclusion. Environmental, Cultural Resource Management and Safety staff of the DOI Pacific Regional Office indicated that their preliminary opinion is that Plan approval would be categorically excluded from NEPA review. Staff at the BIA cautioned that this would require further review by the DOI Solicitor before giving any final advice should a Plan be submitted to the Regional Office for approval. Although approval of a Plan is not approval of a conveyance, staff believed the Categorical Exclusion for Land Conveyances and Other Transfers most closely applied. Staff also analogized the Land Consolidation Plan approval issue to cases where the Secretary approves conveyances of individually-owned land out of trust status, which he indicated also are

considered to be categorically excluded from NEPA review regardless of the use after the land is taken out of trust. The action to take the land out of trust provided by the DOI staff is a good analogy as the action falls within a Categorical Exclusion regardless of any subsequent use or approvals by entities other than the BIA. This case, the transfer of one trust interest from an individual Indian to an Indian tribe, should be considered in the same manner when the Secretary has no approval authority for subsequent development (approval belongs with another entity – in this case the Tribe). This is again consistent with the DOI Departmental Manual in that “[a]ny proposed tribal actions that do not require BIA or other Federal approval, funding or ‘actions’ are not subject to the NEPA process.” 516 DM 10.3(A)(2)(b).

Second, despite extensive research we have found no reported decisions on the question of whether a NEPA review is required for approval of an ILCP. Similarly, a search of the Federal Register database has found no notices of Secretarial approvals of individual tribal land consolidation plans. This lack of reported case decisions and federal register notices is consistent with the proposition that Land Consolidation Plan approvals do not trigger NEPA review. We have had initial discussions with the Solicitor’s office which confirm these findings. This matter will likely be a case of first impression. Although this is a case of first impression the Solicitor’s Office initial response to inquiries as to whether NEPA review would be required for such transfer has been consistent with our analysis. We need to provide further analysis to the Solicitor’s Office for consideration.

b. Mandatory Acquisition

“Federal actions” under NEPA do not include actions mandated by law.¹¹ The ILCA sets forth a strong federal policy promoting consolidation of fractionated interests or ownership of trust land to be transferred to tribal governments. The legislation proclaims it to be the policy of the United States to promote tribal self-sufficiency and self-determination. Section 2209 of the Act states that, “Title to any land acquired under this chapter by an Indian or Indian tribe *shall* be taken in trust by the United States for that Indian or Indian tribe.” The use of the word “shall” implicates a mandatory obligation of the United States to accept land acquired under the Act on behalf of the Tribe. Here the land is already in trust and DOI would be required to take the land on behalf of Big Sandy in accordance with the ILCA. Once the land is transferred there is no subsequent approval by the Secretary required for the Tribe to develop the land in accordance with the Indian Gaming Regulatory Act (“IGRA”). Case law is clear that NEPA does not apply to federal nondiscretionary action or agency inaction (e.g., where no approval by the Secretary is required).¹² Just as the Court in *Sierra Club v. Babbitt* found no benefit from NEPA compliance where the BLM’s ability to modify or stop the Project was limited to specific conditions in the right-of-way agreement, the DOI cannot apply NEPA to an action limited under the provisions of

¹¹ See *Sierra Club v. Babbitt*, 65 F.3d 1502, 1512 (9th Cir. 1995).

¹² See *Sierra Club v. Penfold*, 857 F. 2d 1307, 1314 (9th Cir. 1988) (holding that BLM’s review of certain mining operation for statutory and regulatory compliance is insufficient to trigger NEPA); *State of Alaska v. Andrus*, 591 F.2d 537, 540-41 (9th Cir. 1979) (holding that governmental inaction does not trigger NEPA); *Molokai Homesteaders Coop. Ass’n v. Morton*, 506 F. 2d 572, 580 (9th Cir. 1974) (refusing to characterize the “right of the federal government to object to violations of its loan agreements, or its determination not to object” as federal action); *Goos v. ICC*, 911 F.2d 1283, 1293-95 (8th Cir. 1990) (collecting cases demonstrating the inapplicability of NEPA to nondiscretionary federal action).

the ILCA to either take the land into trust on behalf of the Tribe or approve a Land Consolidation Plan. In approving the Plan NEPA cannot be triggered by a potential future tribal action that does not require any discretionary action ("inaction") by the DOI. If this were the case it would allow the DOI through NEPA review to bootstrap Secretarial approvals to tribal action that is otherwise not subject to DOI approval.

III. Options – Next Steps

It is recommended that the Tribe move forward with preparing and finalizing a Land Consolidation Plan and to finalize agreements with Sherrill Esteves to transfer the allotment to the Tribe. At the same time, the Tribe should continue to consult with the Solicitor's office to work through the legal analysis for a transfer of the trust property to the Tribe rather than seeking approval of the current proposed lease. The decision to move forward with a Land Consolidation Plan or to pursue a trust to trust transfer will depend heavily on the feedback from the Solicitor's office. At this time we do not have a definite timeframe for a final approval by the DOI. However, with close coordination on working through any outstanding issues we anticipate that the process can be worked through fairly quickly once a submission is made consistent with any recommendations received from the Solicitor's office. Once the transfer is complete the Tribe will need to comply with environmental review provisions of the Tribal-State Compact. The Tribal-State Compact requires a tribal environmental review in accordance with the Big Sandy Environmental Ordinance. The environmental document prepared for the lease approval can be utilized for this review. However no subsequent approvals by the Secretary will be required to move forward once the land is transferred to the Tribe.

IV. Conclusion

In conclusion there are strong arguments to support moving forward with a transfer of the land pursuant to the ILCA. The Tribe will need to pursue further discussions with DOI regarding the process for approving a Land Consolidation Plan or direct acquisition of the allotment consistent with the ILCA. A trust to trust transfer does not require the same level of scrutiny that a fee to trust transfer would require, and by seeking a trust to trust transfer under the ILCA the Tribe will be able to put forth a fairly strong argument that NEPA review is not triggered as such transfer falls within a DOI categorical exclusion.



Memorandum

To: Philip N. Hogen, Chairman

Through: Penny J. Coleman, Acting General Counsel *PJC*

From: John R. Hay, Staff Attorney *JRH*

Date: September 6, 2006

Re: Gaming By the Big Sandy Rancheria on the McCabe Allotment

On December 22, 2004, the Big Sandy Band of Western Mono Indians ("Tribe") submitted to the NIGC a Request for Approval of Management Agreement between Big Sandy Entertainment Authority and QBS, LLC, regarding a proposed casino near Fresno, California. On April 19, 2005, the Tribe submitted documentation to support its assertion that the proposed casino site constituted "Indian lands" as defined by the Indian Gaming Regulatory Act ("IGRA").¹ In conjunction with the submission of a Management Agreement, the Tribe has requested that the NIGC provide an advisory legal opinion on whether the proposed casino location qualifies as Indian lands under IGRA.

¹ The Tribe's submission included the following attachments: A Plan For The Distribution Of The Assets Of The Big Sandy (Auberry) Rancheria (Effective Date, March 5, 1965); Stipulation for Entry of Judgment, San Joaquin or Big Sandy Band of Indians, et al. v. James Watt, et al. (March 25, 1983); BIA, Title Status Report (November 12, 2003); BIA, Tract History Report (February 10, 2004); Trust Patent from the United States of America to Mary McCabe (March 29, 1920); BIA, 1933 California Roll Book (excerpt)(November, 1986); Letter from Sacramento Indian Agency (April 24, 1935); Tribal Resolution No. 84-1 (March 19, 1984); Declaration of Dan Lewis (March 28, 2005); Deed to Restricted Indian Land Special Form (February 2, 1979); Lester McCabe, BIA Index and Heirship Card; Opinion of the Solicitor, Sampson Johns Allotment (September 26, 1996); Declaration of Sherril McCabe (April 7, 2005); Declaration of Tribal Council Member, Phyllis Lewis (March 31, 2005); Declaration of Tribal Administrator, Ric Contreras (March 31, 2005); Tribal Council Resolution No. 0604-03, Affirming Tribal Government Jurisdiction Over Indian Lands Of The Tribe (June 12, 2004); Permit to Enter Trust Lands of the Tribe; Tribal Jurisdiction and Government Services Ordinance, Ordinance No. 1204-01 (December 30, 2004); Map of McCabe Allotment; and Fresno County Assessor's Map, Book 138, Page 06 (June 25, 2003).

By letter dated September 9, 2005, the California Governor's Office of Legal Affairs submitted its views on the Indian lands determination. The Tribe responded to the State's arguments by letter dated October 7, 2005.

By letter dated February 1, 2006, the Table Mountain Rancheria submitted its views on the Indian lands determination. The Tribe has not responded to that submission.

The Office of General Counsel has evaluated all of the information submitted and determined that the McCabe Allotment would qualify as Indian lands under IGRA and, therefore, the Tribe may lawfully conduct gaming on this parcel.

Background

The Tribe is a federally recognized Indian tribe occupying the Big Sandy Rancheria near Auberry, California, approximately 35 miles northeast of Fresno. Pursuant to a tribal-state gaming compact with the State of California, the Tribe conducts class II and class III gaming in its reservation's Mono Winds Casino. The tribe is now developing a new gaming facility outside the boundaries of the reservation.

The parcel of land the Tribe proposes to conduct gaming on is an Indian allotment (hereinafter, the "McCabe Allotment") that has been continuously held in trust since 1920 for McCabe family members.² The current allottee, tribal member Sherrill McCabe-Esteves, has been the sole beneficial owner of the McCabe allotment since 1979. The Allotment is located 12 miles outside the Rancheria, in an unincorporated part of Fresno County. The allottee is leasing the parcel to the Tribe.³ The lease has been submitted to the Bureau of Indian Affairs for review.

The McCabe Allotment is a 40.82⁴ acre Indian allotment held in trust by the United States for the benefit of Big Sandy Rancheria tribal member Sherrill Anne McCabe (aka McCabe-Esteves). The McCabe Allotment was originally allotted out of the public domain to Mary McCabe, a member of the Tribe, in 1920 and immediately placed in trust.

Applicable Law

The IGRA explicitly defines "Indian lands" as follows:

- (A) all lands within the limits of any Indian reservation; and

² The parcel at issue is described as: The north half of Lot two of the northwest quarter of Section eighteen in Township eleven south of Range twenty-two east of the Mount Diablo Meridian, California, containing forty and eighty-two-hundredths acres.

³ The lease was submitted to the Pacific Regional Office of the Bureau of Indian Affairs on December 20, 2004.

⁴ The BIA trust status report indicates that this is a 40.82 acre parcel. However, a survey done by the Big Sandy Rancheria has found that this parcel is 48.20 acres. In all likelihood this is simply a scrivener's error, however, our opinion is limited to the legal description of the trust document.

- (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

25 U.S.C. § 2703 (4).

NIGC regulations have further clarified the Indian lands definition, providing that:

Indian lands means:

- (a) Land within the limits of an Indian reservation; or
- (b) Land over which an Indian tribe exercises governmental power and that is either --
 - (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or
 - (2) Held by an Indian tribe or individual subject to restriction by the United States against alienation.

25 C.F.R. § 502.12. Generally, lands that do not qualify as Indian lands under IGRA are subject to state gambling laws. *See National Indian Gaming Commission: Definitions Under the Indian Gaming Regulatory Act, 57 Fed. Reg. 12382, 12388 (1992).*

Further, IGRA gives tribes the exclusive right to regulate gaming on Indian lands, specifically providing that:

Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

25 U.S.C. § 2701 (5). IGRA further clarifies the jurisdiction of Tribes as to the different classes of gaming stating that:

- (1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this chapter
- (2) Any class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this chapter.

25 U.S.C. § 2710(a)(1)(2). The requirements for Class III gaming likewise state:

- (1) Class III gaming activities shall be lawful on Indian lands only if such activities are--
 - (A) authorized by an ordinance or resolution that
 - (i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands ...

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

25 U.S.C. § 2710(d)(1)(A)(C).

Analysis

The McCabe Allotment is not within the Big Sandy Rancheria; it is held in trust for the benefit of tribal member Sherrill McCabe. Therefore, the McCabe Allotment constitutes Indian lands if the Tribe possesses jurisdiction and exercises governmental authority over it.

Jurisdiction

As a general matter, tribes are presumed to possess tribal jurisdiction within "Indian country." See *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329 (1998). The Supreme Court has stated that Indian tribes are "invested with the right of self-government and jurisdiction over the persons and property within the limits of the territory they occupy, except so far as that jurisdiction has been restrained and abridged by treaty or act of Congress." *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 140 (1982).

Historically, the term "Indian country" has been used to identify land that is subject to the "primary jurisdiction . . . [of] the Federal Government and the Indian tribe inhabiting it." *Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 527 n.1 (1998). The U.S. Code defines "Indian country" as:

- (a) all land within the limits of any Indian reservation . . .
- (b) all dependent Indian communities . . . , and
- (c) all Indian allotments, the Indian titles to which have not been extinguished . . .

18 U.S.C. § 1151. See, e.g., *United States v. Pelican*, 232 U.S. 442, 449 (1914) (Indian country includes individual Indian allotments held in trust by the United States because they "remain Indian lands set apart for Indians under governmental care").

This situation is similar to the Sampson Johns Allotment over which the Quinault Tribe possesses jurisdiction. In 1996, the Department of the Interior, Office of the Solicitor concluded that an Indian allotment, located off-reservation and created from the public domain, constituted Indian lands for the purposes of IGRA. See *Opinion of the Solicitor, Sampson Johns Allotment* (September 26, 1996). In that case, the allotment was owned by a member of the Quinault tribe and was located 12 miles from the Quinault reservation. The opinion concluded that the Quinault Tribe possessed jurisdiction over the lands. The opinion noted that a tribe would possess jurisdiction over lands within Indian country unless the "land in question is not owned or occupied by tribal members and is far removed from the tribal community." *Id.*

Similar to the Sampson Johns Allotment, the McCabe Allotment is owned by a tribal member who is a descendent of the original allottee's family and the allotment has been held in trust continuously since 1920 and is located within 12 miles of the Tribe's Rancheria. Therefore, we can conclude that the Tribe has jurisdiction over the land.

Exercise of Governmental Authority

In order for the land to fit the definition of "Indian lands," we must decide whether the Tribe exercises governmental power over the parcel. See 25 U.S.C. § 2703(4)(B); see also *Narragansett Indian Tribe*, 19 F.3d at 703.

IGRA is silent as to how NIGC is to decide whether a tribe exercises governmental power. Furthermore, the manifestation of governmental power can differ dramatically depending upon the circumstances. For this reason NIGC has not formulated a uniform definition of "exercise of governmental power," but rather decides that question in each case based upon all the circumstances. See *National Indian Gaming Commission: Definitions Under the Indian Gaming Regulatory Act*, 57 Fed. Reg. 12382, 12388 (1992).

Case law and NIGC opinions provide some guidance. The First Circuit in *Narragansett Indian Tribe* found that satisfying this requirement depends "upon the presence of concrete manifestations of [governmental] authority." *Narragansett Indian Tribe*, 19 F.3d at 703. Such examples include the establishment of a housing authority, administration of health care programs, job training, public safety, conservation, and other governmental programs. *Id.*

In *Cheyenne River Sioux Tribe v. State of South Dakota*, 830 F. Supp. 523 (D.S.D. 1993), *aff'd* 3 F.3d 273 (8th Cir. 1993), the court stated that several factors might be relevant to a determination of whether off-reservation trust lands constitute Indian lands. The factors were:

- (1) Whether the areas are developed;
- (2) Whether the tribal members reside in those areas;
- (3) Whether any governmental services are provided and by whom;
- (4) Whether law enforcement on the lands in question is provided by the Tribe; and
- (5) Other indicia as to who exercises governmental power over those areas.

Id. at 528. The Court did not opine regarding the weight given any factor or whether the absence or presence of one factor was determinative.

In this case, the Tribe's Constitution provides that the Tribe has jurisdiction over any allotment of a tribal member. The Tribe provides governmental services to off-reservation Indian allotments owned or occupied by tribal members including the McCabe allotment and other allotments in the surrounding area. According to the Tribe, such services have included, for example, tribally and HUD funded housing services,

housing and facility maintenance, social, welfare and property maintenance services (including food and meal delivery, home repair, refuse removal, etc.).

The McCabe Allotment is largely vacant and undeveloped. However, the Tribe provides some governmental services to the allotment, including site inspection by tribal police officers, fence repair, maintenance, inspections for unauthorized grazing, and general supervision. The Tribe provided a sworn statement from Ric Contreras, Big Sandy Tribal Administrator, recounting a recent situation where a tribal employee noticed signs that cattle had been illegally grazing on the land. The Tribe took action to seal-off possible entries that cattle may have used to gain access to the property.

The Tribe has submitted a sworn statement from Sherrill McCabe, the allottee, stating that the "Tribe provides governmental services and benefits to the McCabe Allotment, including inspection by Big Sandy tribal patrol officers, fence repair, maintenance, monitoring for un-permitted grazing, and general supervision."

The Tribe submitted a sworn statement from Dan Lewis, a tribal security officer, stating that he "made regular visits to and inspections of the McCabe Allotment" for the purpose of looking out for "trespassers, squatters and any damage to or removal of objects from the land."

The Tribe has submitted copies of resolutions to show that it exercises jurisdiction over off-reservation Indian allotments. Tribal Council Resolution #0604-03, adopted June 12, 2004, requires that all off-reservation trust allotments display a sign stating: "NO TRESPASSING: PROPERTY UNDER JURISDICTION OF BIG SANDY RANCHERIA TRIBAL GOVERNMENT, ENTRANCE ONLY BY PERMISSION OF TRIBAL GOVERNMENT." (emphasis in original). According to the Tribe, these warning signs have been placed on the McCabe allotment.

According to the Tribe, in December of 2004, it began requiring non-Tribal visitors, such as contractors, surveyors, and others, to obtain a permit before entering off-reservation Indian allotments to conduct work on behalf of the Tribe or a tribal member allottee.

These actions identified above are concrete manifestations of the Tribe's exercise of governmental authority over the allotment.⁵

Conclusion

In our opinion, the McCabe trust allotment constitutes Indian lands under the Indian Gaming Regulatory Act. Therefore, the Big Sandy Rancheria may conduct Class II and III gaming activities on the land. It is important to note that this is an advisory opinion

⁵ The State of California argues that the Tribe must exercise historical and exclusive jurisdiction to qualify as Indian lands under IGRA. This is an incorrect statement of law. At least since prior to the enactment of IGRA, the Tribe had the authority to exercise jurisdiction. In the specific circumstances described here, nothing more is required. Additionally, there is no requirement that the Tribe exercise governmental power over a historically significant period of time.

issued by the Office of General Counsel and not a final agency action. The Department of the Interior, Office of the Solicitor concurs with this opinion.

Attachment No. 3



Re: Big Sandy

Wiseman, Maria <maria.wiseman@bia.gov>

To: "Koch, Karen" <karen.koch@sol.doi.gov>

Cc: Amy Dutschke <Amy.Dutschke@bia.gov>, Carmen Facio <carmen.facio@bia.gov>, Paula Hart <Paula.Hart@bia.gov>

Mon, Jan 7, 2013 at 12:06 PM

Thanks. This ILCA transfer could involve review by the Gaming Office, so we'll need to stay in touch. Where are you in your processing of the LCP? Maria

On Mon, Jan 7, 2013 at 2:59 PM, Koch, Karen <karen.koch@sol.doi.gov> wrote:
Here you go, Maria. Thanks, Carmen. - K

----- Forwarded message -----

From: **Facio, Carmen** <carmen.facio@bia.gov>

Date: Mon, Jan 7, 2013 at 11:44 AM

Subject: Re: Big Sandy

To: "Koch, Karen" <karen.koch@sol.doi.gov>

Cc: Arvada Wolfin <arvada.wolfin@bia.gov>, Troy Burdick <troy.burdick@bia.gov>, Paula EagleTail <paula.eagletail@bia.gov>, Amy Dutschke <amy.dutschke@bia.gov>

We have only one pending F-T application for an "on-reservation" parcel for Big Sandy. **However**, On November 23rd, we (and Central California Agency) did receive a request to approve a "land consolidation" plan for Big Sandy. The package was submitted by Steven Bloxham of Fredericks, Peebles & Morgan. The plan states the land consolidation area is to include lands within the existing rancheria boundaries, any Indian Country lands for Big Sandy, an aboriginal land area and lands designated on an attached map. The attachment indicates that it will encompass off-reservation lands that are likely of interest by the Table Mountain, North Fork and Cold Springs Rancherias. This may prove to be controversial.

