



OFFICE OF THE GOVERNOR

October 8, 2009

Via Facsimile (916) 978-6099 & U.S. Mail

Mr. Dale Morris, Regional Director
United States Department of the Interior
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

Re: Lytton Rancheria 92 Acre Fee to Trust Application

Dear Mr. Morris:

The Governor's Office has reviewed the Lytton Rancheria's (Lytton) application to have the United States accept the conveyance of 92 acres of land in trust for Lytton (Trust Acquisition). As described in the application, the Trust Acquisition consists of seven parcels located approximately two miles west of Highway 101 near the town of Windsor in Sonoma County. The application states that the land will be utilized for the subsequent development of tribal housing and community facilities.

Under the United States Supreme Court decision in *Carciere v. Salazar* (2009) 129 S. Ct. 1058, the Secretary of the Interior may only take land in trust for Indian tribes that were federally recognized and under federal jurisdiction as of the June, 1934 effective date of the Indian Reorganization Act (IRA). In that case, the Narragansett Tribe sought to have 31 acres of land taken in trust for it by the Secretary of the Interior. Despite the fact that the Narragansett Tribe had been in continuous existence since at least 1614, the Supreme Court ruled that the Secretary lacked the authority to accept a trust conveyance under 25 U.S.C. § 465 because the Narragansett Tribe was not federally recognized or under federal jurisdiction in June 1934 inasmuch as the record indicated that the Tribe had been under state jurisdiction until 1983. (*Id.* at p. 1068.)

From the facts available to the Governor's Office, it appears that Lytton was not federally recognized until 1991 and not under federal jurisdiction in 1934. If these facts are accurate, then it appears that the Secretary of the Interior lacks the authority to take land in trust for Lytton. Below is a summary of the available facts we relied upon in raising this issue.

Mr. Dale Morris, Regional Director
October 8, 2009
Page 2

In March, 1927, the United States acquired title to two parcels of property located in the Alexander Valley near the Lytton School on Lytton Station Road. (Ex. 1.) One parcel consisted of forty-five acres and the other five acres. The purchase was authorized under an appropriation designed to purchase land for homeless California Indians. (Ex. 2 at p. 4.) In letters leading up to the acquisition of this land, officials in the Bureau of Indian Affairs (Bureau) indicated that though the land was not officially acquired for any particular Indians, the anticipated beneficiaries of this acquisition would be Dry Creek and Geyersville Indians living nearby. (Ex. 3 at p. 13.)

The Bureau, however, did not allow Dry Creek or Geyersville Indians to live on this land despite the fact that some of those Indians desired to do so. (Ex. 4.) The Bureau indicated that it wanted the Indians to wait until funds to construct decent housing were acquired. (*Id.*) Instead of allowing those Indians to farm the land in the interim, the Bureau leased the land to the Salvation Army for agricultural purposes for approximately ten years. (Ex. 2 at pp. 5-6.) Thus, from 1927 to 1937, it appears that no Indians lived on the fifty acres. (Ex. 2 at pp. 5-6 and Ex. 5 at p. 22.)

In 1937, Bert Steele wrote a letter to the Bureau asking that he be allowed to construct a home on a portion of the land. (Ex. 2 at p. 6.) Mr. Steele was determined to be an Indian whose father was a half-blood Pit River Indian and whose mother was a half-blood Nomlacki. The Bureau also determined that Mr. Steele had previously held other land in Round Valley that he had sold for a profit. (*Id.* at p. 9.) Mr. Steele was married to a Stewarts Point Pomo Indian named Mary. Neither individual was related to any of the Dry Creek or Geyersville Indians living nearby. Shortly thereafter, Mary Steele's brother, John Myers and his wife (Dolores Santos, Ex. 6, from Bodega Bay) moved onto a five-acre portion of the fifty acres with Bureau approval. (Ex. 2 at p. 7.)

The Dry Creek and Geyersville Indians nearby protested what they considered a usurpation of their lands. (Ex. 2 at pp. 8-9.) The Bureau determined that Mr. Steele should be allowed to remain on the land because he had built a house and worked the land for a year before there was an objection and because, since the land had not been set aside for any particular tribe or band of Indians, there was no legal impediment to Mr. Steele's occupation. (Ex. 2 at p. 10.)

