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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

BIG SANDY RANCHERIA BAND OF)	Notice of Docketing, Order Setting
WESTERN MONO INDIANS,)	Briefing Schedule, and Order
Appellant,)	Concerning Service List
)	
v.)	
)	Docket No. IBIA 14-041
ACTING PACIFIC REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	January 3, 2014

The Big Sandy Rancheria Band of Western Mono Indians (Tribe or Appellant) appealed to the Board of Indian Appeals (Board) from a November 7, 2013, decision (Decision) of the Acting Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA), declining to approve the Tribe's Land Consolidation Plan (LCP) and/or any of its amendments, pursuant to the Indian Land Consolidation Act, 25 U.S.C. § 2203, *et seq.*

The Board received the administrative record in this matter on December 20, 2013, including a table of contents for the record. A copy of the table of contents is enclosed for the benefit of the parties. The administrative record in this case is available for inspection at the Board's office and also in the office of the Regional Director. The Board is not able to handle large-volume copying requests. Therefore, if a party desires to obtain copies of documents in the administrative record, and the volume of the documents sought exceeds 100 pages, the Board requests that the party make arrangements with the Regional Director to obtain the desired copies.

Notice of Docketing

Pursuant to 43 C.F.R. § 4.336, on December 19, 2013, the appeal was assigned the above case name and docket number, which should be cited in all future correspondence or inquiries regarding the matter.

Regulations governing appeals to the Board are found in 43 C.F.R. Part 4. A copy of these regulations was mailed to non-Federal parties with the Board's pre-docketing notice of this appeal.

Order Setting Briefing Schedule

Copies of all pleadings filed with the Board must be served on all interested parties. 43 C.F.R. §§ 4.310(b), 4.333(a). Parties who choose to serve and file by U.S. mail may use regular first-class mail; they do not need to use certified mail unless they wish to do so for their own record keeping purposes. If counsel is appearing for an interested party, counsel should enter an appearance, after which service should be made on counsel. A certificate or affidavit evidencing service shall be filed concurrently with the document furnished to the Board.

The parties are advised that the Board will not accept any filing by facsimile transmission (fax) unless the Board has first granted permission for the filing of that particular document by fax. The Board may grant permission to file by fax in extraordinary circumstances. Because documents filed with the Board are filed as of the date of mailing, extraordinary circumstances do not include the fact that a filing is due that day. Any document filed by fax without permission will not be accepted.

In accordance with 43 C.F.R. § 4.311(e), Appellant's opening brief is due on or before February 21, 2014. Appellant is advised that it bears the burden of proving error in the decision being appealed.

Opposing parties or their counsel may file an answer(s) within 30 days from receipt of Appellant's opening brief. If no opening brief is filed, opposing parties may file a brief(s) within 30 days from the date Appellant's opening brief was due. Appellant shall have 15 days from receipt of any answer brief(s) in which to file a reply brief.

If any party wishes to, it may include with the paper copy of its filing an electronic copy of that filing on a CD-ROM in Microsoft Word® or Adobe PDF®.

The Board's Internet website, containing a free, searchable database of its decisions, is located at www.doi.gov/oha/ibia/index.cfm. The Board's decisions are also available on the for-fee websites of WestLaw and Lexis-Nexis. There may be some delay in providing Board decisions to the operators of these sites, but they are relatively current.

Order Concerning Service List

Upon review of Appellant's notice of appeal, the Decision, and the administrative record, the Board concludes that several additional parties should be added to the service list as potentially interested parties to this appeal. The Decision states that the Tribe's LCP encompasses areas where other tribes or their members own lands, and documents in the

record suggest that the Tribe may be contending that approval of its LCP would have certain legal consequences that may, for example, affect whether a trust acquisition by the Tribe within the area encompassed by its LCP, if approved, would require Secretarial approval or be subject to the National Environmental Policy Act. In its notice of appeal, the Tribe includes in its request for relief an order from the Board "to reverse" the Decision and to either "approve the Tribe's ILCP" or remand the matter to the Regional Director. Notice of Appeal at 3. The Board expresses no view on the merits of any of the Tribe's legal positions presented to BIA, as reflected in the administrative record, but based on the allegations and relief sought in this appeal, it appears that the North Fork, Table Mountain, and Cold Springs Rancherias (all mentioned in the Decision), the State of California, and Fresno County, may be potentially interested parties who are entitled to notice of this appeal. Accordingly, the Board has added these parties to the service list attached to this order. Because these parties apparently have not previously been given notice of the Decision and these proceedings, the Board encloses for them a copy of the Tribe's notice of appeal, to which a copy of the Decision was attached.

Alternative Dispute Resolution

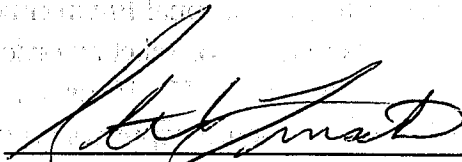
The parties are advised that the Board strongly encourages the voluntary resolution of disputes brought before it. Such resolutions might take the form of traditional settlement discussions, or might involve the use of some form of alternative dispute resolution (ADR), such as mediation.