The old 1988 guidelines for review & approval of land consolidation plans is delegated to the Regional Directors, but the directive requests advance notice to the Asst. Secy. for those that might be considered "unusually significant" or "politically sensitive".

On Mon, Jan 7, 2013 at 10:51 AM, Koch, Karen <karen.koch@sol.doi.gov> wrote:

Good morning Carmen, Evidently the Big Sandy Tribe is seeking a status report from our D.C. attorney regarding an ILCA land transfer. Hopefully you've heard about this? - K

----- Forwarded message -----

From: **Koch, Karen** <karen.koch@sol.doi.gov>

Date: Mon, Jan 7, 2013 at 10:49 AM

Subject: Re: Big Sandy

To: "Wiseman, Maria" <maria.wiseman@bia.gov>

Hi Maria, Dan asked me but I haven't heard anything about Big Sandy. I'll check with Carmen Facio. - K

On Mon, Jan 7, 2013 at 8:32 AM, Wiseman, Maria <maria.wiseman@bia.gov> wrote:

Hi Karen,

Dan said he was going to ask you about Big Sandy. We in OIG met with the tribe about a month ago and they said they were going to pursue a transfer of land under ILCA and that they had been in contact with the Regional Office and maybe you or Dan. Have you been working on this one? The tribe has asked us how things are proceeding. Thanks, Maria

—
Maria K. Wiseman
Associate Deputy Director
Office of Indian Gaming
Office of the Assistant Secretary - Indian Affairs

1849 C St., NW
Mailstop 3657
Washington, DC 20240

202/219-4066 office
202/208-7227 direct
202/273-3153 fax
202/375-9752 mobile

—
Carmen Facio, Regional Realty Officer
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way, Rm. 2820
Sacramento, CA 95825
(916) 978-6062
FAX: (916) 978-6099

—
Maria K. Wiseman
Associate Deputy Director
Office of Indian Gaming
Office of the Assistant Secretary - Indian Affairs

1849 C St., NW
Mailstop 3657
Washington, DC 20240

202/219-4066 office
202/208-7227 direct
202/273-3153 fax
202/375-9752 mobile

Attachment No. 4



Fwd: FW: Indian Land Consolidation Plan- Big Sandy Rancheria

Facio, Carmen <carmen.facio@bia.gov>

Tue, Jan 8, 2013 at 8:43 AM

To: Maria Wiseman <maria.wiseman@bia.gov>, Karen Koch <karen.koch@sol.doi.gov>

See the attachments sent to Amy....Big Sandy has also submitted a memo to Paula Hart . . . the ILCA plan seems to be primarily for the trust-to-trust acquisition of the off-reservation McCabe allotment for which we'd had a pending gaming lease since 2008 (NEPA compliance and/or opposition by Table Mountain have apparently been the issues - the McCabe allotment is adjacent to Table Mountain lands).

Seems we don't have alot of things that are simple out here.

----- Forwarded message -----

From: Dutschke, Amy <Amy.Dutschke@bia.gov>

Date: Mon, Jan 7, 2013 at 9:09 AM

Subject: FW: Indian Land Consolidation Plan- Big Sandy Rancheria

To: "Facio, Carmen" <Carmen.Facio@bia.gov>

Do we have any information on this? Liz wants to have a call concerning this.

From: Liz Kipp [mailto:LKipp@bsrnation.com]

Sent: Friday, January 04, 2013 4:39 PM

To: Dutschke, Amy

Subject: FW: Indian Land Consolidation Plan- Big Sandy Rancheria

Here is the information.

From: Sally Eredia [mailto:SEredia@ndnlaw.com]

Sent: Friday, December 28, 2012 4:26 PM

To: Liz Kipp; Richard Johnson

Cc: John Peebles

Subject: Indian Land Consolidation Plan

Please see the attached documents per John Peebles' request.

Thank you.

Sally Eredia, Legal Assistant

FREDERICKS PEBBLES & MORGAN LLP

2020 L Street, Suite 250

Sacramento, CA 95811

T: (916) 441-2700

F: (916) 441-2067




www.ndnlaw.com



FREDERICKS PEBBLES & MORGAN LLP
ATTORNEYS AT LAW

Carmen Facio, Regional Realty Officer
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way, Rm. 2820
Sacramento, CA 95825
(916) 978-6062
FAX: (916) 978-6099

3 attachments

-  **20121121 BSR ILCA - SJB to Dutschke & Burdick - Req Approval BSR ILCA.pdf**
3594K
-  **20121203 BSR - FPM memo to Hart & Wiseman, DOI re Tribal Acquisition of Member Allotment to ILCA.pdf**
361K
-  **20121012 Memo to BSR re ILCA and NEPA (FPM).pdf**
1545K

Attachment No. 5



Re: FW: Big Sandy Rancheria; what is ILCP

Facio, Carmen <carmen.facio@bia.gov>
 To: "EagleTail, Paula" <paula.eagletail@bia.gov>

Wed, Jan 23, 2013 at 2:09 PM

The proposal should be reviewed & sent to this office w/any comments the agency has. The tribal resolution should be reviewed by Tribal Ops & they should put their cert or whatever they call it on it. That one should be forwarded to this office for inclusion in the final package.

On Wed, Jan 23, 2013 at 11:07 AM, EagleTail, Paula <paula.eagletail@bia.gov> wrote:
Okay - now I remember receiving the letter. What were we suppose to do with it?
 Paula

On Wed, Jan 23, 2013 at 10:19 AM, Facio, Carmen <carmen.facio@bia.gov> wrote:
 It is the Indian Land Consolidation Plan. Big Sandy sent theirs in on November 21, 2012. The Region also received the same letter.

On Wed, Jan 23, 2013 at 10:12 AM, EagleTail, Paula <paula.eagletail@bia.gov> wrote:
Good morning,
I do not know what the ILCP is.

Carmen - what is ILCP? Help!
Thanks, Paula

On Tue, Jan 22, 2013 at 3:57 PM, Burdick, Troy <troy.burdick@bia.gov> wrote:
 Where are we on this? What is ILCP? All I know is we were assisting fee interest owners go back into trust.

----- Forwarded message -----

From: **Dutschke, Amy** <amy.dutschke@bia.gov>
 Date: Tue, Jan 22, 2013 at 3:20 PM
 Subject: Fwd: FW: Big Sandy Rancheria
 To: Troy Burdick <Troy.Burdick@bia.gov>, Carmen Facio <Carmen.Facio@bia.gov>, Kevin Bearquiver <Kevin.Bearquiver@bia.gov>

----- Forwarded message -----

From: **Amy Dutschke** <amy.dutschke@bia.gov>
 Date: Tue, Jan 22, 2013 at 3:18 PM
 Subject: FW: Big Sandy Rancheria
 To:

All

Any information I can report to Liz?

Amy

From: Liz Kipp [mailto:LKipp@bsrnation.com]
Sent: Tuesday, January 22, 2013 2:41 PM
To: Dutschke, Amy
Subject: Big Sandy Rancheria

Hi Amy, just checking to see how things are going on the ILCP.

Respectfully,

Elizabeth D. Hutchins-Kipp

Tribal Chairperson

Big Sandy Rancheria Band of Western Mono Indians

lkipp@bsrnation.com

P.O. Box 337

37387 Aubery Mission Rd

Aubery, California 93602

559-855-4003 Office

559-855-4640 Fax



This email transmission is intended only for the addressee above. It may contain information that is Privileged or Confidential. Any review, dissemination or use of this transmission by persons other than the addressee is strictly prohibited.

Troy Burdick

Superintendent, Central California Agency
Bureau of Indian Affairs
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814

Voice: (916) 930-3774
Fax: (918) 930-3780

Thank you for your time! :o)

Paula Eagle Tail
Acting Realty Officer
Bureau of Indian Affairs
Real Estate Services, CCA
650 Capitol Mall, Ste 8-500
Sacramento, CA 95814
W: (916) 930-3750
F: (916) 930-3780

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Carmen Facio, Regional Realty Officer
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way, Rm. 2820
Sacramento, CA 95825
(916) 978-6062
FAX: (916) 978-6099

Thank you for your time! :o)

Paula Eagle Tail
Acting Realty Officer
Bureau of Indian Affairs
Real Estate Services, CCA
650 Capitol Mall, Ste 8-500
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F: (916) 930-3780

Warning: This e-mail may contain Privacy Act Data/Sensitive Data which is intended only for the use of the individual(s) to whom it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable laws. If you are not the intended recipient, you are hereby notified that any distribution or copy of this email is strictly prohibited. "ACCESS TO THIS INFORMATION IS LIMITED TO AUTHORIZED PERSONNEL ONLY" Information will not be disclosed unless permitted pursuant to 43 CFR 2.56.

12/10/13

DEPARTMENT OF THE INTERIOR Mail - Re: FW: Big Sandy Rancheria; what is ILCP

—
Carmen Facio, Regional Realty Officer
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way, Rm. 2820
Sacramento, CA 95825
(916) 978-6062
FAX: (916) 978-6099

Attachment No. 6



Facio, C

RE: Big Sandy Rancheria ILCA Purchase

Hart, Paula <Paula.Hart@bia.gov>

Tue Jan 29, 2013 at 6:28 AM

To: "Facio, Carmen" <Carmen.Facio@bia.gov>, "Wiseman, Maria K" <Maria.Wiseman@bia.gov>

Carmen,

We are looking at this issue. We will let you know of any progress made.

Paula

From: Facio, Carmen [mailto:carmen.facio@bia.gov]
Sent: Monday, January 28, 2013 5:24 PM
To: Hart, Paula; Wiseman, Maria K
Subject: Big Sandy Rancheria ILCA Purchase

We received a copy of the memo dated December 3, 2012 directed to you by Fredericks, Peebles & Morgan on behalf of the Big Sandy Rancheria. They are making arguments that the off-reservation trust-to-trust purchase of the McCabe allotment under ILCA is authorized and would be mandatory & exempt from NEPA. Are you folks going to prepare a response to the memo? They keep sending in email status requests to Amy so I need to tell them something. If you folks don't intend to respond, I will send the proposal down to the Regional Solicitor's Office here for review.....they might have to coordinate with the Associate Solicitor's Office and/or your office as everyone pretty much knows this purchase is for establishing a gaming facility.

—
Carmen Facio, Regional Realty Officer

Bureau of Indian Affairs

Pacific Regional Office

2800 Cottage Way, Rm. 2820

Sacramento, CA 95825

(916) 978-6062

FAX: (916) 978-6099

Attachment No. 7



Big Sandy

Hall, Harold <harold.hall@bia.gov>
To: Carmen Facio <carmen.facio@bia.gov>

Thu, Jan 31, 2013 at 10:37 AM

Hi Carmen,

Attached is what I have on history of the McCabe allotment. It doesn't really speak to aboriginal territory, but it does demonstrate that Big

Dan

—

Dan Hall
Regional Archeologist
BIA-PRO
2800 Cottage Way
Sacramento, CA 95825
(916) 978-6041
dan.hall@bia.gov

McCabeAllotment_History.pdf
153K

region brought an end to the native people's isolated lifestyle, whose territory was further and more permanently overrun as gold seekers turned their attention to farming and ranching, setting up permanent homesteads. The concomitant displacement of Indians from their homes, food sources, and spiritual places soon fomented violence between Indians and Euroamericans which continued through 1851 when the United States government took steps toward establishing a reservation system by signing the agreement of "freedom and peace" at Camp Barbour (Wallace 1987:144). This agreement granted the natives a large tract of land and payment in beef, blankets and other supplies in exchange for the relinquishing of tribal territories. The Camp Barbour agreement was never ratified due to strong public sentiment against granting land to native peoples and once it became clear that the treaty would not be ratified many returned to their former homes, where they worked as farmer laborers or menials in seasonal work. Native laborers often were given or took White settlers' surnames (Gehr 1987:158, 162; Spier 1978a:483, 1978b:435; Wallace 1987:144-146).

Disease, alcoholism and violence reduced the local Yokuts and Mono populations to less than half of pre-Euroamerican settlement. By the turn of the twentieth century, the Fresno area Yokuts and Mono populations numbered 6 to 9 percent of pre-Euroamerican settlement population. Over time, many Yokuts and Mono converted to Christianity, although they retained elements of their native spiritual practices, such as use of the Ghost Dance of 1870, which fostered interaction between the two Indian groups. Over time, the population gradually rose again though it remained relatively small. Surviving natives lived in or near their traditional territories, on scattered farmsteads or in hamlets (Spier 1978a:483; 1978b:435; Wallace 1987:144-146).

By the mid-twentieth century, after more than 100 years of contact with Euroamericans, population, social structure and cultural practices of the native tribes were altered substantially. The Fresno area Yokuts social structure lost much of its cohesiveness and pre-contact level of functionality due to demographic changes; positions such as chief and messenger were vastly changed, where they could be maintained at all. Modern Fresno area Monos and Yokuts, however, have maintained a partially traditional social organization, with a tribal council and headquarters. Native housing, food and clothing was replaced by Euroamerican housing structures, store-bought foods and manufactured clothing. By the late 1970s, many of the Fresno area Yokuts were irregularly employed, often in agricultural labor while some others received public assistance (Eargle 1986: 100-101; Spier 1978a:483; 1978b:435).

The Big Sandy Rancheria Band of Western Mono Indians (Tribe) is a federally recognized tribe with an approved constitution. The Tribe consists of approximately 375 members, 70 of which reside on the Tribe's 48-ha (120-ac) land base near Auberry in Fresno County (Hay 2006:2; Mooney Jones & Stokes 2005a:1). The federal government established lands for the Tribe in 1909. The government rescinded federal recognition of the Tribe during the 1950s, but *Big Sandy Band v. Watt* (1984) returned community-owned property and individual allotments to trust status. Both Big Sandy and Table Mountain Rancherias have had and continue to have Gashowu Yokuts and Mono members. (Mooney Jones & Stokes 2005a:1.)

The McCabe Allotment

The McCabe allotment is a 19-ha property located near Friant in Fresno County. The allotment has historically been used by Big Sandy and Table Mountain tribal members for hunting and gathering activities, (such as gathering wild mushrooms, acorns, and downed wood) (D. Lewis 2005). Records indicate that as early as 1886 Mary McCabe (nèe Buffalo), a Gashowu/Mono Indian moved onto the

property. Born in 1870, McCabe was a native to the Fresno area, where her parents lived their entire lives. In 1914, McCabe applied to have the allotment placed in trust as a homestead. She died in 1915 and five years later the property was placed in trust. Sometime after Mary McCabe's death, her only son, Frank, and his stepfather, Robert Lewis of Table Mountain Rancheria moved onto the property, which they used for horse and cow ranching and grazing. Accounts are inconsistent regarding Frank McCabe's length of occupancy at the property. Some accounts state that by 1919, Frank McCabe moved from the allotment to Big Sandy Rancheria and within one year the property was taken in trust by the BIA. The property is then said to have been occupied by John Ned Jones (Chuckchansi/Tohola), his wife Jane Soledad Jones (Gashowu), and their two children, Ned and Goldie. Goldie was given the Indian name *Sel-mut* during a naming ceremony which took place on the McCabe Allotment. The name *Sel-mut* also belonged to Goldie's grandmother and great grandmother, Jane Soledad Jones.

The Jones family previously resided in Gashowu communities near Letcher and Morgan Canyon. They occupied the allotment along with Jane's brother, Copeland Soledad, through 1952 at which time Jane and Ned Jones died at ages 72 and 45, respectively. That year, Goldie Jones relocated to Robert Lewis' parent's prior residence at Table Mountain Rancheria where she remained for a short time before moving to Lemoore, California. (Hunter 2005; Jones 2005; Lajeunesse et al. 2008:9; Roper 2005:8.)

Other accounts state that during the 1940s, Frank McCabe constructed a single-family residence on the property, which remained extant through the late 1950s, when it was likely destroyed by fire (Lajeunesse et al. 2008:9; D. Lewis 2005; Roper 2005:8).

Little information is available about occupants of the McCabe allotment during the mid-twentieth century; however, by 2005 the McCabe allotment was vacant and undeveloped. Big Sandy tribal members provide the property with inspection by tribal patrol officers, signage, fence repair, maintenance and monitoring for unpermitted grazing. Adjacent properties have historically been used, and continue to be occupied, by Big Sandy tribal members (Hay 2006:6; Lajeunesse et al. 2008:9; P. Lewis 2005; Roper 2005:8).

Attachment No. 8

BUREAU OF INDIAN AFFAIRS
Pacific Region
2800 Cottage Way
Sacramento, CA 95825

JAN 31 2013

Honorable Elizabeth D. Kipp
Chairperson, Big Sandy Band of Western Mono Indians
37387 Auberry Mission Road
Auberry, California 93602

Dear Chairperson Kipp:

Both this office and the Central California Agency Superintendent are in receipt of the November 21, 2012 request on behalf of Big Sandy by Attorney Bloxham to approve the Tribe's Land Consolidation Plan pursuant to 25 U.S.C. § 2203, i.e., the Indian Land Consolidation Act. Shortly after submission of the Consolidation Plan, the Indian Gaming Management Director received a memorandum from Attorney Bloxham setting forth his legal arguments for the BIA's approval of the Tribe's Consolidation Plan and subsequent purchase of the McCabe allotment. We have been advised that those legal arguments are under consideration in the Office of Indian Gaming.

Upon review of the Land Consolidation Plan, our initial concern is with Section 2, which specifies that the Land Consolidation Area extends to "*Such other lands designated on the map attached as Figure "A" to Big Sandy Tribal Council Resolution No. 1012-07.*" The area shown on Figure "A" extends to North Fork, Millerton Lake and down below the town of Tollhouse. This area encompasses areas where public domain allotments may be owned by members of the North Fork, Table Mountain and Cold Springs Rancherias, or where these tribes already own lands. Accordingly, we are requesting that you submit any additional documentation that identifies the aboriginal land area of the Big Sandy Rancheria as well as any known off-reservation allotments that are owned by Big Sandy tribal members.

There are no implementing regulations specific to our review and approval of tribal land consolidation plans. However, it has been our understanding that 25 U.S.C. § 2203 was mainly intended to provide a means by which tribes could consolidate interests in "on-reservation" tracts. We have been advised that the authority to approve such a plan rests with the Regional Directors, but we are to advise the Assistant Secretary of our intent to approve such plans. The Assistant Secretary has retained the right to withdraw the Regional Director's authority should the action be considered as unusually significant or politically sensitive. Accordingly, we request your assistance by providing any additional documentation that would support a favorable decision.

JK
Jan 2

We regret our delay in providing a response to the submission on behalf of the Tribe, however, we have had quite a number of other priorities.

The contact at this office for the Tribe's subject proposal is Carmen Facio, Realty Officer, (916) 978-6062 (or carmen.facio@bia.gov). We will await your response.

Sincerely,

/s/ Amy L. Dutschke

Regional Director

cc: Steven J. Bloxham
Frederick, Peebles & Morgan, LLP
2020 L Street, Suite 250
Sacramento, CA 95811

Troy Burdick, Superintendent
Central California Agency
Bureau of Indian Affairs
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814

FACIO:cf 1/29/13

Attachment No. 9



Facio, Carmen <carmen.facio@bia.gov>

Big Sandy Plan

Message

Facio, Carmen <carmen.facio@bia.gov>

Fri, Feb 1, 2013 at 8:39 AM

To: Paula Hart <paula.hart@bia.gov>, Maria Wiseman <maria.wiseman@bia.gov>

Cc: Karen Koch <karen.koch@sol.doi.gov>

Just F.Y.I. - - here's copy of letter dated 1/31/13 directed to Big Sandy.

Although the Regional Solicitor's Office did receive a copy of the approval request for the land consolidation plan.....we have not requested an opinion or otherwise discussed this issue yet.