From 1940 to 1950 assignments were made among Steele's and Myers' descendants. In those assignments, the Bureau made clear that the assignees received no interest in the land itself, but only to the improvements and that the assignment could be revoked if proper use was not made of the property. (Ex. 7.)

Beginning in 1950, members of the Myers family sought to have the land conveyed in fee to them and the other assignees. (Ex. 8.) Their hope, as the Bureau recognized, was "to have clear title to the lands they [occupied] so they [could] feel secure in the ownership of their

Mr. Dale Morris, Regional Director
October 8, 2009
Page 3

homes.” (Ex. 8.) The assignees ultimately obtained fee title when the land was distributed to the descendants of Bert Steele and John Myers pursuant to the California Rancheria Act. (Ex. 9.)

As the result of a subsequent settlement agreement with the United States, the descendants of Bert Steele and John Myers were ultimately restored to their status prior to the termination under the Rancheria Act. (Ex. 10.) Thereafter, Lytton was placed on the list of federally recognized tribes.

Based on these facts, it appears that the Secretary of the Interior lacks the authority to take any land in trust for Lytton under the provisions of 25 U.S.C. § 465. First, no claim has or could be made that Lytton existed as a tribe prior to European contact, or that Lytton is the successor-in-interest to any previously extant tribe. Indeed, the groups from which Bert Steele and John Myers descend (Pitt River, Nomlacki (Round Valley) and Stewart’s Point Pomos) have their own tribal identities and organizations. Second, under the definition of a tribe set forth in 25 U.S.C. § 479 (“Indians residing on one reservation”), the United States could not have recognized the Indians living on the fifty acres near Lytton Road as a tribe, or asserted jurisdiction over them in 1934 because no Indians resided on that land in 1934. Thus, because Lytton is composed solely of the descendants of Bert Steele and John Myers, it can have no greater status under the IRA than can be attributed to Mr. Steele and Mr. Myers. Because Mr. Steele was not permitted to move onto the fifty acres until 1937, Lytton could not have been under federal jurisdiction until that date. For these reasons, the Governor’s Office respectfully requests that the Bureau reject the Lytton application.

Finally, though Congress specifically authorized the Secretary of the Interior to accept the conveyance of ten acres of land located in Contra Costa County in trust for Lytton under the IRA in enacting the Omnibus Indian Advancement Act of 2000, Public Law 106-568, title VIII, section 819,¹ that provision does not authorize any other acquisition of land under any IRA

¹ Section 819 provides as follows:

SEC. 819. LAND TO BE TAKEN INTO TRUST.

Notwithstanding any other provision of law, the Secretary of the Interior shall accept for the benefit of the Lytton Rancheria of California the land described in that certain grant deed dated and recorded on October 16, 2000, in the official records of the County of Contra Costa, California, Deed Instrument Number 2000-229754. The Secretary shall declare that such land is held in trust by the United States for the benefit of the Rancheria and that such land is part of the reservation of such Rancheria under sections 5 and 7 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 467). Such land shall be deemed to have been held in trust and part of the reservation of the Rancheria prior to October 17, 1988.

Mr. Dale Morris, Regional Director
October 8, 2009
Page 4

provision. Indeed, subsequent legislation, changing the date the ten-acre parcel was deemed to have been taken into trust, has made clear that Lytton must comply with the provisions of the IRA. Moreover, to the extent that act describes those ten acres of land as Lytton's "reservation," it follows that Lytton's tribal location should be considered to be Contra Costa County, rather than Sonoma County. At a minimum, under the provisions of 25 C.F.R. § 151.11, great weight should be given to any local government objections.

Thank you for the opportunity to provide comments on this application. Should you have any questions concerning this comment, please feel free to contact the undersigned at your convenience. Please note also that these comments do not necessarily reflect the entirety of the State of California's comments on this application and that agencies with specific expertise on the areas addressed by the environment assessment may provide comments as well.

Sincerely,

A handwritten signature in blue ink that reads "Andra Lynn Hoch". The signature is written in a cursive style with a large initial 'A'.

ANDRA LYNN HOCH
Legal Affairs Secretary

Enclosure