If the parties wish to discuss the possibility of settling this dispute or engaging in ADR, they should so inform the Board. Upon receiving such notification, the Board may stay further proceedings before it while the parties are exploring other possibilities.

If the parties would like to use mediation or another form of ADR, but have questions about the process, would like assistance in locating a neutral, or have other concerns, they may contact the Department's Office of Collaborative Action and Dispute Resolution (CADR). CADR does not normally provide neutrals, but can answer questions about ADR processes and assist parties in locating a mutually acceptable neutral. CADR assistance can be reached via email by contacting Shayla.Simmons@sol.doi.gov or Elena_Gonzalez@ios.doi.gov, or by phone at 202-208-7950 (Shayla Simmons) or 703-235-3791 (Elena Gonzalez).

The parties are also advised that the Board reviews all appeals, usually on several occasions, to determine whether it believes that the parties might benefit from the use of ADR. If it believes that the parties might benefit from the use of ADR, the Board may order them to participate in an assessment conference to determine whether ADR is likely

to be successful. The Board will not, however, order the parties to mediation or any other form of ADR over their objections.



Steven K. Linscheid
Chief Administrative Judge

Enclosures

- (1) Table of Contents (all parties)
- (2) Notice of Appeal and Decision (newly added potentially interested parties)

Distribution: See attached list.

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.

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Distribution: IBIA 14-041

Darcie L. Houck, Esq.
for Appellant Big Sandy Rancheria
Band of Mono Indians
Fredericks Peebles & Morgan LLP
2020 L Street, Suite 250
Sacramento, CA 95811

Michele LaPena, Esq.
for Sherrill Esteves
LaPena Law Corporation
777 Campus Commons Road, Suite 200
Sacramento, CA 95825

Chairperson
Cold Springs Rancheria
P.O. Box 209
Tollhouse, CA 93667

Chairperson
Table Mountain Rancheria of California
P.O. Box 410
Friant, CA 93626

Chairperson
Northfork Rancheria of Mono Indians
of California
P.O. Box 929
North Fork, CA 93643-0929

Sara J. Drake
Deputy Attorney General
State of California
Department of Justice
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Sacramento, CA 94244-2550

Governor of California
Attn: Jacob Appelsmith
State Capitol Building
Sacramento, CA 95814

Board of Supervisors
County of Fresno
2281 Tulare Street, Room 301
Fresno, CA 93721-2198

Superintendent
Central California Agency
Bureau of Indian Affairs
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814-4710

Pacific Regional Director
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

Pacific Southwest Regional Solicitor
Office of the Solicitor
U.S. Department of the Interior
2800 Cottage Way, Room E-1712
Sacramento, CA 95825

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**Attorneys for BIG SANDY RANCHERIA BAND
OF WESTERN MONO INDIANS**

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OFFICE OF HEARINGS AND APPEALS
BOARD OF INDIAN APPEALS

**UNITED STATES DEPARTMENT OF THE INTERIOR
INTERIOR BOARD OF INDIAN APPEALS**

BIG SANDY RANCHERIA BAND OF
WESTERN MONO INDIANS,

Appellants,

v.

KEVIN BEARQUIVER, Acting Pacific
Regional Director; AMY DUTSCHKE,
Pacific Regional Director,

Respondents.

) Docket No. _____

) **NOTICE OF APPEAL**

PLEASE TAKE NOTICE that, pursuant to 43 C.F.R. § 4.332, the Big Sandy Rancheria Band of Western Mono Indians (hereinafter referred to as the "Tribe" or "Big Sandy") hereby appeals the November 7, 2013 Decision of Acting Regional Director of the Pacific Regional Office of the Bureau of Indian Affairs ("the Decision"). A true and complete copy of the Decision is attached hereto as **Exhibit A**.

I. Identification of the Decision

The Decision being appealed is the Acting Regional Director's Decision of November 7, 2013, notifying the Big Sandy Band of Western Mono Indians of its denial of the Tribe's Indian Land Consolidation Plan (ILCP), which was originally submitted to the Bureau

of Indian Affairs on November 21, 2012, pursuant to the Indian Land Consolidation Act (ILCA). The decision states the approval of Big Sandy's ILCP would be considered "precedent-setting" on account of the numerous off-reservation allotments, and could potentially result in tribal jurisdictional disputes over the off-reservation landowners. Additionally, the Decision states that authorization of the off-reservation Indian landowners would be required in order to approve the proposed ILCP. A final reason discussed is the *assumption* by the Bureau of Indian Affairs that because the subject land will ultimately be used for gaming, the ILCP is an attempt to circumvent compliance with the National Environmental Policy Act (NEPA).¹

II. Statement of Reasons for the Appeal

By way of background, the Big Sandy Rancheria was established in 1909, along with two other Rancherias, as lands for the Western Mono People. The Big Sandy Rancheria is located on the western edge of the Sierra National Forest, approximately two (2) miles east of Auberry, California and approximately thirty-five (35) miles northeast of Fresno, California. The aboriginal land of the Tribe's ancestors, the Western Mono People, occupies the western edge of the Sierra National Forest and the surrounding territory. Specifically, the Tribe's aboriginal territory includes an allotment, known as the McCabe Allotment, located approximately twelve (12) miles east of the Big Sandy Rancheria. The Tribe exercises jurisdiction over, and provides governmental services to, the McCabe Allotment.