--

Carmen Facio, Regional Realty Officer
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way, Rm. 2820
Sacramento, CA 95825
(916) 978-6062
FAX: (916) 978-6099



Big Sandy re Land Consolidation Plan.doc

26K

January 31, 2013

Honorable Elizabeth D. Kipp
Chairperson, Big Sandy Band of Western Mono Indians
37387 Auberry Mission Road
Auberry, California 93602

Dear Chairperson Kipp:

Both this office and the Central California Agency Superintendent are in receipt of the November 21, 2012 request on behalf of Big Sandy by Attorney Bloxham to approve the Tribe's Land Consolidation Plan pursuant to 25 U.S.C. § 2203, i.e., the Indian Land Consolidation Act. Shortly after submission of the Consolidation Plan, the Indian Gaming Management Director received a memorandum from Attorney Bloxham setting forth his legal arguments for the BIA's approval of the Tribe's Consolidation Plan and subsequent purchase of the McCabe allotment. We have been advised that those legal arguments are under consideration in the Office of Indian Gaming.

Upon review of the Land Consolidation Plan, our initial concern is with Section 2, which specifies that the Land Consolidation Area extends to "*Such other lands designated on the map attached as Figure "A" to Big Sandy Tribal Council Resolution No. 1012-07.*" The area shown on Figure "A" extends to North Fork, Millerton Lake and down below the town of Tollhouse. This area encompasses areas where public domain allotments may be owned by members of the North Fork, Table Mountain and Cold Springs Rancherias, or where these tribes already own lands. Accordingly, we are requesting that you submit any additional documentation that identifies the aboriginal land area of the Big Sandy Rancheria as well as any known off-reservation allotments that are owned by Big Sandy tribal members.

There are no implementing regulations specific to our review and approval of tribal land consolidation plans. However, it has been our understanding that 25 U.S.C. § 2203 was mainly intended to provide a means by which tribes could consolidate interests in "on-reservation" tracts. We have been advised that the authority to approve such a plan rests with the Regional Directors, but we are to advise the Assistant Secretary of our intent to approve such plans. The Assistant Secretary has retained the right to withdraw the Regional Director's authority should the action be considered as unusually significant or politically sensitive. Accordingly, we request your assistance by providing any additional documentation that would support a favorable decision.

-2-

We regret our delay in providing a response to the submission on behalf of the Tribe, however, we have had quite a number of other priorities.

The contact at this office for the Tribe's subject proposal is Carmen Facio, Realty Officer, (916) 978-6062 (or carmen.facio@bia.gov). We will await your response.

Sincerely,

Sgd/Amy Dutschke

Regional Director

cc: Steven J. Bloxham
Fredericks, Peebles & Morgan, LLP
2020 L Street, Suite 250
Sacramento, CA 95811

Troy Burdick, Superintendent
Central California Agency
Bureau of Indian Affairs
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814

FACIO:cf 1/29/13

Attachment No. 10



United States Department of the Interior RECEIVED BIA

BUREAU OF INDIAN AFFAIRS
Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, California 95814

2013 FEB -8 PM 3:47

PACIFIC REGIONAL
OFFICE

IN REPLY REFER TO:
RES
606

FEB 05 2013

Reg Dir	_____
Dep RD Trust	_____
Dep RD IS	_____
Route	_____ <i>RPM</i>
Response Required	_____ <i>No</i>
Due Date	_____
Memo	_____ Ltr _____
Fax	_____
_____	_____
_____	_____

Memorandum

To: Regional Director, Pacific Region Office

Via: **ACTING** Superintendent, Central California Agency

From: Acting Realty Officer, Central California Agency *pk*
Attention: Realty Specialist

Subject: Big Sandy Rancheria's Indian Land Consolidation Plan

By this memorandum, we are transmitting the subject item, per the Regional Realty Officer's e-mail of January 23, 2013.

Point of contact for this matter is Bobbie Jo Henry, Realty Specialist, at (916) 930-3761 or bobbie.henry@bia.gov.

Attachment

received
RES 2-14-13



FREDERICKS PEEBLES & MORGAN LLP
ATTORNEYS AT LAW

STEVEN J. BLOXHAM
2020 L STREET, SUITE 250
Sacramento, CA 95811
T: (916) 441-2700
F: (916) 441-2067
E: sbloxham@ndnlaw.com
www.ndnlaw.com

November 21, 2012

VIA CERTIFIED MAIL #
70092820000233178422

Honorable Amy Dutschke
Regional Director
United States Department of the Interior
Bureau of Indian Affairs
Pacific Region Office
2800 Cottage Way
Sacramento, CA 95825

VIA CERTIFIED MAIL #
70092820000233178415

Honorable Troy Burdick
Superintendent
United States Department of the Interior
Bureau of Indian Affairs
Central California Agency
650 Capital Mall, Suite 8-500
Sacramento, CA 95814

**RE: Request for Approval of Big Sandy Rancheria Band of Western Mono
Indians Land Consolidation Plan**

Dear Regional Director Dutschke and Superintendent Burdick:

On October 31, 2012, the governing body of the Big Sandy Rancheria Band of Western Mono Indians ("Tribe"), its Tribal Council, ratified Resolution No. 1012-07. Resolution No. 1012-07 adopted a Tribal Land Consolidation Plan pursuant to the Indian Land Consolidation Act ("ILCA"), 25 U.S.C. § 2201 et seq. The Tribe respectfully requests that the Bureau review and approve the Tribe's Land Consolidation Plan pursuant to 25 U.S.C. § 2203.

I have enclosed a true and complete copy the Tribe's Land Consolidation Plan, along with its supporting resolution, Resolution No. 1012-07. Please direct all correspondence regarding the Land Consolidation Plan to me by phone at (916) 441-2700 or at the following address:

Steven J. Bloxham
Fredericks Peebles & Morgan LLP
2020 L Street, Suite 250
Sacramento, CA 95811

RECEIVED
NOV 21 2012
BUREAU OF INDIAN AFFAIRS
SACRAMENTO, CA

ADMIN _____
YOU FEEL _____
RESPONSE REQUIRED YES
DUE DATE _____
MEMO _____ LTR _____
TELE _____ OTHER _____
PLEASE REVIEW AND
RESPOND ASAP.

Hon. A. Dutschke
Hon. T. Burdick
November 21, 2012
Page 2 of 2

In addition, please send a copy of all correspondence to the Tribe's Chairperson at the following address:

Elizabeth D. Kipp, Chairperson
Tribal Council
Big Sandy Band of Western Mono Indians
37387 Auberry Mission Road
Auberry, CA 93602

Please contact me if you have any questions or need anything further.

Very truly yours,

FREDERICKS PEEBLES & MORGAN LLP



Steven J. Bloxham
Attorneys for the Big Sandy Band of Western
Mono Indians

SJB:se
Enclosures

Cc: Daniel G. Shillito, Regional Solicitor, Pacific Southwest Region, U.S. Department
of the Interior, Office of the Solicitor

Attachment No. 11



Re: FW: Big Sandy Rancheria- request for meeting

Facio, Carmen <carmen.facio@bia.gov>
To: Amy Dutschke <amy.dutschke@bia.gov>

Thu, Feb 7, 2013 at 3:57 PM

Yes.....fine w/me.

On Thu, Feb 7, 2013 at 12:42 PM, Amy Dutschke <amy.dutschke@bia.gov> wrote:
Carmen

Is Wednesday a.m. okay with you? If so I will let Liz know that we can meet with her about 10:00 a.m.

—Original Message—

From: Liz Kipp [mailto:LKipp@bsmation.com]
Sent: Thursday, February 07, 2013 11:53 AM
To: 'Amy.Dutschke@bia.gov'; 'carmen.facio@bia.gov'
Cc: 'jpeebles@ndnlaw.com'; 'dhouck@ndnlaw.com'; Miles Baty; Gina Riley; Amy Hutchins; Patricia Soto; Richard Johnson
Subject: Re: Big Sandy Rancheria- request for meeting

Wednesday would be great.

— Original Message —

From: Amy Dutschke [mailto:amy.dutschke@bia.gov]
Sent: Thursday, February 07, 2013 11:48 AM Pacific Standard Time
To: Liz Kipp; Carmen Facio <carmen.facio@bia.gov>
Cc: JMP <jpeebles@ndnlaw.com>; Darcie Houck <DHouck@ndnlaw.com>; Miles Baty; Gina Riley; Amy Hutchins; Patricia Soto; Richard Johnson
Subject: RE: Big Sandy Rancheria- request for meeting

Liz

Next week I only have Monday or Wednesday morning available. I will check with Carmen and see if she has anything scheduled. Please let me know if one of those days works for you.

Amy

—Original Message—

From: Liz Kipp [mailto:LKipp@bsmation.com]
Sent: Thursday, February 07, 2013 11:43 AM
To: Amy Dutschke; carmen.facio@bia.gov
Cc: JMP; Darcie Houck; Miles Baty; Gina Riley; Amy Hutchins; Patricia Soto; Richard Johnson
Subject: Big Sandy Rancheria- request for meeting

Hello Amy/Carmen, we are in receipt of the letter from your office in regards to the Indian Lands Consolidation Plan submitted by Big Sandy Rancheria, and I am in hopes to schedule a meeting to discuss. Currently, I have all next week open (11th-15th) to meet in Sacramento, if your

2/21/18 INTERIOR Mail - Re: FW: Big Sandy Rancheria - request for meeting

schedule allows. Thanks so much, and look forward to talking with you soon.

Elizabeth D. Kipp,
Big Sandy Rancheria
Tribal Chairperson
Sent from my iPad

—
Carmen Facio, Regional Realty Officer
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way, Rm. 2820
Sacramento, CA 95825
(916) 978-6062
FAX: (916) 978-6099



Rescheduled Meeting -- Indian Lands Consolidation Plan

Sally Eredia <SEredia@ndnlaw.com>

To: "amy.dutschke@bia.gov" <amy.dutschke@bia.gov>, "carmen.facio@bia.gov" <carmen.facio@bia.gov>, "Liz Kipp" (LKipp@bsmation.com)" <LKipp@bsmation.com>

Cc: Darcie Houck <DHouck@ndnlaw.com>

Wed, Feb 13, 2013 at 10:14 AM

The meeting previously scheduled for today, February 13, 2013 at 10:00 am is now rescheduled to the following date and time:

Date: Wednesday, February 20, 2013

Time: 10:00 am.

Location: Pacific Regional Office, 2800 Cottage Way, Sacramento, CA

Thank you.

Sally Eredia, Legal Assistant to

DARCIE L. HOUCK, ESQ.

FREDERICKS PEEBLES & MORGAN LLP

2020 L Street, Suite 250

Sacramento, CA 95811

T: (916) 441-2700

F: (916) 441-2067

www.ndnlaw.com

Attachment No. 12

Meeting - Notes
BIA Pacific Regional Office
Real Property Management

Date: 2/20/13 Employee: Carmen Davis

Subject: Land Consolidation Plan - Big Sandy

Present: _____

See attached notes

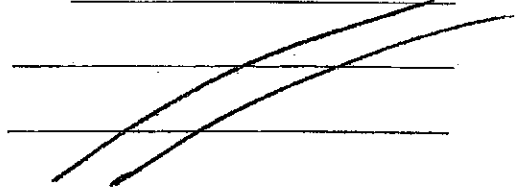
Notes:

Chair explained reasons for land consolidation plan - would like to acquire all allotments within boundary plus those outside boundary that might be acquired from tribal members. Not specifically for fee-to-trust parcels.

Draft revisions to plan presented - understands why BIA was concerned; not intent to include lands of other tribes. Final modify to be submitted.

File reference: _____

Copy to: _____



PACIFIC REGION, SACRAMENTO
BUREAU OF INDIAN AFFAIRS

MEETING DATE: 02/20/2013

SUBJECT: Big Sandy Land Consolidation Plan

PARTICIPANTS:

<u>NAME</u>	<u>REPRESENTING</u>	<u>TELEPHONE NO.</u>
CARMEN FACIO	BIA-REACTY	916-978-6062
Kevin Bergman	BIA	carmen.facio@bia.gov
Amy Dutschke	BIA	916-978-6000
Richard Johnson	Big Sandy	(559) 855-4003
Darcie Houck	FPM/Big Sandy	916-441-2700
Elizabeth D. YIP	Big Sandy Rancheria	559) 855-4003
Michelle LaPena	Allottee (Sherrill McCabe)	(916) 442-9906

[BIG SANDY LETTERHEAD]

ORDINANCE NO. _____

FEBRUARY 20, 2013~~FEBRUARY 19, 2013~~

BIG SANDY RANCHERIA
BAND OF WESTERN MONO INDIANS

TRIBAL LAND CONSOLIDATION PLAN

The Tribal Council of the Big Sandy Rancheria Band of Western Mono Indians ("Big Sandy Rancheria" or "Tribe"), empowered by the Constitution and Bylaws of the Big Sandy Rancheria Band of Western Mono Indians ("Big Sandy Rancheria Constitution and Bylaws"), hereby enacts this Tribal Land Consolidation Plan for the purpose of eliminating fractionation of Big Sandy lands and the consolidation of tribal landholdings.

1. Section 1: Declarations

(a) **Citation:** This Ordinance may be cited as the Big Sandy Rancheria Land Consolidation Plan.

(b) **Purpose**

Certain lands within the Tribe's jurisdiction have become or may become fractionated over time. The purpose of the Big Sandy Land Consolidation Plan is to eliminate and prevent fractionation of Big Sandy lands and consolidate tribal landholdings by providing the Big Sandy Tribal Council authority to consolidate and augment the Big Sandy land base, in accordance with the provisions of the Indian Land Consolidation Act, 25 U.S.C. §§ 2201, et seq. ("ILCA"). Further authority for taking land and improvements into trust for the Big Sandy Rancheria under this plan is provided by the Indian Finance Act (codified at 25 U.S.C. § 1466), 25 U.S.C. § 463(a), 25 U.S.C. § 465, and the Federal Property and Administrative Services Act of 1949, as amended (codified at 40 U.S.C. § 483(a)).

Acquisitions of land under this Plan shall conform to the policies, priorities, and procedures of the Big Sandy Rancheria unless otherwise expressly stated in this Plan or any amendment thereto approved by the Big Sandy Tribal Council or a duly authorized committee. Lands so acquired will be administered for economic, industrial, residential, recreation, and other purposes as set forth by the Big Sandy Tribal Council and its duly authorized committees.

(c) **Authority:** This Ordinance is enacted pursuant to the inherent sovereign powers of the Big Sandy Rancheria Band of Western Mono Indians, and by the Tribal

Council's authority pursuant to Article VI, Section 1 and Article XI, Section 1 of the Tribe's Constitution.

(d) **Sovereign Immunity:** Nothing in this Ordinance shall constitute or be construed to constitute a waiver of the sovereign immunity from suit of either the Tribe or any entity of the Tribe.

2. Section 2: Land consolidation area

(a) The land acquisition and consolidation area includes all lands, including federally administered and public domain lands, within:

- (1) The boundaries of the Big Sandy Rancheria;
- (2) Big Sandy "Indian Country" as defined by 18 U.S.C. § 1151;
- (3) The ~~a~~Aboriginal lands area of the Big Sandy Rancheria Band of Western Mono Indians within a fifteen (15) mile radius of the outer boundaries of the Big Sandy Rancheria, except lands held by or for another Indian tribe or allotments held by or for a member of another Indian tribe;
- (4) All lands subject to the jurisdiction of the Tribe, as defined in the Constitution of the Big Sandy Band of Western Mono Indians, including all those lands as shown on the map of Fresno County Tract No. 2060 recorded at pages 89, 90, and 91 in volume 22 of plates, Fresno County Records, and to all Indian country (as now defined by 18 U.S.C. § 1151) held by or for the Tribe or any member of the Tribe, wherever located;
and
- (5) ~~Such other lands designated on the map attached as Figure "A" to Big Sandy Tribal Council Resolution No. _____;~~

(b) Any land described in subsection (a) that is held by or for another Indian tribe or allotments held by or for a member of another Indian tribe shall be excluded from this Ordinance.

~~(b)~~(c) Any land consolidation plans approved previously by the Bureau of Indian Affairs on behalf of the Big Sandy Rancheria shall be deemed to be incorporated herein, and may be amended by the Big Sandy Tribal Council or its duly authorized committees.

3. Section 3: Operational Policy and Procedure

(a) Tracts and properties within the land consolidation area will be continually monitored to identify available acquisitions. Close contact will be maintained with

Realty personnel of the Bureau of Indian Affairs, Pacific Region for identification of individual allotted and restricted heirship lands or minerals or water rights, with the Big Sandy's preferential rights being exercised during the sale process.

(b) Specific proposals for acquisition and consolidation that are found to be in the best interests of the Tribe will be developed by the Big Sandy Tribal Council. The Big Sandy Tribal Council will enact resolutions to effect such transaction and, if necessary, authorize the Bureau of Indian Affairs to accomplish any federal actions needed to effect such transaction.

(c) An interest bearing trust account shall be established by the Secretary of the Interior or his or her delegate pursuant to 25 U.S.C. § 2203(a)(4). All proceeds derived from the sale of land or interests in land pursuant to this Plan shall be deposited into this account and utilized only for the purposes of land consolidation.

(d) An appraisal of value will be developed in accordance with the established standards of the appraisal profession by the Big Sandy Tribal Council and utilized as a guide in all acquisitions, disposals, exchanges, and other proposals for land consolidation.

4. Section 4: Purchase, sale, or exchange of interests

The Big Sandy Tribal Council may sell, exchange, purchase, or acquire any Big Sandy Rancheria trust or restricted or unrestricted lands, or interests in such lands, for the purpose of eliminating undivided fractional interests in Big Sandy Rancheria trust or restricted lands, or consolidation of Big Sandy Rancheria land holdings. Any such purchase, sale, or exchange shall conform to the following conditions:

(a) The sale price paid or exchange value received by the Big Sandy Rancheria for land or interests in land covered by this Section shall deviate by no more than ten percent (10%) of the fair market value;

(b) If the Big Sandy Rancheria land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the Big Sandy Rancheria may accept the land exchange or give or receive cash in such exchange to equalize the values of the property exchanged;

(c) Proceeds from the sale of land or interests in land or proceeds received by the Big Sandy Rancheria to equalize an exchange made pursuant to this Section shall be deposited into the account established pursuant to Section 3(c) above, and additional monies may be deposited in said account as authorized by the Big Sandy Tribal Council;

(d) The Big Sandy Rancheria may reserve the mineral and water rights to such sold or exchanged land; and

(e) The Big Sandy Rancheria may purchase less than the whole estate.

5. Section 5: Purchase of undivided fractional interests

(a) The Big Sandy Rancheria may purchase, at no less than the fair market value, part or all of the interests in any tract of trust or restricted land within the land consolidation area described in Section 2 above with the consent of the majority of the owners of such tract or allotment as required by 25 U.S.C. § 2204, under the following conditions:

- (1) Any Indian person owning an undivided interest, and in actual use and possession of such tract for at least three consecutive years preceding the Big Sandy Rancheria's offer may purchase such tract by matching the Tribe's offer;
- (2) If at any time within five years following the date of acquisition of such land by an individual under subsection (1) above, such property is offered for sale or a petition is filed with the Bureau of Indian Affairs for removal of the property from trust or restricted status, the Big Sandy Rancheria shall have 90 days from the date it is notified of such offer or petition to acquire such property by paying to the owner the fair market value.

(b) The Big Sandy Rancheria may purchase, at no less than fair market value, part or all of the interests in any tract of trust or restricted land from willing sellers and shall acquire pursuant to the Indian Land Consolidation Act any de minimis undivided fractionated interests in allotments subject to the escheat provision of the Indian Land Consolidation Act (25 U.S.C. § 2206).

(c) All sales that comply this Plan and with Tribal and federal law shall be executed by the Bureau of Indian Affairs. Appeals of Bureau of Indian Affairs actions shall be pursuant to Title 25 Code of Federal Regulations, Part 2.

6. Section 6: Public purpose; U.S. acceptance of trust allotments

(a) It is hereby declared that the acquisition by the Big Sandy Rancheria of trust allotments or of interests in trust allotments within the land consolidation area described in Section 2 above is required in the public interest and constitutes a public purpose under the laws of the Big Sandy Rancheria and under this Plan.

(b) Upon the approval of the Chairperson of the Big Sandy Tribal Council or his or her duly authorized delegate, and notwithstanding any provision of law of the Big Sandy Rancheria to the contrary, the United States is authorized and directed to accept deeds of trust allotments or interest in trust allotments from any allottee or heir who owns

any interest in such allotment and who has deeded such allotment or interest in such allotment or portion thereof to the United States in trust for the Big Sandy Rancheria.

(c) No taxes shall be paid by the Big Sandy Rancheria on any lands acquired pursuant to this Ordinance.

[BIG SANDY LETTERHEAD]

TRIBAL COUNCIL

RESOLUTION NO. _____ - ____

FEBRUARY 20, 2013~~FEBRUARY 19, 2013~~

Subject: Adoption of a Tribal Land Consolidation Plan

WHEREAS, the Big Sandy Rancheria Band of Western Mono Indians ("Tribe") is a federally-recognized Indian Tribe with the rights, benefits, privileges and immunities attendant thereto; and

WHEREAS, the Tribe is organized under the Constitution of the Big Sandy Rancheria Band of Western Mono Indians, as amended ("Constitution"), approved by the Department of the Interior on April 1, 2004; and

WHEREAS, pursuant to Article III of the Constitution, the governing body of the Tribe is a five-member Tribal Council; and

WHEREAS, pursuant to Article VI of the Constitution, the Tribal Council has the power and responsibility to, among other things: (1) promulgate and enforce ordinances; (2) initiate, approve, grant or reject any acquisition, disposition, lease, or encumbrance of Tribal lands or property; (3) to manage, protect and preserve all Tribal lands, minerals, wildlife and other natural resources of the Big Sandy Rancheria; (4) initiate and administer land development projects for the entire Rancheria; (5) promulgate and enforce resolutions or ordinances, providing for the manner of making, holding and revoking assignments of Big Sandy Rancheria land; (6) promote the health, education and general welfare of the members of the tribe; (7) encourage and foster arts, crafts, traditions and culture of the tribe; (8) administer charity and other services as may contribute to the social and economic advancement of the tribe and its members; and (9) create and regulate subordinate organizations and to delegate such organizations any of its powers; and

WHEREAS, pursuant to Article I of the Constitution, the jurisdiction of the Tribe extends to all those lands as shown on the map of Fresno County Tract No. 2060 recorded at pages 89, 90, and 91 in volume 22 of plates, Fresno County Records, and to all Indian country (as now defined by 18 U.S.C. § 1151) held by or for the Tribe or any member of the Tribe, wherever located;

WHEREAS, certain lands within the Tribe's jurisdiction have become or may become fractionated over time; and

WHEREAS, fractionated lands are present or may become present within the “land consolidation area,” ~~reflected on the map that is attached hereto as Exhibit A,~~ that includes: the boundaries of the Big Sandy Rancheria; Big Sandy “Indian Country” as defined by 18 U.S.C. § 1151; ~~the-aboriginal lands area~~ of the Big Sandy Rancheria Band of Western Mono Indians within a fifteen (15) mile radius of the outer boundaries of the Big Sandy Rancheria, except lands held by or for another Indian tribe or allotments held by or for a member of another Indian tribe; and all lands subject to the jurisdiction of the Tribe as described in the Constitution of the Big Sandy Band of Western Mono Indians, and such other lands as designated in Exhibit A;

WHEREAS, lands held by or for another Indian tribe or allotments held by or for a member of another Indian tribe are excluded from the Tribe’s Land Consolidation Plan; and

WHEREAS, the Big Sandy Rancheria recognizes the need to implement a Land Consolidation Plan in order to eliminate and prevent fractionation of Big Sandy lands and consolidate tribal landholdings, by authorizing the Tribe to consolidate and augment the Big Sandy land base in accordance with the provisions of the Indian Land Consolidation Act, 25 U.S.C. §§ 2201, et seq. (“ILCA”).

NOW, THEREFORE, BE IT RESOLVED, that the Big Sandy Tribal Council does hereby adopt the Land Consolidation Plan, Ordinance No. _____ - _____, a true and complete copy of which is attached hereto as Exhibit B; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Chairperson of the Tribal Council shall submit this plan to the Bureau of Indian Affairs for approval.

CERTIFICATION

We, the undersigned duly elected officials of the Big Sandy Rancheria Band of Western Mono Indians, certify on _____, _____ that this Tribal Council Resolution No. _____ - _____ was adopted at a duly called meeting of the Tribal Council by a vote of _____ for, _____ against, and _____ abstaining. A quorum of _____ was present.

Elizabeth D. Kipp – Tribal Chairperson

Arrow Sample – Vice Chairperson

Lisa Garcia – Secretary

Johnny Baty – Treasurer

Amy Hutchins – Member-at-Large

Big Sandy Tribal Council
Resolution No. _____ - _____
Page 3 of 3

Attachment No. 13



Facio, Carmen <carmen.facio@bia.gov>

Re: ILCP- Big Sandy Rancheria

Facio, Carmen <carmen.facio@bia.gov>

Fri, Mar 29, 2013 at 3:45 PM

To: Liz Kipp <LKipp@bsmation.com>

Cc: Amy Dutschke <Amy.Dutschke@bia.gov>, Miles Baty <MBaty@bsmation.com>, Patricia Soto <PSoto@bsmation.com>, Gina Riley <GRiley@bsmation.com>, Amy Hutchins <AHutchins@bsmation.com>

Sorry.....I have not had a chance to get to it ... I still have a couple of items that are ahead of yours.

On Fri, Mar 29, 2013 at 11:39 AM, Liz Kipp <LKipp@bsmation.com> wrote:

Hello, I am once again following up on the status of the Indian Land Consolidation Plan for Big Sandy Rancheria. I am available all day today for a call, which you can reach me at 559-855-4003 ext. 212. Thanks so much, and I look forward to talking with you.

Elizabeth D. Kipp,
Big Sandy Rancheria
Tribal Chairperson
Sent from my iPad

—
Carmen Facio, Regional Realty Officer
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way, Rm. 2820
Sacramento, CA 95825
(916) 978-6062
FAX: (916) 978-6099



Re: ILCP- Big Sandy Rancheria

Liz Kipp <LKipp@bsmation.com>

Thu, Apr 4, 2013 at 5:04 PM

To: "Facio, Carmen" <carmen.facio@bia.gov>

Cc: Amy Dutschke <Amy.Dutschke@bia.gov>, Miles Baty <MBaty@bsmation.com>, Patricia Soto <PSoto@bsmation.com>, Gina Riley <GRiley@bsmation.com>, Amy Hutchins <AHutchins@bsmation.com>, Michelle LaPena <michelle@lapenalaw.com>

Carmen/Amy, hope all is well. Is there is an update on the ILCP for Big Sandy Rancheria? If you would like to have a meeting to discuss, I can make myself at anytime. Thanks.

Elizabeth D. Kipp,
Big Sandy Rancheria
Tribal Chairperson
Sent from my iPad

On Mar 29, 2013, at 3:46 PM, "Facio, Carmen" <carmen.facio@bia.gov> wrote:

Sorry.....I have not had a chance to get to it ... I still have a couple of items that are ahead of yours.

On Fri, Mar 29, 2013 at 11:39 AM, Liz Kipp <LKipp@bsmation.com> wrote:

Hello, I am once again following up on the status of the Indian Land Consolidation Plan for Big Sandy Rancheria. I am available all day today for a call, which you can reach me at 559-855-4003 ext. 212. Thanks so much, and I look forward to talking with you.

Elizabeth D. Kipp,
Big Sandy Rancheria
Tribal Chairperson
Sent from my iPad

—
Carmen Facio, Regional Realty Officer
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way, Rm. 2820
Sacramento, CA 95825
(916) 978-6062
FAX: (916) 978-6099



RE: ILCP- Big Sandy Rancheria

Liz Kipp <LKipp@bsmation.com>

Tue, Apr 16, 2013 at 2:40 PM

To: "Facio, Carmen" <carmen.facio@bia.gov>

Cc: "Dutschke, Amy" <Amy.Dutschke@bia.gov>, "Darcie Houck (dhouch@ndnlaw.com)" <dhouch@ndnlaw.com>, "michelle@lapenalaw.com" <michelle@lapenalaw.com>, Amy Hutchins <AHutchins@bsmation.com>, Liz Kipp <LKipp@bsmation.com>, Miles Baty <MBaty@bsmation.com>, Patricia Soto <PSoto@bsmation.com>, Gina Riley <GRiley@bsmation.com>

Hi, thanks for the update. With our last meeting, I was under the impression- that once you received the modification to the Ordinance/Resolution, it was going to be a quick turnaround for your recommendation for approval. We are so glad to hear, that you hope to start on the ILCP next week, and please do contact me if there is anything you may need.

From: Facio, Carmen [mailto:carmen.facio@bia.gov]

Sent: Tuesday, April 16, 2013 2:33 PM

To: Liz Kipp

Subject: Re: ILCP- Big Sandy Rancheria

Sorry.....Amy is out of the office until April 25th.....I don't see a need for any meeting on Thursday.....as I indicated before, I am swamped. Unfortunately, I am the only one that works on all of the transactions other than F-T and rights of way. I have a backlog of administrative appeals to lease cancellations as well as other transactions. I hope to start on your ILCP next week as I have to complete a lease cancellation notice & some other items first.

On Tue, Apr 16, 2013 at 2:12 PM, Liz Kipp <LKipp@bsmation.com> wrote:

Once again, I have not heard from anyone, therefore, sending another request for an update regarding the ILCP for Big Sandy Rancheria. I would like to schedule an appointment with both Amy/Carmen, for Thursday 4/18/13, as I will be in the Sacramento area, please advise if 10:00 am is a good time to meet.
Thanks.

From: Liz Kipp

Sent: Monday, April 08, 2013 3:24 PM

To: 'Facio, Carmen'

Cc: 'Amy Dutschke'; Miles Baty; Patricia Soto; Gina Riley; Amy Hutchins; 'Michelle LaPena'

Subject: RE: ILCP- Big Sandy Rancheria

Importance: High

Hi Carmen/Amy, just checking in, once again, to see if you can provide me with an update on the ILCP for Big Sandy Rancheria. Hope to talk with you soon. Thanks.

From: Liz Kipp
Sent: Thursday, April 04, 2013 5:04 PM
To: Facio, Carmen
Cc: Amy Dutschke; Miles Baty; Patricia Soto; Gina Riley; Amy Hutchins; Michelle LaPena
Subject: Re: ILCP- Big Sandy Rancheria

Carmen/Amy, hope all is well. Is there is an update on the ILCP for Big Sandy Rancheria? If you would like to have a meeting to discuss, I can make myself at anytime. Thanks.

Elizabeth D. Kipp,
Big Sandy Rancheria
Tribal Chairperson
Sent from my iPad

On Mar 29, 2013, at 3:46 PM, "Facio, Carmen" <carmen.facio@bia.gov> wrote:

Sorry.....I have not had a chance to get to it ... I still have a couple of items that are ahead of yours.

On Fri, Mar 29, 2013 at 11:39 AM, Liz Kipp <LKipp@bsrnation.com> wrote:

Hello, I am once again following up on the status of the Indian Land Consolidation Plan for Big Sandy Rancheria. I am available all day today for a call, which you can reach me at 559-855-4003 ext. 212. Thanks so much, and I look forward to talking with you.

Elizabeth D. Kipp,
Big Sandy Rancheria
Tribal Chairperson
Sent from my iPad

—
Carmen Facio, Regional Realty Officer

Bureau of Indian Affairs

Pacific Regional Office

2800 Cottage Way, Rm. 2820

Sacramento, CA 95825

(916) 978-6062

FAX: (916) 978-6099



Updates; Big Sandy Rancheria

Liz Kipp <LKipp@bsmation.com>

Tue May 7, 2013 at 5:54 PM

To: "Dutschke, Amy" <Amy.Dutschke@bia.gov>

Cc: "Darcie Houck (dhouck@ndnlaw.com)" <dhouck@ndnlaw.com>, "JMP (jpeebles@ndnlaw.com)" <jpeebles@ndnlaw.com>, Richard Johnson <RJohnson@bsmation.com>, "carmen.facio@bia.gov" <carmen.facio@bia.gov>, "dan.hall@bia.gov" <dan.hall@bia.gov>, "John Rydzik (john.rydzik@bia.gov)" <john.rydzik@bia.gov>, "michelle@lapenalaw.com" <michelle@lapenalaw.com>, Amy Hutchins <AHutchins@bsmation.com>, Liz Kipp <LKipp@bsmation.com>, Miles Baty <MBaty@bsmation.com>, Patricia Soto <PSoto@bsmation.com>, Gina Riley <GRiley@bsmation.com>

Hi Amy, I have two, very important items pending, and would like to have an update on each;

- Indian Land Consolidation Plan, the last correspondence by email with Carmen Fazio, she was to start work on the ILCP for Big Sandy Rancheria the week of April 22, 2013, and I am following up on the status of the review/recommendation of approval. This is VERY IMPORTANT to Big Sandy Rancheria, and I need to have an answer to the status, as the face to face meeting, seemed very positive and that the turnaround would not result in such a delay. Please notify me immediately, if the department is requesting additional information or assistance to help expedite the process of approval.

-Section 106 consulting party; May 1, 2013 BSR had requested a formal meeting with BIA regarding Table Mountain Rancheria's Fee to Trust Application, and have not heard any update to our request. I would greatly appreciate your immediate response, as we would like to discuss our concerns and knowledge or our cultural and religious sites contained within the land subject to the proposed Fee to Trust Application.

Please contact me at any time, as I will make myself available to fit your schedule. Email is the best avenue of contact for me and cell phone is second best; 559-301-4004.

Respectfully,

Elizabeth D. Hutchins-Kipp

Tribal Chairperson

Big Sandy Rancheria Band of Western Mono Indians

lkipp@bsmation.com

8/1/13

DEPARTMENT OF THE INTERIOR Mail - Updates; Big Sandy Rancheria

P.O. Box 337

37387 Auberry Mission Rd

Auberry, California 93602

559-855-4003 Office

559-855-4640 Fax



This email transmission is intended only for the addressee above. It may contain information that is Privileged or Confidential. Any review, dissemination or use of this transmission by persons other than the addressee is strictly prohibited.

Attachment No. 14



FW: ILCP ordinance and resolution

Amy Dutschke <amy.dutschke@bia.gov>
To: Carmen Facio <carmen.facio@bia.gov>
Cc: Kevin Bearquiver <kevin.bearquiver@bia.gov>

Mon, Jun 24, 2013 at 3:34 PM

modified

Amended ILCP Ordinance and Resolution from Liz Kipp, Big Sandy Rancheria.

Amy

From: Liz Kipp [mailto:L.Kipp@bsrnation.com]
Sent: Monday, June 24, 2013 3:00 PM
To: Amy Dutschke
Cc: Darcie Houck; JMP
Subject: Fwd: ILCP ordinance and resolution

Amy, here is the amended ILCP Ordinance and Resolution. Please review and let me know if the changes address your concerns. I will check in with you on Thursday, to see how things are going. I will be in the Sacramento area on Thursday, so if you would like for me to swing by and have a one on one to discuss the changes, I can make my self available after 3pm. Thanks so much, and we'll be talking soon.

Elizabeth D. Kipp,
Big Sandy Rancheria
Tribal Chairperson
Sent from my iPad

Begin forwarded message:

From: Gina Riley <GRiley@bsmation.com>
Date: June 24, 2013, 2:17:24 PM PDT
To: Liz Kipp <LKipp@bsmation.com>
Subject: ILCP ordinance and resolution


Here you go

2 attachments

ATT00001.htm
1K

6/24/13

DEPARTMENT OF THE INTERIOR Mail - FW: ILCP ordinance and resolution

 **06242013 ILCP ordinance and resolution 2nd amendment.pdf**
5759K



ORDINANCE NO. 1012-01 (2ND AMENDMENT)

JUNE 24, 2013

BIG SANDY RANCHERIA
BAND OF WESTERN MONO INDIANS

TRIBAL LAND CONSOLIDATION PLAN

The Tribal Council of the Big Sandy Rancheria Band of Western Mono Indians ("Big Sandy Rancheria" or "Tribe"), empowered by the Constitution and Bylaws of the Big Sandy Rancheria Band of Western Mono Indians ("Big Sandy Rancheria Constitution and Bylaws"), hereby enacts this Tribal Land Consolidation Plan for the purpose of eliminating and preventing fractionation of Big Sandy lands and consolidating tribal landholdings.

1. Section 1: Declarations

(a) **Citation:** This Ordinance may be cited as the Big Sandy Rancheria Land Consolidation Plan.

(b) **Purpose**

Certain lands within the Tribe's jurisdiction have become and/or may become fractionated over time. The purpose of the Big Sandy Land Consolidation Plan is to eliminate and prevent fractionation of Big Sandy lands and to consolidate tribal landholdings by providing the Big Sandy Tribal Council authority to consolidate and augment the Big Sandy land base, in accordance with the provisions of the Indian Land Consolidation Act, 25 U.S.C. §§ 2201, et seq. ("ILCA"). Further authority for taking land and improvements into trust for the Big Sandy Rancheria under this plan is provided by the Indian Finance Act (codified at 25 U.S.C. § 1466), 25 U.S.C. § 463(a), 25 U.S.C. § 465, and the Federal Property and Administrative Services Act of 1949, as amended (codified at 40 U.S.C. § 483(a)).

Acquisitions of land under this Plan shall conform to the policies, priorities, and procedures of the Big Sandy Rancheria unless otherwise expressly stated in this Plan or any amendment thereto approved by the Big Sandy Tribal Council or a duly authorized committee. Lands so acquired will be administered for economic, industrial, residential, recreation, and other purposes as set forth by the Big Sandy Tribal Council and its duly authorized committees.

(c) **Authority:** This Ordinance is enacted pursuant to the inherent sovereign powers of the Big Sandy Rancheria Band of Western Mono Indians, and by the Tribal Council's authority pursuant to Article VI, Section 1 and Article XI, Section 1 of the Tribe's Constitution.

(d) **Sovereign Immunity:** Nothing in this Ordinance shall constitute or be construed to constitute a waiver of the sovereign immunity from suit of either the Tribe or any entity of the Tribe.

2. Section 2: Land consolidation area

(a) Pursuant to 25 U.S.C. § 2204, the land acquisition and consolidation area includes any tract of trust or restricted land within the boundaries of the Big Sandy Rancheria and land that is otherwise subject to the jurisdiction of the Tribe within the Land Consolidation Area. The Land Consolidation Area includes lands within:

- (1) The boundaries of the Big Sandy Rancheria;
- (2) Big Sandy "Indian Country" as defined by 18 U.S.C. § 1151;
- (3) Aboriginal lands of the Big Sandy Rancheria Band of Western Mono Indians within a fifteen (15) mile radius of the outer boundaries of the Big Sandy Rancheria; and
- (4) Lands that are otherwise subject to the jurisdiction of the Tribe, as defined in the Constitution of the Big Sandy Band of Western Mono Indians, including all those lands as shown on the map of Fresno County Tract No. 2060 recorded at pages 89, 90, and 91 in volume 22 of plates, Fresno County Records, and to all Indian country (as now defined by 18 U.S.C. § 1151) held by or for the Tribe or any member of the Tribe, wherever located.

(b) Any land described in subsection (a)(2), (a)(3), and (a)(4) above that is held by or for another Indian tribe sharing an Aboriginal land area with the Big Sandy Rancheria shall be excluded from this Ordinance.

3. Section 3: Operational Policy and Procedure

(a) Tracts and properties within the land consolidation area will be continually monitored to identify available acquisitions. Close contact will be maintained with Realty personnel of the Bureau of Indian Affairs, Pacific Region for identification of individual allotted and restricted heirship lands or minerals or water rights, with the Big Sandy's preferential rights being exercised during the sale process.