As the Tribe will more fully explain in its Opening Brief, the Acting Regional Director's Decision is arbitrary and capricious, an abuse of discretion, and vague. The decision appears to state that the Department cannot approve the plan without the approval of individual off-reservation Indian land owners so as not to "set precedent" based on the

¹ The Tribe is not attempting to avoid an environmental review. In fact, both the Tribal-State Compact and the Tribe's Environmental Ordinance require an environmental review.

decision. Yet, nothing in the proposed ILCP or any decision that would approve the plan requires off-reservation Indian landowners to sell their land holdings to the Tribe. The Tribe has fully complied with the Bureau's requests for additional information. Similarly, the Landowner of the McCabe Allotment has been present throughout the ILCP application process, and she is fully aware of the Tribe's intent with regard to the ILCP.

III. Relief Sought

The Tribe respectfully requests the Interior Board of Indian Appeals to reverse the Decision issued by the Bureau of Indian Affairs and either approve the Tribe's ILCP, or remand with direction to the Department as to the proper standard of review and approval of the Tribe's Plan.

IV. Appellant's Address

The Tribe's address is:

Big Sandy Rancheria
Attn: Chairwoman Elizabeth Kipp
P.O. Box 337
Auberry, CA 93602

However, any Notice of Docketing, Answer and correspondence concerning this appeal shall also be forwarded to the Tribe's Counsel:

John Peebles, Esq.
Darcie Houck, Esq.
Fredericks Peebles & Morgan LLP
2020 L Street, Suite 250
Sacramento, CA 95811
Tel: (916) 441-2700
Fax: (916) 441-2067
dhouck@ndnlaw.com

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V. Interested Parties

Any Notice of Docketing, Answer and correspondence concerning this appeal shall be forwarded to the Indian allottee's Counsel:

Sherrill Esteves
c/o Michele LaPena, Esq.
LaPena Law Corporation
777 Campus Commons Rd., Suite 200
Sacramento, CA 95825

The interested parties, including the Assistant Secretary of Indian Affairs and the Pacific Regional Director of the Bureau of Indian Affairs, are identified on the Distribution List, attached hereto as **Exhibit B**.

Dated: November 26, 2013

Respectfully submitted,

FREDERICKS PEEBLES & MORGAN LLP

By: 

Darcie L. Houck

Attorneys for Big Sandy Rancheria Band
of Western Mono Indians

EXHIBIT A



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.

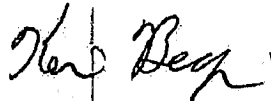
This decision may be appealed to the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 North Quincy Street, Suite 300, Arlington, Virginia 22203, in accordance with the regulations at 43 CFR 4.310-4.340 (copy enclosed).

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

EXHIBIT B

DISTRIBUTION LIST

Assistant Secretary of Indian Affairs
U.S. Department of the Interior
1849 C Street, N.W.
MS-4140-MIB
Washington, D.C. 20240

Pacific Regional Director
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

Sherrill Esteves
c/o Michele LaPena, Esq.
LaPena Law Corporation
777 Campus Commons Rd., Suite 200
Sacramento, CA 95825

CERTIFICATE OF SERVICE

I declare that I am employed with the law firm of Fredericks Peebles & Morgan LLP, whose address is 2020 L Street, Suite 250 Sacramento, California 95811. I am employed in Sacramento County, California. I am over the age of 18 and am not a party to this case. On **November 26, 2013**, I caused the following documents(s) to be served as described as:

NOTICE OF APPEAL

on the interested party(ies) in this action as addressed as follows:

CERTIFIED MAIL # 7009 0960 0000 4067 7685 Interior Board of Indian Appeals U.S. Department of the Interior 801 N. Quincy Street, #300 Arlington, VA 22203	CERTIFIED MAIL # 7009 0960 0000 4067 7647 Assistant Secretary of Indian Affairs U.S. Department of the Interior 1849 C Street, N.W. MS-4140-MIB Washington, D.C. 20240
CERTIFIED MAIL # 7009 0960 0000 4067 7654 Pacific Regional Director Bureau of Indian Affairs 2800 Cottage Way Sacramento, CA 95825	CERTIFIED MAIL # 7009 0960 0000 4067 7661 Sherrill Esteves c/o Michele LaPena, Esq. LaPena Law Corporation 777 Campus Commons Rd., Suite 200 Sacramento, CA 95825

XX (By U.S. Certified Mail, Return Receipt Requested) I am familiar with the business practice for collection and processing of documents for mailing. On the same day that documents are placed for collection and mailing, they are deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.
Executed on **November 26, 2013** at Sacramento, California.



Suzanne Balluff

MINISTRY OF LAWYERS

...to the law firm of ...
...the ...
...the ...



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...

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...