(b) Specific proposals for acquisition and consolidation that are found to be in the best interests of the Tribe will be developed by the Big Sandy Tribal Council. The Big Sandy Tribal Council will enact resolutions to effect such transaction and, if necessary, authorize the Bureau of Indian Affairs to accomplish any federal actions needed to effect such transaction.

(c) An interest bearing trust account shall be established by the Secretary of the Interior or his or her delegate pursuant to 25 U.S.C. § 2203(a)(4). All proceeds derived from the sale of land or interests in land pursuant to this Plan shall be deposited into this account and utilized only for the purposes of land consolidation.

(d) An appraisal of value will be developed in accordance with the established standards of the appraisal profession by the Big Sandy Tribal Council and utilized as a guide in all acquisitions, disposals, exchanges, and other proposals for land consolidation.

4. Section 4: Purchase, sale, or exchange of interests

The Big Sandy Tribal Council may sell, exchange, purchase, or acquire any Big Sandy Rancheria trust or restricted or unrestricted lands, or interests in such lands, for the purpose of eliminating undivided fractional interests in Big Sandy Rancheria trust or restricted lands, or consolidation of Big Sandy Rancheria land holdings. In addition, the Big Sandy Tribal Council is authorized to sell or exchange off-reservation fee lands in order to eliminate undivided fractional interests in Tribal trust or restricted lands, consolidate Tribal land holdings both within and without the Big Sandy Rancheria boundaries, and the Tribal Council may purchase, or acquire off-reservation fee land for the purpose of such exchanges. Any such purchase, sale, or exchange shall conform to the following conditions:

(a) The sale price paid or exchange value received by the Big Sandy Rancheria for land or interests in land covered by this Section shall deviate by no more than ten percent (10%) of the fair market value;

(b) If the Big Sandy Rancheria land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the Big Sandy Rancheria may accept the land exchange or give or receive cash in such exchange to equalize the values of the property exchanged;

(c) Proceeds from the sale of land or interests in land or proceeds received by the Big Sandy Rancheria to equalize an exchange made pursuant to this Section shall be deposited into the account established pursuant to Section 3(c) above, and additional monies may be deposited in said account as authorized by the Big Sandy Tribal Council;

(d) The Big Sandy Rancheria may reserve the mineral and water rights to such sold or exchanged land; and

(e) The Big Sandy Rancheria may purchase less than the whole estate.

5. Section 5: Purchase of undivided fractional interests

(a) The Big Sandy Rancheria may purchase, at no less than the fair market value, part or all of the interests in any tract of trust or restricted land within the land consolidation area described in Section 2 above with the consent of the majority of the owners of such tract or allotment as required by 25 U.S.C. § 2204, under the following conditions:

- (1) Any Indian person owning an undivided interest, and in actual use and possession of such tract for at least three consecutive years preceding the Big Sandy Rancheria's offer may purchase such tract by matching the Tribe's offer;
- (2) If at any time within five years following the date of acquisition of such land by an individual under subsection (1) above, such property is offered for sale or a petition is filed with the Bureau of Indian Affairs for removal of the property from trust or restricted status, the Big Sandy Rancheria shall have 90 days from the date it is notified of such offer or petition to acquire such property by paying to the owner the fair market value.

(b) The Big Sandy Rancheria may purchase, at no less than fair market value, part or all of the interests in any tract of trust or restricted land from willing sellers and shall acquire pursuant to the Indian Land Consolidation Act any de minimis undivided fractionated interests in allotments subject to the escheat provision of the Indian Land Consolidation Act (25 U.S.C. § 2206).

(c) All sales that comply with this Plan and with Tribal and federal law shall be executed by the Bureau of Indian Affairs. Appeals of Bureau of Indian Affairs actions shall be pursuant to Title 25 Code of Federal Regulations, Part 2.

6. Section 6: Public purpose; U.S. acceptance of trust allotments

(a) It is hereby declared that the acquisition by the Big Sandy Rancheria of trust allotments or of interests in trust allotments within the land consolidation area described in Section 2 above is required in the public interest and constitutes a public purpose under the laws of the Big Sandy Rancheria and under this Plan.

(b) Upon the approval of the Chairperson of the Big Sandy Tribal Council or his or her duly authorized delegate, and notwithstanding any provision of law of the Big Sandy Rancheria to the contrary, the United States is authorized and directed to accept deeds of trust allotments or interest in trust allotments from any allottee or heir who owns

any interest in such allotment and who has deeded such allotment or interest in such allotment or portion thereof to the United States in trust for the Big Sandy Rancheria.

(c) No taxes shall be paid by the Big Sandy Rancheria on any lands acquired pursuant to this Ordinance.

7. Section 7: Previous Land Consolidation Plans; Amendments

Any land consolidation plans approved previously by the Bureau of Indian Affairs on behalf of the Big Sandy Rancheria shall be deemed to be incorporated herein. This Ordinance may be amended by the Big Sandy Tribal Council or its duly authorized committees.

CERTIFICATION

We, the undersigned duly elected officials of the Big Sandy Rancheria Band of Western Mono Indians, certify that this Tribal council Ordinance No. 1012-01 (2nd Amendment) was adopted at a duly called meeting on June 24, 2013 with a vote of 3 For, 0 Against, and 0 Abstaining.

ADGENT
Elizabeth D. Kipp, Chairperson

Regina Riley
Regina Riley, Secretary

Amy Hutchins
Amy Hutchins, Member At Large

Miles Baty
Miles Baty, Vice Chairperson

ADGENT
Patricia Soto, Treasurer



TRIBAL COUNCIL

RESOLUTION NO. 0613-04

JUNE 24, 2013

Subject: Adoption of a Tribal Land Consolidation Plan

WHEREAS, the Big Sandy Rancheria Band of Western Mono Indians ("Tribe") is a federally-recognized Indian Tribe with the rights, benefits, privileges and immunities attendant thereto; and

WHEREAS, the Tribe is organized under the Constitution of the Big Sandy Rancheria Band of Western Mono Indians, as amended ("Constitution"), approved by the Department of the Interior on April 1, 2004; and

WHEREAS, pursuant to Article III of the Constitution, the governing body of the Tribe is a five-member Tribal Council; and

WHEREAS, pursuant to Article VI of the Constitution, the Tribal Council has the power and responsibility to, among other things: (1) promulgate and enforce ordinances; (2) initiate, approve, grant or reject any acquisition, disposition, lease, or encumbrance of Tribal lands or property; (3) to manage, protect and preserve all Tribal lands, minerals, wildlife and other natural resources of the Big Sandy Rancheria; (4) initiate and administer land development projects for the entire Rancheria; (5) promulgate and enforce resolutions or ordinances, providing for the manner of making, holding and revoking assignments of Big Sandy Rancheria land; (6) promote the health, education and general welfare of the members of the tribe; (7) encourage and foster arts, crafts, traditions and culture of the tribe; (8) administer charity and other services as may contribute to the social and economic advancement of the tribe and its members; and (9) create and regulate subordinate organizations and to delegate such organizations any of its powers; and

WHEREAS, pursuant to Article I of the Constitution, the jurisdiction of the Tribe extends to all those lands as shown on the map of Fresno County Tract No. 2060 recorded at pages 89, 90, and 91 in volume 22 of plates, Fresno County Records, and to all Indian country (as now defined by 18 U.S.C. § 1151) held by or for the Tribe or any member of the Tribe, wherever located;

WHEREAS, certain lands within the Tribe's jurisdiction have become or may become fractionated over time; and

WHEREAS, fractionated lands are present or may become present within the "land consolidation area" that includes: the boundaries of the Big Sandy Rancheria; Big Sandy "Indian Country" as defined by 18 U.S.C. § 1151; aboriginal lands of the Big Sandy Rancheria Band of Western Mono Indians within a fifteen (15) mile radius of the outer boundaries of the Big Sandy Rancheria, *except* lands held by or for another Indian tribe or allotments held by or for a member of another Indian tribe; and all lands subject to the jurisdiction of the Tribe as described in the Constitution of the Big Sandy Band of Western Mono Indians;

WHEREAS, lands held by or for another Indian tribe or allotments held by or for a member of another Indian tribe are excluded from the Tribe's Land Consolidation Plan; and

WHEREAS, the Big Sandy Rancheria recognizes the need to implement a Land Consolidation Plan in order to eliminate and prevent fractionation of Big Sandy lands and consolidate tribal landholdings, by authorizing the Tribe to consolidate and augment the Big Sandy land base in accordance with the provisions of the Indian Land Consolidation Act, 25 U.S.C. §§ 2201, et seq. ("ILCA").

NOW, THEREFORE, BE IT RESOLVED, that the Big Sandy Tribal Council does hereby adopt the Land Consolidation Plan, Ordinance No. 1012-01 (2nd Amendment), a true and complete copy of which is attached hereto as Exhibit A; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Chairperson of the Tribal Council shall submit this plan to the Bureau of Indian Affairs for approval.

CERTIFICATION

We, the undersigned duly elected officials of the Big Sandy Rancheria Band of Western Mono Indians, certify on June 24, 2013 that this Tribal Council Resolution No. 0613-04 was adopted at a duly called meeting of the Tribal Council by a vote of 2 for, 0 against, and 0 abstaining.

absent
Elizabeth D. Kipp – Tribal Chairperson

Miles Baty
Miles Baty – Vice Chairperson

Regina Riley
Regina Riley – Secretary

absent
Patricia Soto – Treasurer

Amy Hutchins
Amy Hutchins – Member-at-Large

Attachment No. 15



Fw: Big Sandy Rancheria

Amy Dutschke <amy.dutschke@bia.gov>
To: Carmen.Facio@bia.gov

Thu, Jul 18, 2013 at 12:51 PM

Carmen

What do you think, should we be approving this or should it be going to DC? I know there could be issues but we need to decide what we should do or maybe send it up so a decision can be made. The Tribe keeps sending me messages to talk about the approval. I will be back in the office on Monday, maybe we can take a minute to talk about this.

— Original Message —

From: Liz Kipp [mailto:LKipp@bsmation.com]
Sent: Monday, July 15, 2013 01:17 PM
To: Amy Dutschke <Amy.Dutschke@bia.gov>
Subject: Big Sandy Rancheria

Hi Amy, just checking to see if you had the opportunity to speak with Carmen on the ILCP for Big Sandy Rancheria. Please..... I need to talk with you on the status, as this is very important to the Tribe, and we would like to have an answer if you will be sending to Central office or approval will be at Pacific. Thanks for everything, and I hope to be talking with you soon. I am available on my cell: 559-301-4004.

Elizabeth D. Kipp,
Big Sandy Rancheria
Tribal Chairperson
Sent from my iPad

Attachment No. 16



RE: Big Sandy Rancheria ILCP

Liz Kipp <LKipp@bsmation.com>

Thu, Jul 25, 2013 at 9:17 AM

To: "Facio, Carmen" <carmen.facio@bia.gov>

Cc: "Dutschke, Amy" <Amy.Dutschke@bia.gov>, Amy Hutchins <AHutchins@bsmation.com>, Miles Baty <MBaty@bsmation.com>, Patricia Soto <PSoto@bsmation.com>, Gina Riley <GRiley@bsmation.com>

Thanks so much Carmen. Have a good day.

From: Facio, Carmen [mailto:carmen.facio@bia.gov]

Sent: Thursday, July 25, 2013 8:23 AM

To: Liz Kipp

Cc: Dutschke, Amy; Amy Hutchins; Miles Baty; Patricia Soto; Gina Riley

Subject: Re: Big Sandy Rancheria ILCP

Sorry for the delay in providing a response. I will begin writing the decision for Amy's consideration later today.

On Wed, Jul 24, 2013 at 12:51 PM, Liz Kipp <LKipp@bsmation.com> wrote:

Hello Amy, can you please give me a call- 559-855-2103, to discuss the status of the ILCP for Big Sandy Rancheria? I need an update, as we, the tribe, are in a very critical timeframe. Please I ask for some guidance or approval on the ILCP. Thank you for this important matter.

Respectfully,

Elizabeth D. Hutchins-Kipp

Tribal Chairperson

Big Sandy Rancheria Band of Western Mono Indians

lkipp@bsmation.com

P.O. Box 337

37387 Auberry Mission Rd

Auberry, California 93602

7/25/13

DEPARTMENT OF THE INTERIOR Mail - RE: Big Sandy Rancheria ILCP

559-855-4003 Office

559-855-4640 Fax



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—
Carmen Facio, Regional Realty Officer

Bureau of Indian Affairs

Pacific Regional Office

2800 Cottage Way, Rm. 2820

Sacramento, CA 95825

(916) 978-6062

FAX: (916) 978-6099

Attachment No. 17



Re: Big Sandy Rancheria ILCP

Fri Aug 2, 2013 at 3:12 PM

Facio, Carmen <carmen.facio@bia.gov>

To: Liz Kipp <LKipp@bsmation.com>

Cc: "Dutschke, Amy" <Amy.Dutschke@bia.gov>, "Darcie Houck (dhouck@ndnlaw.com)" <dhouck@ndnlaw.com>, Amy Hutchins <AHutchins@bsmation.com>, Miles Baty <MBaty@bsmation.com>, Patricia Soto <PSoto@bsmation.com>, Gina Riley <GRiley@bsmation.com>

The decision has been written.....it was forwarded for review & is currently under consideration. Hopefully, the decision can be released next week.

On Wed, Jul 31, 2013 at 5:59 PM, Liz Kipp <LKipp@bsmation.com> wrote:

H Amy/Carmen, hope all is well. I would like to request a call, to discuss the ILCP for Big Sandy Rancheria. Please let me know what date and time works best for you. I can send out call in information, once you confirm a date and time. Thanks so much, and hope to be talking with you soon.

From: Liz Kipp

Sent: Monday, July 29, 2013 2:23 PM

To: Dutschke, Amy

Cc: carmen.facio@bia.gov; Darcie Houck (dhouck@ndnlaw.com); Amy Hutchins; Liz Kipp; Miles Baty; Patricia Soto; Gina Riley

Subject: Big Sandy Rancheria ILCP

Importance: High

Amy/Carmen, Hello, following up once again on the status of the ILCP for Big Sandy Rancheria. I have a very important meeting tomorrow, and would really appreciate a response prior to 10:00 am (7/30), so that I can share with my group the status of the ILCP. Thank you so much, as I cannot type- how important this is, and the crucial timeframe to which the Tribe currently is in. Please respond soon. Thank you.

Respectfully,

Elizabeth D. Hutchins-Kipp

Tribal Chairperson

Big Sandy Rancheria Band of Western Mono Indians

lkipp@bsmation.com

P.O. Box 337
37387 Auberry Mission Rd
Auberry, California 93602

559-855-4003 Office

559-855-4640 Fax



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—
Carmen Facio, Regional Realty Officer
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way, Rm. 2820
Sacramento, CA 95825
(916) 978-6062
FAX: (916) 978-6099



RE: Big Sandy Rancheria ILCP

Gina Riley <GRiley@bsmation.com>

Fri, Aug 2, 2013 at 3:57 PM

To: "Facio, Carmen" <carmen.facio@bia.gov>, Liz Kipp <LKipp@bsmation.com>

Cc: "Dutschke, Amy" <Amy.Dutschke@bia.gov>, "Darcie Houck (dhouck@ndnlaw.com)" <dhouck@ndnlaw.com>, Amy Hutchins <AHutchins@bsmation.com>, Miles Baty <MBaty@bsmation.com>, Patricia Soto <PSoto@bsmation.com>

Thank you for the update. We look forward to hearing the release of the decision.

From: Facio, Carmen [mailto:carmen.facio@bia.gov]

Sent: Friday, August 02, 2013 3:13 PM

To: Liz Kipp

Cc: Dutschke, Amy; Darcie Houck (dhouck@ndnlaw.com); Amy Hutchins; Miles Baty; Patricia Soto; Gina Riley

Subject: Re: Big Sandy Rancheria ILCP

The decision has been written.....it was forwarded for review & is currently under consideration. Hopefully, the decision can be released next week.

On Wed, Jul 31, 2013 at 5:59 PM, Liz Kipp <LKipp@bsmation.com> wrote:

H Amy/Carmen, hope all is well. I would like to request a call, to discuss the ILCP for Big Sandy Rancheria. Please let me know what date and time works best for you. I can send out call in information, once you confirm a date and time. Thanks so much, and hope to be talking with you soon.

From: Liz Kipp

Sent: Monday, July 29, 2013 2:23 PM

To: Dutschke, Amy

Cc: carmen.facio@bia.gov; Darcie Houck (dhouck@ndnlaw.com); Amy Hutchins; Liz Kipp; Miles Baty; Patricia Soto; Gina Riley

Subject: Big Sandy Rancheria ILCP

Importance: High

Amy/Carmen, Hello, following up once again on the status of the ILCP for Big Sandy Rancheria. I have a very important meeting tomorrow, and would really appreciate a response prior to 10:00 am (7/30), so that I can share with my group the status of the ILCP. Thank you so much, as I cannot type- how important this is, and the crucial timeframe to which the Tribe currently is in. Please respond soon. Thank you.

Attachment No. 18



Facio, Carmen <carmen.facio@bia.gov>

RE: ILCP= BSR**Amy Dutschke** <amy.dutschke@bia.gov>

Tue, Oct 1, 2013 at 12:49 PM

To: Liz Kipp <LKipp@bsmation.com>, Carmen Facio <carmen.facio@bia.gov>

The ILCP is being worked on. As you know we are currently in shut down with only about 5 staff in the office. Until the shut down is over I wouldn't look for a decision. Will communicate with you once we are back in business.

Amy

From: Liz Kipp [mailto:LKipp@bsrnation.com]**Sent:** Tuesday, October 01, 2013 12:41 PM**To:** Dutschke, Amy; carmen.facio@bia.gov**Subject:** ILCP= BSR

Status of the ILCP for Big Sandy Rancheria? I have been more that patient- but would like a response ASAP. Please respond to how the government shut down has effect on a response from your office.

Respectfully,

Elizabeth D. Hutchins-Kipp

Tribal Chairperson

Big Sandy Rancheria Band of Western Mono Indians

lkipp@bsmation.com

P.O. Box 337

37387 Auberry Mission Rd

Auberry, California 93602

559-855-4003 Office

10/8/13

DEPARTMENT OF THE INTERIOR Mail - RE: ILCP- RSR

559-855-4640 Fax



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Attachment No. 19



Fwd: Big Sandy Rancheria- ILCP

Wiseman, Maria <maria.wiseman@bia.gov>
To: Carmen Facio <carmen.facio@bia.gov>

Thu, Aug 15, 2013 at 11:40 AM

FYI

----- Forwarded message -----

From: **Wiseman, Maria** <maria.wiseman@bia.gov>
Date: Thu, Aug 15, 2013 at 2:40 PM
Subject: Re: Big Sandy Rancheria- ILCP
To: Liz Kipp <LKipp@bsrnation.com>
Cc: "Paula Hart (paula.hart@bia.gov)" <paula.hart@bia.gov>, "Nancy Pierskalla (Nancy.Pierskalla@bia.gov)" <Nancy.Pierskalla@bia.gov>

Chairperson Kipp, Yes - we have Carmen's memo and are reviewing it. As soon as we finish our review, we will be in touch with Carmen - most likely next week. Thanks, Maria

On Thu, Aug 15, 2013 at 2:03 PM, Liz Kipp <LKipp@bsrnation.com> wrote:

Hello, I just got word, that the BSR ILCP was submitted to the IGM, and I wanted to see if you , first you had received a memo from Carmen Fazio, and if you can update me on the review (status, questions, concerns- etc.). Thanks so much/.

Respectfully,

Elizabeth D. Hutchins-Kipp

Tribal Chairperson

Big Sandy Rancheria Band of Western Mono Indians

lkipp@bsrnation.com

P.O. Box 337

37387 Auberry Mission Rd

Auberry, California 93602

559-855-4003 Office

*Maria called 9/10/13
re plan - minor corrections,
pgs 2, 3, 4 (citations),
clarity of*

Attachment No. 20



Facio, Carmen <carmen.facio@bia.gov>

RE: ILCP= BSR

Amy Dutschke <amy.dutschke@bia.gov>

Tue, Oct 1, 2013 at 12:49 PM

To: Liz Kipp <LKipp@bsmation.com>, Carmen Facio <carmen.facio@bia.gov>

The ILCP is being worked on. As you know we are currently in shut down with only about 5 staff in the office. Until the shut down is over I wouldn't look for a decision. Will communicate with you once we are back in business.

Amy

From: Liz Kipp [mailto:LKipp@bsrnation.com]**Sent:** Tuesday, October 01, 2013 12:41 PM**To:** Dutschke, Amy; carmen.facio@bia.gov**Subject:** ILCP= BSR

Status of the ILCP for Big Sandy Rancheria? I have been more that patient- but would like a response ASAP. Please respond to how the government shut down has effect on a response from your office.

Respectfully,

Elizabeth D. Hutchins-Kipp

Tribal Chairperson

Big Sandy Rancheria Band of Western Mono Indians

lkipp@bsmation.com

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Auberry, California 93602

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10/8/13

DEPARTMENT OF THE INTERIOR Mail - RE: ILCP- BSR

559-855-4640 Fax



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Attachment No. 21

Sec. 2202. Other applicable provisions

The provisions of section 465 of this title shall apply to all tribes notwithstanding the provisions of section 478 of this title: *Provided*, That nothing in this section is intended to supersede any other provision of Federal law which authorizes, prohibits, or restricts the acquisition of land for Indians with respect to any specific tribe, reservation, or state(s).

Sec. 2203. Adoption of land consolidation plan with approval of Secretary

(a) Statement of purpose; sales or exchanges: terms and conditions

Notwithstanding any other provision of law, any tribe, acting through its governing body, is authorized, with the approval of the Secretary to adopt a land consolidation plan providing for the sale or exchange of any tribal lands or interest in lands for the purpose of eliminating undivided fractional interests in Indian trust or restricted lands or consolidating its tribal landholdings:

Provided, That--

- (1) except as provided by subsection (c) of this section, the sale price or exchange value received by the tribe for land or interests in land covered by this section shall be no less than within 10 per centum of the fair market value as determined by the Secretary;
- (2) if the tribal land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the tribe may accept or give cash in such exchange in order to equalize the values of the property exchanged;
- (3) any proceeds from the sale of land or interests in land or proceeds received by the tribe to equalize an exchange made pursuant to this section shall be used exclusively for the purchase of other land or interests in land;
- (4) the Secretary shall maintain a separate trust account for each tribe selling or exchanging land pursuant to this section consisting of the proceeds of the land sales and exchanges and shall release such funds only for the purpose of buying lands under this section; and
- (5) any tribe may retain the mineral rights to such sold or exchanged lands and the Secretary shall assist such tribe in determining the value of such mineral rights and shall take such value into consideration in determining the fair market value of such lands.

(b) Conveyancing requirement; specific findings for nonexecution

The Secretary must execute such instrument of conveyance needed to effectuate a sale or exchange of tribal lands made pursuant to an approved tribal land consolidation plan unless he makes a specific finding that such sale or exchange is not in the best interest of the tribe or is not in compliance with the tribal land consolidation plan.

(c) Below market value conveyance of Cherokee Nation of Oklahoma homesites

The Secretary may execute instruments of conveyance for less than fair market value to effectuate the transfer of lands used as homesites held, on December 17, 1991, by the United States in trust for the Cherokee Nation of Oklahoma. Only the lands used as homesites, and described in the land consolidation plan of the Cherokee Nation of Oklahoma approved by the Secretary on February 6, 1987, shall be subject to this subsection.

Sec. 2204. Purchase of trust or restricted or controlled lands at no less than fair market value; requisite conditions

(a) Purchase of Land.--

(1) IN GENERAL.--Subject to subsection (b), any Indian tribe may purchase, at not less than fair market value and with the consent of the owners of the interests, part or all of the interests in-

(A) any tract of trust or restricted land within the boundaries of the reservation of the tribe; or

(B) land that is otherwise subject to the jurisdiction of the tribe.

(2) REQUIRED CONSENT.--

(A) IN GENERAL.--The Indian tribe may purchase all interests in a tract described in paragraph (1) with the consent of the owners of undivided interests equal to at least 50 percent of the undivided interest in the tract.

(B) INTEREST OWNED BY TRIBE.--Interests owned by an Indian tribe in a tract may be included in the computation of the percentage of ownership of the undivided interests in that tract for purposes of determining whether the consent requirement under subparagraph (A) has been met.

(b) Conditions applicable to purchase

Subsection (a) of this section applies on the condition that--

(1) any Indian owning any undivided interest, and in actual use and possession of such tract for at least three years preceding the tribal initiative, may purchase such tract by matching the tribal offer;

(2) if at any time within five years following the date of acquisition of such land by an individual pursuant to this section, such property is offered for sale or a petition is filed with the Secretary for removal of the property from trust or restricted status, the tribe shall have 180 days from the date it is notified of such offer or petition to acquire such property by paying to the owner the fair market value as determined by the Secretary; and

(3) the approval of the Secretary shall be required for a land sale initiated under this section, ~~except that such approval shall not be required with respect to a land sale transaction initiated by an Indian tribe that has in effect a land consolidation plan that has been approved by the Secretary under section 2203 of this title.~~

(c) Partition of highly fractionated Indian lands

(1) Applicability.

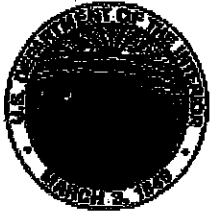
This subsection shall be applicable only to parcels of land (including surface and subsurface interests, except with respect to a subsurface interest that has been severed from the surface interest, in which case this subsection shall apply only to the surface interest) which the Secretary has determined, pursuant to paragraph (2)(B), to be parcels of highly fractionated Indian land.

(2) Requirements.

Each partition action under this subsection shall be conducted by the Secretary in accordance with the following requirements:

(A) Application.

Upon receipt of any payment or bond required under subparagraph (B), the Secretary shall commence a process for partitioning a parcel of land by sale in accordance with the provisions of this subsection upon receipt of an application by--



INTERIOR BOARD OF INDIAN APPEALS

Absentee Shawnee Tribe v. Anadarko Area Director, Bureau of Indian Affairs

18 IBIA 156 (02/20/1990)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ABSENTEE SHAWNEE TRIBE OF INDIANS OF OKLAHOMA
v.
ANADARKO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-48-A

Decided February 20, 1990

Appeal from a decision disapproving a tribal Land Consolidation and Acquisition Plan.

Reversed and remanded.

1. Indians: Lands: Trust Acquisitions

In the absence of any statutory or regulatory criteria for the approval of a "plan for the acquisition of land in trust status for [an Indian] tribe" under 25 CFR 151.2(h), a Bureau of Indian Affairs official may devise and employ reasonable criteria to review such a plan.

2. Indians: Lands: Trust Acquisitions

It was not reasonable for the Bureau of Indian Affairs to disapprove a tribal plan for the acquisition of land in trust status under 25 CFR 151.2(h) on the basis of criteria derived from a provision in the Indian Land Consolidation Act, 25 U.S.C. § 2203 (1983 and 1984 Supps.), concerning sale or exchange of tribal lands.

APPEARANCES: F. Browning Pipestem, Esq., Norman, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Absentee Shawnee Tribe of Indians of Oklahoma seeks review of a January 18, 1989, decision of the Anadarko Area Director, Bureau of Indian Affairs (BIA; appellee), disapproving its Land Consolidation and Acquisition Plan. For the reasons discussed below, the Board reverses that decision and remands this case to appellee for further consideration.

Background

In early 1987, appellant submitted a proposed Land Consolidation and Acquisition Plan to the Shawnee Agency (Agency), BIA, for review and technical assistance. This plan was developed after analysis of appellant's

existing land base and anticipated future needs. Appellant's original reservation, which was concurrent with that of the Citizen Band Potawatomi Tribe of Oklahoma, was generally bounded to the north by the North Canadian River, to the south by the South Canadian River, to the east by the eastern edge of what is presently Potawattomie County, and to the west by the Indian Meridian. Of the original reservation, only 289.25 acres are presently owned by appellant.

Concerned with such factors as a high tribal unemployment rate, low educational level, substandard housing, low standard of living and high disease rate, and its own inability to generate additional income from existing tribal lands to assist its people's economic development, appellant developed a goal of planned acquisition of additional lands in order to increase the tribal land base and gain access to new economic markets within Oklahoma. Through this plan of acquisition, appellant hoped to acquire lands suitable for economic development, develop economic enterprises, increase tribal income through an increased tax base, and create new jobs. As stated at page 18 of its proposed plan, "[t]he overall purpose of this plan is to access the Absentee Shawnee Tribe of Oklahoma to a greater geographic area which meets the aforementioned criteria [for being suitable for economic development] by extending our existing land acquisition area some thirteen and one-half (13½) miles to the west of our existing reservational boundary." 1/

By letter dated July 16, 1987, the Agency Superintendent (Superintendent) informed appellant that the Anadarko Area Office (Area Office) had reviewed the draft plan and had requested (1) a map showing the intended area of acquisition in relation to the original reservation boundaries and (2) photographs of the "String of Pearls" tract, which would be the first acquisition under the plan, depicting its relation to downtown Oklahoma City.

The requested items were provided and the final plan was submitted in July 1987. The Agency sent the plan to the Area Office on September 3, 1987. The Agency indicated it found no deficiencies in the plan, but was

1/ Appellant indicated in its proposed plan that two opportunities had already been presented that were consistent with the plan. The first opportunity concerned a proposal from the Oklahoma City Riverfront Redevelopment Authority for appellant to acquire a tract of land consisting of approximately 60 acres along the North Canadian River within the city limits of Oklahoma City at the intersection of Interstate Routes 35 and 40. The tract, which had been part of a proposed "String of Pearls" development of 7 tracts along the river, had not been developed. The second opportunity consisted of the acquisition of an existing shopping center in Norman, Oklahoma. Both possible acquisitions apparently involved donations of land to appellant. Appellant stated at page 16 of its plan that "[b]oth of these existing situations illustrate the opportunities that the Absentee Shawnee Tribe presently cannot take advantage of as a result of the inability to acquire real property outside its historic reservation area."

concerned about the size of the proposed expansion area and staffing problems that might occur within the Agency if the plan were to be fully implemented. Despite its concerns, the Agency recommended that consideration be given to approval of the plan.

The Area Office concurred with the Agency in its statement that the proposed area of the plan might be excessive, but noted that the area could easily be scaled down. Under instructions then in effect, on September 21, 1987, the Area Office sent the plan to the Washington, D.C., BIA office for approval. The Area Office noted no problem with the plan other than the geographical size.

Subsequently, the Assistant Secretary - Indian Affairs authorized BIA Area Directors to approve off-reservation land acquisitions. Accordingly, on July 5, 1988, appellant was informed that the plan was being returned to appellee for consideration. By letter dated January 18 and received by appellant on January 24, 1989, appellee disapproved the plan, indicating that it did not meet the necessary criteria for approval and stating at page 1:

Congress has enacted a number of laws which authorize the acquisition of land in a trust status for individual Indians and Indian Tribes. None of these laws speak to authorization, recognition or creation of Land Acquisition Plans. The Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1466 [(1982) 2/]) provided for loans and loan guaranty and insurance which could be used to acquire land in a trust status for Indians and Indian Tribes within an Indian Reservation or an approved "Tribal Consolidation Area," and the Indian Land Consolidation Act of January 12, 1983 (Title II of P.L. 97-459; 96 Stat. 2515), as amended by Act of October 30, 1984 (P.L. 98-608; 98 Stat. 3171) (25 U.S.C. §§ 2201-2211 (ILCA)) provides that any tribe is authorized with the approval of the Secretary to adopt a "Land Consolidation Plan." The premise of both laws was for the purpose of

2/ 25 U.S.C. § 1466 provides:

"Title to any land purchased by a tribe or by an individual Indian with loans made from the revolving loan fund may be taken in trust unless the land is located outside the boundaries of a reservation or a tribal consolidation area approved by the Secretary. Title to any land purchased by a tribe or by an individual Indian which is outside the boundaries of the reservation or approved consolidation area may be taken in trust if the purchaser was the owner of trust or restricted interests in the land before the purchase, otherwise title shall be taken in the name of the purchasers without any restriction on alienation, control, or use. Title to personal property purchased with a loan from the revolving loan fund shall be taken in the name of the purchaser."

All further citations to the United States Code are to the 1982 edition.

eliminating fractional interests in Indian trust or restricted lands or consolidating land holdings. A consolidation area should reflect some rational plan to consolidate land. In this instance the expansion area does not meet that criteria, it gives the appearance that the tribe is seeking carte blanche authority to acquire random tracts all over the area, rather than to further any actual land consolidation plan.

On January 25, 1989, appellant asked appellee to provide it with the specific evaluation criteria that were used in disapproving the plan. When the requested information was not received, by letter dated February 21, 1989, appellant filed a notice of appeal with appellee.

By letter dated February 23, 1989, appellee provided information concerning his evaluation criteria. Appellee stated that BIA did not have specific criteria for evaluating the type of plan appellant had submitted. Therefore, he indicated that the Area Office had developed its own criteria to justify and support the decision. He stated that the phrase "tribal consolidation area" was first used in the Indian Financing Act of 1974 and that the only reference to the phrase in the act's legislative history indicated "that one of the purposes of the proposed legislation was to give tribes a method of consolidating their land base and buying up fractionated interests" (Feb. 23, 1989, letter at 1).

Appellee then looked to ILCA as a source for criteria to evaluate a "land consolidation plan." Appellee quoted 25 U.S.C. § 2203(a), which provides:

Notwithstanding any other provision of law, any tribe, acting through its governing body, is authorized, with the approval of the Secretary to adopt a land consolidation plan providing for the sale or exchange of any tribal lands or interest in lands for the purpose of eliminating undivided fractional interests in Indian trust or restricted lands or consolidating its tribal landholdings: Provided, That --

- (1) the sale price or exchange value received by the tribe for land or interests in land covered by this section shall be no less than within 10 per centum of the fair market value as determined by the Secretary;
- (2) if the tribal land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the tribe may accept or give cash in such exchange in order to equalize the values of the property exchanged;
- (3) any proceeds from the sale of land or interests in land or proceeds received by the tribe to equalize an exchange made pursuant to this section shall be used exclusively for the purchase of other land or interests in land;

(4) the Secretary shall maintain a separate trust account for each tribe selling or exchanging land pursuant to this section consisting of the proceeds of the land sales and exchanges and shall release such funds only for the purpose of buying lands under this section; and

(5) any tribe may retain the mineral rights to such sold or exchanged lands and the Secretary shall assist such tribe in determining the value of such mineral rights and shall take such value into consideration in determining the fair market value of such lands. [3/]

Based on the requirements of ILCA, appellee determined that appellant needed to add three sections to its plan in order for it to be approvable:

1. Clearly demonstrate how the Plan will accomplish the purposes of eliminating fractional ownership or consolidating tribal lands,
2. Provide at least a general plan for the reinvestment of proceeds received from the sale of tribal land, and
3. Ensure that all sales of tribal land are for no less than fair market value.

Appellee forwarded appellant's notice of appeal to the Washington, D.C., BIA office, where it was still pending when new appeal regulations for BIA and the Board took effect on March 13, 1989. See 54 FR 6478 and

3/ Appellee's letter also included a definition of "land consolidation plan" from a draft revision of 25 CFR Part 152. Appellee recognized that the revision was not in effect, but stated that he believed the definition was consistent with the Department's position concerning land consolidation plans. The draft definition provides:

"Land consolidation plan means a detailed plan devised by a tribe and approved by the Secretary which contemplates the sale or exchange of any tribal lands or interests in land for the purpose of eliminating undivided lands or consolidating its tribal land holdings. If the reservation does not encompass an area sufficient to permit a meaningful consolidation plan, the plan may contemplate the consolidation of land in a specified area adjacent to the tribe's reservation boundaries. The plan will, at a minimum, include an explanation of how the tribe will accomplish the purposes of eliminating undivided interests or consolidating the tribal land base; a map, depicting in general, what lands or interests are covered by the plan; guidelines for the purchase of new lands with the proceeds of any lands sold or exchanged under the plan; and, designate under what authority the plan was approved or authorized by the tribe. The plan and supporting documents will be submitted to the Superintendent for approval by the Secretary."

6483 (Feb. 10, 1989). The appeal was transferred to the Board for consideration under those new procedures on May 16, 1989. Because the materials in the administrative record indicated that appellant was willing to work with BIA, by order dated May 23, 1989, the Board stayed proceedings before it pending good faith settlement negotiations between the parties.

In June 1989, discussions were held between representatives of appellant, the Area Office, and the Agency, during which the matter of the geographic area covered by appellant's plan was again addressed. However, by letter dated July 5, 1989, appellee reaffirmed his disapproval of appellant's plan, stating:

At this point, the question of area is not paramount. The issue before us is to determine if your recent transmittal complies with the provisions of [ILCA] regarding the adoption of Land Consolidation Plans. At your request, and by letter dated February 23, 1989 we provided the specific criteria utilized in evaluating your plan and also included a proposed definition which we feel is consistent with the department's current position on Land Consolidation Plans.

After receiving this letter, appellant determined that further settlement attempts would be fruitless and requested the Board to lift its stay. By order dated July 17, 1989, the Board lifted the stay and established a briefing schedule. Only appellant filed a brief.

Discussion and Conclusions

Regulations governing the acquisition of land in trust status for Indians and Indian tribes are found in 25 CFR Part 151. 25 CFR 151.3(a) provides:

Subject to the provisions contained in the acts of Congress which authorize land acquisitions, land may be acquired for a tribe in trust status (1) when the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or, (2) when the tribe already owns an interest in the land or, (3) when the Secretary determines that the acquisition of land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

Section 151.2(f) provides that "in the State of Oklahoma * * * 'Indian reservation' means that area constituting the former reservation of the tribe as defined by the Secretary." Section 151.2(h) defines "tribal consolidation area" as "a specific area of land with respect to which the tribe has prepared, and the Secretary has approved, a plan for the acquisition of land in trust status for the tribe."

Appellant's "Land Consolidation and Acquisition Plan" clearly appears to have been intended as a plan for the acquisition of land in trust status under Part 151. Appellee's initial review of the plan also appears to have been conducted under this assumption. At some point before January 1989, however, appellee began to consider the plan under criteria derived from ILCA, pursuant to which he ultimately disapproved it. The issue in this appeal is whether appellee properly employed these criteria in evaluating appellant's plan, which was ostensibly submitted for approval under 25 CFR Part 151.

[1] The Department's primary statutory authority for the acquisition of land in trust status for Indians is 25 U.S.C. § 465, which vests broad discretion in the Secretary. ^{4/} See State of Florida v. U.S. Department of the Interior, 768 F.2d 1248 (11th Cir. 1985), cert. denied, 475 U.S. 1011 (1986). To the extent the Secretary has promulgated regulations specifying how this authority is to be exercised, he has limited his discretion. Cf. id. at 1257 n.11. However, to the extent he has not so limited it, the discretion vested in the Secretary by section 465 remains.

The authority to approve a tribal "plan for the acquisition of land in trust status" under 25 CFR 151.2(h) is an aspect of the Secretary's discretionary authority to acquire lands in trust status. No criteria for approval of such plans are contained in Part 151. The Board is unaware of any other statutory or regulatory criteria concerning this type of plan.

The Board finds that, in the absence of statutory or regulatory criteria, appellee had the discretionary authority to analyze appellant's plan under reasonable criteria of his own devising. ^{5/} Appellee's initial analysis, which took into account such factors as the geographic extent of the proposed consolidation area vis-a-vis the tribe's need for additional land, and BIA's ability to provide services to the land, appears to be reasonably related to the ultimate development of a realistic and manageable plan for the trust acquisition of additional land for the tribe.

^{4/} 25 U.S.C. § 465 provides:

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

Presumably, any trust acquisitions for appellant would be made under authority of this provision. See 25 CFR 151.5.

^{5/} Cf. City of Eagle Butte v. Aberdeen Area Director, 17 IBIA 192, 197, 96 I.D. 328, 331 (1989), in which the Board held that, while approval of a trust acquisition request is discretionary, in order to avoid any allegation of abuse of discretion, BIA's final decision should be reasonable in light of its overall analysis of the factors in section 151.10.

[2] The question remains whether appellee's later analysis, in which he employed "land consolidation plan" criteria derived from ILCA to evaluate a plan prepared for trust acquisition purposes, was reasonable. 25 U.S.C. § 2203, the ILCA provision concerning land consolidation plans, is directed primarily toward authorizing the sale or exchange of existing tribal lands, under certain conditions, rather than toward trust acquisition of new tribal lands. ^{6/} The statutory requirement that such sales or exchanges be for the purpose of "eliminating fractional interests in Indian trust or restricted lands or consolidating tribal landholdings" is clearly intended as a limitation upon alienation, rather than acquisition, of tribal lands. ^{7/}

Appellant's plan does not contemplate the sale or exchange of any lands it presently owns, but only the acquisition of new lands. In this context, the requirements established in appellee's February 23, 1989, letter, i.e., that appellant's plan "demonstrate how [it] will accomplish the purposes of eliminating fractional ownership or consolidating tribal lands, provide at least a general plan for the reinvestment of proceeds received from the sale of tribal land, and ensure that all sales of tribal land are for no less than fair market value," are largely irrelevant.

The Board finds that it was not reasonable for appellee to employ ILCA-derived criteria, related primarily to the sale or exchange of tribal lands, to appellant's "Land Consolidation and Acquisition Plan," which was intended as a plan for the acquisition of land in trust status.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the January 18, 1989, decision of the Anadarko Area Director is reversed and this case is remanded to him for further consideration. In evaluating appellant's plan, the Area Director should employ criteria bearing a reasonable relation to the

^{6/} Trust acquisitions are the subject of the immediately preceding section of ILCA, 25 U.S.C. § 2202, which provides:

"The provisions of section 465 of this title shall apply to all tribes notwithstanding the provisions of section 478 of this title: Provided, That nothing in this section is intended to supersede any other provision of Federal law which authorizes, prohibits, or restricts the acquisition of land for Indians which respect to any specific tribe, reservation, or state(s)."

^{7/} The draft definition of "land consolidation plan" quoted by appellee in his Feb. 23, 1989, letter is also directed toward transactions involving sales or exchanges of tribal land. See note 3, supra. Appellee stated that this definition was intended for inclusion in a revision of 25 CFR Part 152, where provisions concerning sale or exchange of tribal lands (e.g., 25 CFR 152.21, 152.22(b)) are presently located. He did not indicate the intended relation of this definition to Part 151.

purpose of appellant's plan as a "plan for the acquisition of land in trust status" under 25 CFR 151.2(h). 8/

//original signed

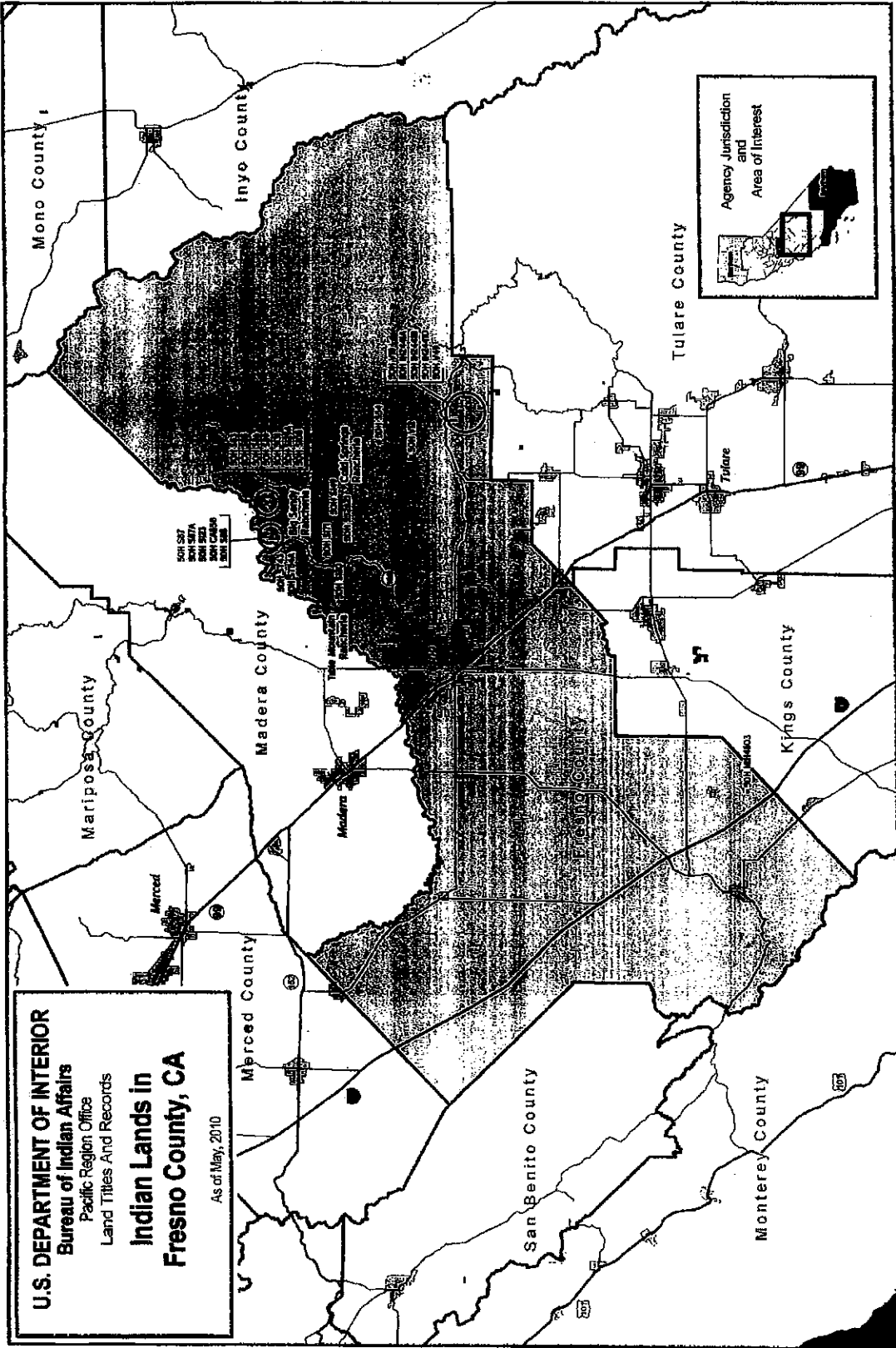
Anita Vogt
Administrative Judge

I concur:

//original signed

Kathryn A. Lynn
Chief Administrative Judge

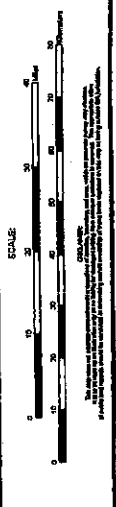
8/ The Board notes that appellant has apparently concluded, incorrectly, that land may be taken into trust for it only if the land is located within its historic reservation or within a tribal consolidation area. See note 1, *supra*, and accompanying text. In fact, land may also be taken into trust under 25 CFR 151.3(a) (3) "when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing." It is possible that the trust acquisitions sought by appellant might qualify under this criterion, regardless of the ultimate decision on its acquisition plan.



U.S. DEPARTMENT OF INTERIOR
Bureau of Indian Affairs
 Pacific Region Office
 Land Titles And Records
Indian Lands in
Fresno County, CA
 As of May, 2010

Pacific Region
Indian Lands in Fresno Co.
 Cartographer: Janis Schubert
 Map Date: 5/27/2010

Sheet No. 1 of 1



California Indian Trust Land
 U.S. Bureau of Indian Affairs
 Pacific Region Office - Division of Real Estate Services
 2000 College Way, Suite W22019, PO, 9719 974-9990
 Sacramento, California 95825
 Dismal, North American Datum 1983
 Spheroid: GRS 1980



Attachment No. 22



United States Department of the Interior

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

IN REPLY REFER TO:
Real Estate Services

NOV 07 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED 7013 1090 0002 1067 5886

Honorable Elizabeth D. Kipp
Chairperson, Big Sandy Band of Western Mono Indians
37387 Auberry Mission Road
Auberry, California 93602

Dear Chairperson Kipp:

By letter dated November 21, 2012, we received the request on behalf of Big Sandy submitted by Steven J. Bloxham of the firm of Fredericks, Peebles & Morgan, LLP, to approve the Tribe's Land Consolidation Plan pursuant to 25 U.S.C. § 2203, i.e., the Indian Land Consolidation Act (ILCA).

Background

Shortly after submission of the subject Consolidation Plan, the Indian Gaming Management Director and this office received the December 3, 2012 memorandum from the law firm of Fredericks, Peebles & Morgan, LLP, setting forth arguments for the BIA's approval of the Tribe's Consolidation Plan and subsequent purchase of the McCabe allotment. The McCabe allotment is approximately 13-15 miles from the Big Sandy Rancheria, and the sole owner is Ms. Sherrill Esteves. The allotment contains 40.82 acres, more or less, and is described as the N1/2 of Lot 2 of the NW1/4 of Section 18, T. 11 S., R. 22 E., Mount Diablo Meridian. Said allotment is in Fresno County in central California, and is in close proximity to the Table Mountain Rancheria.

It was noted that the above-referenced December 3, 2012 memorandum from Fredericks, Peebles & Morgan states as follows: "If the purchase is in accordance with an ILCP adopted by the Tribe and approved by the Secretary of the Interior, the purchase and transfer would not need to be specifically approved by the Secretary,³ and an environmental impact statement would not apply to the purchase or transfer of land in accordance with the plan."

The Indian Land Consolidation Act at 25 U.S.C. § 2204(b)(3), does specify as follows: *"the approval of the Secretary shall be required for a land sale initiated under this section, except that such approval shall not be required with respect to a land sale transaction initiated by an Indian tribe that has in effect a land consolidation plan that has been approved by the Secretary under section 2203 of this title."* (Emphasis added.) Accordingly, with the approval

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of the Consolidation Plan, the Tribe could move forward with the purchase of the McCabe allotment without BIA approval and the associated requirements to comply with the National Environmental Policy Act and its related regulations and laws.

Upon review of the Land Consolidation Plan, our initial concern was with Section 2, which specified that the Land Consolidation Area extends to "*Such other lands designated on the map attached as Figure "A" to Big Sandy Tribal Council Resolution No. 1012-07.*" The area shown on Figure "A" extended to North Fork, Millerton Lake and down below the town of Tollhouse. This area encompasses areas where public domain allotments may be owned by members of the North Fork, Table Mountain and Cold Springs Rancherias, or where these tribes already own lands. By our letter dated January 31, 2013, we advised you of our concerns and requested that you submit any additional documentation that identifies the aboriginal land area of the Big Sandy Rancheria as well as any known off-reservation allotments that are owned by Big Sandy tribal members. No responsive data was received.

On February 20, 2013, a meeting was held at this office at which time you explained the reasons for the plan, i.e., to acquire all allotted lands within the Rancheria plus those outside the Rancheria boundaries that might be acquired from tribal members. You also explained that it was not the intent to include lands of other tribes, and it was indicated that a modified plan would be submitted.

We received the modified plan dated February 21, 2013 and the accompanying Tribal Resolution on February 23rd. The amended plan included the following changes to Section 2(a)(3):

"Aboriginal lands of the Big Sandy Rancheria Band of Western Mono Indians within a fifteen (15) mile radius of the outer boundaries of the Big Sandy Rancheria, except lands held by or for another Indian tribe or allotments held by or for another Indian tribe or allotments held by or for a member of another Indian tribe; . . ."

"Any land described in subsection (a) that is held by or for another Indian tribe or allotments held by or for a member of another Indian tribe shall be excluded from this Ordinance."

A copy of an additional amendment to the plan was submitted by email dated June 24, 2013, and Section 2(a) and Section 2(a)(3) read as follows:

"Pursuant to 25 U.S.C. § 2204, the land acquisition and consolidation area includes any tract of trust or restricted land within the boundaries of the Big Sandy Rancheria and land that is otherwise subject to the jurisdiction of the Tribe within the Land Consolidation Area. The Land Consolidation Area includes lands within:

"Aboriginal lands of the Big Sandy Rancheria Band of Western Mono Indians within a fifteen (15) mile radius of the outer boundaries of the Big Sandy Rancheria; . . ."

While the foregoing provisions do not, on their face, cause serious concern, coupled with the Tribe's real intent, i.e., to purchase the off-reservation public domain allotment No. SAC-120, for use as a gaming facility without compliance with the National Environmental Policy Act (NEPA), the approval of the ILCA Plan sets a precedent that does not, in our opinion, demonstrate consistency with the intent of ILCA.

Section 2204 of the Indian Land Consolidation Act provides that any Indian tribe may purchase, at not less than fair market value and with the consent of the owners of the interests, part or all of the interest in trust or restricted land within the boundaries of the reservation of the tribe or land that is otherwise subject to the jurisdiction of the tribe.

However, as indicated above, Section 2204(b)(3) provides that land purchases of allotted lands by tribes having an approved land consolidation plan need not have such purchases approved by the Secretary.

As pointed out by the Fredericks, Peebles & Morgan memorandum, absent a requirement for Secretarial approval, the purchase of the McCabe allotment could be deemed a mandatory acquisition, and as such, there would be no trigger for compliance with NEPA. This appears to be the main goal for the Tribe's implementation of the ILCA Plan. Generally, a tribe's purchase of on-reservation fractional interests, as was anticipated with passage of ILCA, can qualify as a categorical exclusion from NEPA because there is no immediate change in land use anticipated, which is not the situation in this instance.

The Tribe's initial gaming lease proposal for the McCabe allotment was submitted in December 2004, and the National Indian Gaming Commission's Staff Attorney issued an advisory opinion on September 6, 2006 that concluded that Big Sandy could conduct Class II and III gaming on the McCabe allotment. An updated Business Lease was submitted in April 2008, however, to date, compliance with NEPA is not yet been completed (a Federal Register Notice was published January 14, 2011 giving Notice of the Availability of the Draft Environmental Impact Statement).

Big Sandy can seek a trust-to-trust purchase of the McCabe allotment without an approved ILCA plan. However, the purchase, as with gaming on lands being acquired by a tribe for gaming purposes, would have to be reviewed by the Office of Indian Gaming with the Assistant Secretary having the authority to authorize us to approve the sale. Requiring Secretarial approval would trigger compliance with NEPA, and based on the proposed lease and correspondence already surrounding the McCabe allotment, it is not likely that a determination could be made that the sale/purchase would qualify as a categorical exclusion.

We are also concerned that we have received no confirmation from the landowner that she wants to include her land in the ILCA plan or to sell her land. In prior meetings, she stated that she did

not want to sell, but that she did want to lease the land to the Big Sandy Rancheria for gaming purposes. Even if she is willing to now sell the land, we have no application for sale, and we have no indication from Ms. Esteves or her legal counsel that she is willing to sell it without BIA supervision and compliance with other regulatory requirements.

As indicated above, we were previously provided with a copy of the September 6, 2006 memorandum to the National Indian Gaming Commission's Chairman that the Big Sandy Rancheria could conduct gaming on the McCabe allotment as it exercised governmental jurisdiction over the allotment. However, that opinion was given based on the provisions of the Indian Gaming Regulatory Act, and it is not our role to determine whether or not gaming can be conducted on Indian lands.

In contrast, § 2203 and § 2004 of the Indian Land Consolidation Act are directed primarily toward the authorization of the sale or exchange of allotted and tribal lands for the purpose of land consolidation of tribal lands and eliminating fractional interests. In a matter before the Interior Board of Indian Appeals, the Board found that ILCA plans are for the consolidation of tribal holdings, not for the acquisition of tribal land, see *Absentee Shawnee Tribe v. Anadarko Area Director*, 18 IBIA 156 (02/20/1990).

Conclusion

As previously pointed out, there are no implementing regulations specific to our review and approval of tribal land consolidation plans. However, it has been our understanding that 25 U.S.C. § 2203 and § 2204 were mainly intended to provide a means by which tribes could consolidate interests in "on-reservation" tracts. We would consider our approval of the presently-proposed ILCA plan as precedent-setting as there are numerous off-reservation allotments in various locations throughout California, most of which have not been historically subject to a tribe's jurisdiction. Unfortunately, some off-reservation allotment owners have been disenrolled by nearby tribes and there continues to be animosity in these areas. Approval of Big Sandy's proposal could possibly result in additional tribal jurisdictional disputes over these off-reservation landowners. Accordingly, we cannot conclude that it would be appropriate to allow a tribe to include these off-reservation allotments in a particular tribe's ILCA plan without consulting with and obtaining the authorization of the Indian landowners. Based on the foregoing, we hereby decline to approve the Big Sandy Land Consolidation Plan and/or any of its amendments.

This decision may be appealed to the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 North Quincy Street, Suite 300, Arlington, Virginia 22203, in accordance with the regulations at 43 CFR 4.310-4.340 (copy enclosed).

Your notice of appeal to the Board must be signed by you or your legal counsel, and the notice of appeal must be mailed within 30 days of the day of receipt of this notice. The notice of appeal should clearly identify the decision being appealed. A copy of this decision should be attached to the notice. You must send copies of the notice of appeal to (1) the Assistant Secretary-Indian

Affairs, U.S. Department of the Interior, 1849 C Street, N.W., MS-4140-MIB, Washington, D.C. 20240; (2) each interested party known to Lessee; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must include a certification that copies have been sent to each of the interested parties. If a notice of appeal is filed, 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 30-day appeal period. **No extension of time may be granted for filing a notice of appeal.**

Sincerely,



Acting Regional Director

Enclosure

43 CFR 4.320, et seq.

cc: BY CERTIFIED MAIL RETURN RECEIPT REQUESTED, TO:

Steven J. Bloxham 7013 1090 0002 1067 5893
Fredericks, Peebles & Morgan, LLP
2020 L Street, Suite 250
Sacramento, CA 95811
w/enclosure

Michele LaPena, Esq. (on behalf of Sherrill Esteves) 7013 1090 0002 1067 5909
LaPena Law Corporation
2001 "N" Street, Suite 100
Sacramento, CA 95814
w/enclosure

BY REGULAR MAIL, TO:

Troy Burdick, Superintendent
Central California Agency
Bureau of Indian Affairs
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814
w/enclosure

Title 43, Code of Federal Regulation, Administrative Appeals to the Interior Board of Indian Appeals

Office of the Secretary, Interior

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state specifically and concisely the grounds upon which it is based.

(b) *Notice; burden of proof.* The OHA deciding official will, upon receipt of a demand for hearing, set a time and place therefor and must mail notice thereof to all parties in interest not less than 30 days in advance; provided, however, that such date must be set after the expiration of the 60-day period fixed for the filing of the demand for hearing as provided in §4.305(a). At the hearing, each party challenging the tribe's claim to purchase the interests in question or the valuation of the interests as set forth in the valuation report will have the burden of proving his or her position.

(c) *Decision after hearing; appeal.* Upon conclusion of the hearing, the OHA deciding official will issue a decision which determines all of the issues including, but not limited to, a judgment establishing the fair market value of the interests purchased by the tribe, including any adjustment thereof made necessary by the surviving spouse's decision to reserve a life estate in one-half of the interests. The decision must specify the right of appeal to the Board of Indian Appeals within 60 days from the date of the decision in accordance with §§4.310 through 4.323. The OHA deciding official must lodge the complete record relating to the demand for hearing with the title plant as provided in §4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

§4.306 Time for payment.

A tribe must pay the full fair market value of the interests purchased, as set forth in the valuation report or as determined after hearing in accordance with §4.305, whichever is applicable, within 2 years from the date of decedent's death or within 1 year from the date of notice of purchase, whichever comes later.

§4.307 Title.

Upon payment by the tribe of the interests purchased, the Superintendent must issue a certificate to the OHA deciding official that this has been done and file therewith such documents in

support thereof as the OHA deciding official may require. The OHA deciding official will then issue an order that the United States holds title to such interests in trust for the tribe, lodge the complete record, including the decision, with the title plant as provided in §4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

§4.308 Disposition of income.

During the pendency of the probate and up to the date of transfer of title to the United States in trust for the tribe in accordance with §4.307, all income received or accrued from the land interests purchased by the tribe will be credited to the estate.

CROSS REFERENCE: See 25 CFR part 2 for procedures for appeals to Area Directors and to the Commissioner of the Bureau of Indian Affairs.

GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§4.310 Documents.

(a) *Filing.* The effective date for filing a notice of appeal or other document with the Board during the course of an appeal is the date of mailing or the date of personal delivery, except that a motion for the Board to assume jurisdiction over an appeal under 25 CFR 2.20(e) will be effective the date it is received by the Board.

(b) *Service.* Notices of appeal and pleadings must be served on all parties in interest in any proceeding before the Interior Board of Indian Appeals by the party filing the notice or pleading with the Board. Service must be accomplished upon personal delivery or mailing. Where a party is represented in an appeal by an attorney or other representative authorized under 43 CFR 1.3, service of any document on the attorney or representative is service on the party. Where a party is represented by more than one attorney, service on any one attorney is sufficient. The certificate of service on an attorney or

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representative must include the name of the party whom the attorney or representative represents and indicate that service was made on the attorney or representative.

(c) *Computation of time for filing and service.* Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed or answered was served or the day of any other event after which a designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays, and other nonbusiness days are excluded in the computation.

(d) *Extensions of time.* (1) The time for filing or serving any document except a notice of appeal may be extended by the Board.

(2) A request to the Board for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the Board may grant an extension of time on its own initiative.

(e) *Retention of documents.* All documents received in evidence at a hearing or submitted for the record in any proceeding before the Board will be retained with the official record of the proceeding. The Board, in its discretion, may permit the withdrawal of original documents while a case is pending or after a decision becomes final upon conditions as required by the Board.

§4.311 Briefs on appeal.

(a) The appellant may file an opening brief within 30 days after receipt of the notice of docketing. Appellant must serve copies of the opening brief upon all interested parties or counsel and file a certificate with the Board showing service upon the named parties. Opposing parties or counsel will have 30 days from receipt of appellant's brief

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to file answer briefs, copies of which must be served upon the appellant or counsel and all other parties in interest. A certificate showing service of the answer brief upon all parties or counsel must be attached to the answer filed with the Board.

(b) Appellant may reply to an answering brief within 15 days from its receipt. A certificate showing service of the reply brief upon all parties or counsel must be attached to the reply filed with the Board. Except by special permission of the Board, no other briefs will be allowed on appeal.

(c) The BIA is considered an interested party in any proceeding before the Board. The Board may request that the BIA submit a brief in any case before the Board.

(d) An original only of each document should be filed with the Board. Documents should not be bound along the side.

(e) The Board may also specify a date on or before which a brief is due. Unless expedited briefing has been granted, such date may not be less than the appropriate period of time established in this section.

§4.312 Decisions.

Decisions of the Board will be made in writing and will set forth findings of fact and conclusions of law. The decision may adopt, modify, reverse or set aside any proposed finding, conclusion, or order of a BIA official or an OHA deciding official. Distribution of decisions must be made by the Board to all parties concerned. Unless otherwise stated in the decision, rulings by the Board are final for the Department and must be given immediate effect.

§4.313 Amicus Curiae; intervention; joinder motions.

(a) Any interested person or Indian tribe desiring to intervene or to join other parties or to appear as amicus curiae or to obtain an order in an appeal before the Board must apply in writing to the Board stating the grounds for the action sought. Permission to intervene, to join parties, to appear, or for other relief, may be granted for purposes and subject to limitations established by the Board. This section will be liberally construed.

(b) Motions to intervene, to appear as amicus curiae, to join additional parties, or to obtain an order in an appeal pending before the Board must be served in the same manner as appeal briefs.

§ 4.314 Exhaustion of administrative remedies.

(a) No decision of an OHA deciding official or a BIA official, which at the time of its rendition is subject to appeal to the Board, will be considered final so as to constitute agency action subject to judicial review under 5 U.S.C. 704, unless made effective pending decision on appeal by order of the Board.

(b) No further appeal will lie within the Department from a decision of the Board.

(c) The filing of a petition for reconsideration is not required to exhaust administrative remedies.

§ 4.315 Reconsideration.

(a) Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. Any party to the decision may petition for reconsideration. The petition must be filed with the Board within 30 days from the date of the decision and must contain a detailed statement of the reasons why reconsideration should be granted.

(b) A party may file only one petition for reconsideration.

(c) The filing of a petition will not stay the effect of any decision or order and will not affect the finality of any decision or order for purposes of judicial review, unless so ordered by the Board.

§ 4.316 Remands from courts.

Whenever any matter is remanded from any federal court to the Board for further proceedings, the Board will either remand the matter to an OHA deciding official or to the BIA, or to the extent the court's directive and time limitations will permit, the parties will be allowed an opportunity to submit to the Board a report recommending procedures for it to follow to comply with the court's order. The Board will enter special orders governing matters on remand.

§ 4.317 Standards of conduct.

(a) *Inquiries about cases.* All inquiries with respect to any matter pending before the Board must be made to the Chief Administrative Judge of the Board or the administrative judge assigned the matter.

(b) *Disqualification.* An administrative judge may withdraw from a case in accordance with standards found in the recognized canons of judicial ethics if the judge deems such action appropriate. If, prior to a decision of the Board, a party files an affidavit of personal bias or disqualification with substantiating facts, and the administrative judge concerned does not withdraw, the Director of the Office of Hearings and Appeals will determine the matter of disqualification.

§ 4.318 Scope of review.

An appeal will be limited to those issues which were before the OHA deciding official upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the BIA official on review. However, except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board will not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.

APPEALS TO THE BOARD OF INDIAN
APPEALS IN PROBATE MATTERS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§ 4.320 Who may appeal.

(a) A party in interest has a right to appeal to the Board from an order of an OHA deciding official on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate.

(b) Notice of appeal. Within 60 days from the date of the decision, an appellant must file a written notice of appeal signed by appellant, appellant's attorney, or other qualified representative as provided in 43 CFR 1.3, with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203. A

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statement of the errors of fact and law upon which the appeal is based must be included in either the notice of appeal or in any brief filed. The notice of appeal must include the names and addresses of parties served. A notice of appeal not timely filed will be dismissed for lack of jurisdiction.

(c) Service of copies of notice of appeal. The appellant must personally deliver or mail the original notice of appeal to the Board of Indian Appeals. A copy must be served upon the OHA deciding official whose decision is appealed as well as all interested parties. The notice of appeal filed with the Board must include a certification that service was made as required by this section.

(d) Action by the OHA deciding official; record inspection. The OHA deciding official, upon receiving a copy of the notice of appeal, must notify the Superintendent concerned to return the duplicate record filed under §§4.236(b) and 4.241(d), or under §4.242(f) of this part, to the Land Titles and Records Office designated under §4.236(b) of this part. The duplicate record must be conformed to the original by the Land Titles and Records Office and will thereafter be available for inspection either at the Land Titles and Records Office or at the office of the Superintendent. In those cases in which a transcript of the hearing was not prepared, the OHA deciding official will have a transcript prepared which must be forwarded to the Board within 30 days from receipt of a copy of the notice of appeal.

[66 FR 67656, Dec. 31, 2001, as amended at 67 FR 4368, Jan. 30, 2002]

§4.321 Notice of transmittal of record on appeal.

The original record on appeal must be forwarded by the Land Titles and Records Office to the Board by certified mail. Any objection to the record as constituted must be filed with the Board within 15 days of receipt of the notice of docketing issued under §4.332 of this part.

§4.322 Docketing.

The appeal will be docketed by the Board upon receipt of the administrative record from the Land Titles and

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Records Office. All interested parties as shown by the record on appeal must be notified of the docketing. The docketing notice must specify the time within which briefs may be filed and must cite the procedural regulations governing the appeal.

§4.323 Disposition of the record.

Subsequent to a decision of the Board, other than remands, the record filed with the Board and all documents added during the appeal proceedings, including any transcripts prepared because of the appeal and the Board's decision, must be forwarded by the Board to the Land Titles and Records Office designated under §4.236(b) of this part. Upon receipt of the record by the Land Titles and Records Office, the duplicate record required by §4.320(c) of this part must be conformed to the original and forwarded to the Superintendent concerned.

APPEALS TO THE BOARD OF INDIAN APPEALS FROM ADMINISTRATIVE ACTIONS OF OFFICIALS OF THE BUREAU OF INDIAN AFFAIRS: ADMINISTRATIVE REVIEW IN OTHER INDIAN MATTERS NOT RELATING TO PROBATE PROCEEDINGS

SOURCE: 54 FR 6487, Feb. 10, 1989, unless otherwise noted.

§4.330 Scope.

(a) The definitions set forth in 25 CFR 2.2 apply also to these special rules. These regulations apply to the practice and procedure for: (1) Appeals to the Board of Indian Appeals from administrative actions or decisions of officials of the Bureau of Indian Affairs issued under regulations in 25 CFR chapter 1, and (2) administrative review by the Board of Indian Appeals of other matters pertaining to Indians which are referred to it for exercise of review authority of the Secretary or the Assistant Secretary—Indian Affairs.

(b) Except as otherwise permitted by the Secretary or the Assistant Secretary—Indian Affairs by special delegation or request, the Board shall not adjudicate:

- (1) Tribal enrollment disputes;

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(2) Matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority; or

(3) Appeals from decisions pertaining to final recommendations or actions by officials of the Minerals Management Service, unless the decision is based on an interpretation of Federal Indian law (decisions not so based which arise from determinations of the Minerals Management Service, are appealable to the Interior Board of Land Appeals in accordance with 43 CFR 4.410).

§4.331 Who may appeal.

Any interested party affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in title 25 of the Code of Federal Regulations may appeal to the Board of Indian Appeals, except—

(a) To the extent that decisions which are subject to appeal to a higher official within the Bureau of Indian Affairs must first be appealed to that official;

(b) Where the decision has been approved in writing by the Secretary or Assistant Secretary—Indian Affairs prior to promulgation; or

(c) Where otherwise provided by law or regulation.

§4.332 Appeal to the Board; how taken; mandatory time for filing; preparation assistance; requirement for bond.

(a) A notice of appeal shall be in writing, signed by the appellant or by his attorney of record or other qualified representative as provided by 43 CFR 1.3, and filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203, within 30 days after receipt by the appellant of the decision from which the appeal is taken. A copy of the notice of appeal shall simultaneously be filed with the Assistant Secretary—Indian Affairs. As required by §4.333 of this part, the notice of appeal sent to the Board shall certify that a copy has been sent to the Assistant Secretary—Indian Affairs. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction. A notice of appeal shall include:

(1) A full identification of the case;
(2) A statement of the reasons for the appeal and of the relief sought; and

(3) The names and addresses of all additional interested parties, Indian tribes, tribal corporations, or groups having rights or privileges which may be affected by a change in the decision, whether or not they participated as interested parties in the earlier proceedings.

(b) In accordance with 25 CFR 2.20(c) a notice of appeal shall not be effective for 20 days from receipt by the Board, during which time the Assistant Secretary—Indian Affairs may decide to review the appeal. If the Assistant Secretary—Indian Affairs properly notifies the Board that he has decided to review the appeal, any documents concerning the case filed with the Board shall be transmitted to the Assistant Secretary—Indian Affairs.

(c) When the appellant is an Indian or Indian tribe not represented by counsel, the official who issued the decision appealed shall, upon request of the appellant, render such assistance as is appropriate in the preparation of the appeal.

(d) At any time during the pendency of an appeal, an appropriate bond may be required to protect the interest of any Indian, Indian tribe, or other parties involved.

[54 FR 6487, Feb. 10, 1989, as amended at 67 FR 4368, Jan. 30, 2002]

§4.333 Service of notice of appeal.

(a) On or before the date of filing of the notice of appeal the appellant shall serve a copy of the notice upon each known interested party, upon the official of the Bureau of Indian Affairs from whose decision the appeal is taken, and upon the Assistant Secretary—Indian Affairs. The notice of appeal filed with the Board shall certify that service was made as required by this section and shall show the names and addresses of all parties served. If the appellant is an Indian or an Indian tribe not represented by counsel, the appellant may request the official of the Bureau whose decision is appealed to assist in service of copies of the notice of appeal and any supporting documents.

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(b) The notice of appeal will be considered to have been served upon the date of personal service or mailing.

§ 4.334 Extensions of time.

Requests for extensions of time to file documents may be granted upon a showing of good cause, except for the time fixed for filing a notice of appeal which, as specified in § 4.332 of this part, may not be extended.

§ 4.335 Preparation and transmittal of record by official of the Bureau of Indian Affairs.

(a) Within 20 days after receipt of a notice of appeal, or upon notice from the Board, the official of the Bureau of Indian Affairs whose decision is appealed shall assemble and transmit the record to the Board. The record on appeal shall include, without limitation, copies of transcripts of testimony taken; all original documents, petitions, or applications by which the proceeding was initiated; all supplemental documents which set forth claims of interested parties; and all documents upon which all previous decisions were based.

(b) The administrative record shall include a Table of Contents noting, at a minimum, inclusion of the following:

- (1) The decision appealed from;
- (2) The notice of appeal or copy thereof; and
- (3) Certification that the record contains all information and documents utilized by the deciding official in rendering the decision appealed.

(c) If the deciding official receives notification that the Assistant Secretary—Indian Affairs has decided to review the appeal before the administrative record is transmitted to the Board, the administrative record shall be forwarded to the Assistant Secretary—Indian Affairs rather than to the Board.

§ 4.336 Docketing.

An appeal shall be assigned a docket number by the Board 20 days after receipt of the notice of appeal unless the Board has been properly notified that the Assistant Secretary—Indian Affairs has assumed jurisdiction over the appeal. A notice of docketing shall be sent to all interested parties as shown

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by the record on appeal upon receipt of the administrative record. Any objection to the record as constituted shall be filed with the Board within 15 days of receipt of the notice of docketing. The docketing notice shall specify the time within which briefs shall be filed, cite the procedural regulations governing the appeal and include a copy of the Table of Contents furnished by the deciding official.

§ 4.337 Action by the Board.

(a) The Board may make a final decision, or where the record indicates a need for further inquiry to resolve a genuine issue of material fact, the Board may require a hearing. All hearings shall be conducted by an administrative law judge of the Office of Hearings and Appeals. The Board may, in its discretion, grant oral argument before the Board.

(b) Where the Board finds that one or more issues involved in an appeal or a matter referred to it were decided by the Bureau of Indian Affairs based upon the exercise of discretionary authority committed to the Bureau, and the Board has not otherwise been permitted to adjudicate the issue(s) pursuant to § 4.330(b) of this part, the Board shall dismiss the appeal as to the issue(s) or refer the issue(s) to the Assistant Secretary—Indian Affairs for further consideration.

§ 4.338 Submission by administrative law judge of proposed findings, conclusions and recommended decision.

(a) When an evidentiary hearing pursuant to § 4.337(a) of this part is concluded, the administrative law judge shall recommend findings of fact and conclusions of law, stating the reasons for such recommendations. A copy of the recommended decision shall be sent to each party to the proceeding, the Bureau official involved, and the Board. Simultaneously, the entire record of the proceedings, including the transcript of the hearing before the administrative law judge, shall be forwarded to the Board.

(b) The administrative law judge shall advise the parties at the conclusion of the recommended decision of their right to file exceptions or other

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comments regarding the recommended decision with the Board in accordance with § 4.339 of this part.

§ 4.339 Exceptions or comments regarding recommended decision by administrative law judge.

Within 30 days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to or other comments on the decision with the Board.

§ 4.340 Disposition of the record.

Subsequent to a decision by the Board, the record filed with the Board and all documents added during the appeal proceedings, including the Board's decision, shall be forwarded to the official of the Bureau of Indian Affairs whose decision was appealed for proper disposition in accordance with rules and regulations concerning treatment of Federal records.

WHITE EARTH RESERVATION LAND SETTLEMENT ACT OF 1985; AUTHORITY OF ADMINISTRATIVE JUDGES; DETERMINATIONS OF THE HEIRS OF PERSONS WHO DIED ENTITLED TO COMPENSATION

SOURCE: 56 FR 61383, Dec. 3, 1991, unless otherwise noted.

§ 4.350 Authority and scope.

(a) The rules and procedures set forth in §§ 4.350 through 4.357 apply only to the determination through intestate succession of the heirs of persons who died entitled to receive compensation under the White Earth Reservation Land Settlement Act of 1985, Public Law 99-264 (100 Stat. 61), amended by Public Law 100-163 (101 Stat. 886) and Public Law 100-212 (101 Stat. 1433).

(b) Whenever requested to do so by the Project Director, an administrative judge shall determine such heirs by applying inheritance laws in accordance with the White Earth Reservation Settlement Act of 1985 as amended, notwithstanding the decedent may have died testate.

(c) As used herein, the following terms shall have the following meanings:

(1) The term *Act* means the White Earth Reservation Land Settlement Act of 1985 as amended.

(2) The term *Board* means the Board of Indian Appeals in the Office of Hearings and Appeals, Office of the Secretary.

(3) The term *Project Director* means the Superintendent of the Minnesota Agency, Bureau of Indian Affairs, or other Bureau of Indian Affairs official with delegated authority from the Minneapolis Area Director to serve as the federal officer in charge of the White Earth Reservation Land Settlement Project.

(4) The term *party (parties) in interest* means the Project Director and any presumptive or actual heirs of the decedent, or of any issue of any subsequently deceased presumptive or actual heir of the decedent.

(5) The term *compensation* means a monetary sum, as determined by the Project Director, pursuant to section 8(c) of the Act.

(6) The term *administrative judge* means an administrative judge or an administrative law judge, attorney-advisor, or other appropriate official of the Office of Hearings and Appeals to whom the Director of the Office of Hearings and Appeals has redelegated his authority, as designee of the Secretary, for making heirship determinations as provided for in these regulations.

(7) The term *appellant* means a party aggrieved by a final order or final order upon reconsideration issued by an administrative judge who files an appeal with the Board.

[56 FR 61383, Dec. 3, 1991; 56 FR 65782, Dec. 18, 1991, as amended at 64 FR 13363, Mar. 18, 1999]

§ 4.351 Commencement of the determination process.

(a) Unless an heirship determination which is recognized by the Act already exists, the Project Director shall commence the determination of the heirs of those persons who died entitled to receive compensation by filing with the administrative judge all data, identifying the purpose for which they are being submitted, shown in the records relative to the family of the decedent.

(b) The data shall include but are not limited to:

Receipt(s) for Acting Regional Director's 11/7/13
Disapproval Decision - Big Sandy land consolidation plan

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece or on the front if space permits.

1. Article Addressed to: **Re ILCA Plan**
ELIZABETH D KIPP CHAIRPERSON
BIG SANDY BAND OF MONO
37387 AUBERRY MISSION RD
AUBERRY CA 93602

2. Article Number (Transfer from service label) **7013 1090 0002 1067 5886**

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
Don Lewis Agent Addressee

B. Received by (Printed Name) **Don Lewis** C. Date of Delivery **11-17-13**

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type Certified Mail Express Mail Return Receipt for Merchandise
 Registered Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes No

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to: **Re ILCA Plan**
STEVEN J BLOXHAM
FREDERICKS PEEBLES & MORGAN
2020 L STREET SUITE 250
SACRAMENTO CA 95811

2. Article Number (Transfer from service label) **7013 1090 0002 1067 5893**

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
Brian R. McElman Agent Addressee

B. Received by (Printed Name) **Brian R. McElman** C. Date of Delivery **11/17/13**

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type Certified Mail Express Mail Return Receipt for Merchandise
 Registered Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes No

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to: **RETURN TO SENDER**

2. Article Number (Transfer from service label) **7013 0600 0001 1880 7154**

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
Melanie Miller Agent Addressee

B. Received by (Printed Name) **Melanie Miller** C. Date of Delivery **12/10/13**

D. Is delivery address different from item 1? Yes No

3. Service Type Certified Mail Express Mail Return Receipt for Merchandise
 Registered Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes No