

M-289



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, California 95825  
APR 28 2014

IN REPLY REFER TO:

## NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7009 3410 0000 1318 8232

Honorable Marshall McKay  
Chairman, Yocha DeHe Wintun Nation  
P.O. Box 18  
Brooks, CA 95606

Dear Chairman McKay:

This is our Notice of Decision for the application of the Yocha DeHe Wintun Nation to have the below-described property accepted by the United States of America in trust for the Yocha DeHe Wintun Nation, California.

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA, COUNTY OF YOLO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

### PARCEL ONE:

BLOCK 16 OF RHODES TRACT, FILED July 13, 1892, IN BOOK 1 OF MAPS, PAGE 18, YOLO COUNTY RECORDS.

EXCEPTING FROM BLOCK 16 THE FOLLOWING DESCRIBED LAND:

BEGINNING AT THE NORTHWEST CORNER OF LOT 16 OF RHODES AND SWEITZER TRACTS, AND RUNNING THENCE ALONG THE BOUNDARY LINE OF SAID LOT 16, NORTH 40°54' EAST, AT 25 FEET A CONCRETE MONUMENT, 99.1 FEET THE TOTAL LENGTH OF THIS COURSE; THENCE NORTH 60°24' EAST 115 FEET; THENCE NORTH 87°24' EAST 144 FEET; THENCE SOUTH 3°04' EAST, 200 FEET; THENCE SOUTH 45°04' EAST 72.2 FEET; THENCE LEAVING THE BOUNDARY OF SAID LOT 16, SOUTH 77°30' WEST AT 31.8 FEET AN IRON PIPE, 139.5 FEET THE TOTAL LENGTH OF THIS COURSE A CONCRETE MONUMENT; THENCE SOUTH 17°07' WEST, 50.1 FEET TO AN IRON PIPE, WHICH IS IN THE COUNTY ROAD



AND ON THE BOUNDARY OF SAID LOT 16; THENCE NORTH 49°03 WEST, 290.9 FEET ALONG THE BOUNDARY OF SAID LOT 16 TO THE PLACE OF BEGINNING.

A PART OF LOTS 15-A AND 15-B, RHODES TRACT, FILED July 13, 1892, IN BOOK 1 OF MAPS, PAGE 18, YOLO COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A 1 INCH BY 12 INCH GAS PIPE MARKING THE NORTHWEST CORNER OF LOT 15-B OF THE RHODES TRACT (SOMETIMES CALLED THE RHODES & SWEITZER TRACT), RUNNING THENCE NORTH 73°38' EAST, 663 FEET ALONG THE BOUNDARY LINE BETWEEN LOTS NUMBERED 15-B AND 16 OF SAID TRACT TO A 1 1/8 INCH BY 32 INCH ROUND IRON MONUMENT; THENCE SOUTH 16°22' EAST, 594.5 FEET TO A 5/8 INCH BY 5/8 INCH BY 12 INCH IRON MONUMENT ON THE SOUTHERN BOUNDARY OF LOT 15-A; THENCE SOUTH 73°38' WEST ALONG THE SOUTHERN BOUNDARY OF LOT 15-A, TO A 1/2 INCH BY 23 INCH GAS PIPE MARKING THE SOUTHWEST CORNER OF SAID LOT 15-A; THENCE NORTH 34°51' WEST 626.7 FEET TO THE PLACE OF BEGINNING.

APN: 060-030-001-000

PARCEL TWO:

BEGINNING AT AN OLD IRON MONUMENT MARKING THE NORTHWEST CORNER OF LOT 14-B OF THE RHODES TRACT, FILED July 13, 1892 IN BOOK 1 OF MAPS, PAGE 18, YOLO COUNTY RECORDS, AND RUNNING THENCE NORTH 73°38' EAST EIGHT HUNDRED AND FOUR AND 8/10 (804.8) FEET ALONG THE NORTH BOUNDARIES OF LOTS 14-B AND 14-C OF THE SAID TRACTS; THENCE SOUTH 16°22' EAST THREE HUNDRED AND THIRTEEN AND 2/10 (313.2) FEET; THENCE SOUTH 73°38' WEST SEVEN HUNDRED AND 2/10 (700.2) FEET, TO THE WEST BOUNDARY OF THE SAID LOT 14-B; THENCE NORTH 34°51' WEST THREE HUNDRED AND THIRTY AND 3/10 (330.3) FEET TO THE PLACE OF BEGINNING, BEING PARTS OF LOTS 14-B AND 14-C OF THE RHODES TRACT AS SHOWN ON MAP FILED IN BOOK 1 OF MAPS, PAGE 18, YOLO COUNTY RECORDS.

COMMENCING AT THE NORTHEAST CORNER OF LOT 14-C AS PER THE MAP OF THE RHODES TRACT, FILED July 13, 1892 IN BOOK 1 OF MAPS, PAGE 18, YOLO COUNTY RECORDS; THENCE SOUTH 16°22' EAST 1100 FEET TO THE SOUTHEAST CORNER OF LOT 14-D; THENCE 73°38' WEST TO THE SOUTHWEST CORNER OF LOT 14-A; THENCE NORTH 34°51' WEST ALONG THE WEST LINE OF LOTS 14-A AND 14-B; 829.8 FEET TO THE SOUTH LINE OF THE LAND OF LOUISE YACKEL; THENCE NORTH 73°38' EAST 700.2 FEET; THENCE NORTH 16°22' EAST 313.2 FEET TO THE NORTH LINE OF LOT 14-C; THENCE NORTH 73°38' EAST 396.4 FEET TO THE PLACE OF BEGINNING AND BEING ALL OF LOTS 14-A AND 14-D, AND PORTIONS OF LOTS 14-B AND 14-C.

APN: 060-030-008-000

PARCEL THREE:

BLOCK 7 OF THE RHODES TRACT, FILED July 13, 1892 IN BOOK 1 OF MAPS, PAGE 18, YOLO COUNTY RECORDS.

APN: 060-030-009-000

PARCEL FOUR:

LOT 4, TANCREED SUBDIVISION AS FILED AUGUST, 1911, IN BOOK 2 OF MAPS, PAGE 42, YOLO COUNTY RECORDS.

APN: 060-020-019-000

PARCEL FIVE:

BLOCK 6, RHODES TRACT, AS FILED July 13, 1892, IN BOOK 1 OF MAPS, PAGE 18, YOLO COUNTY RECORDS, AND AN ADJACENT STRIP OF LAND FORMERLY BELONGING TO THE SOUTHERN PACIFIC RAILROAD COMPANY, AND MORE PARTICULARLY DESCRIBED IN DEED DATED July 22, 1937, AND RECORDED October 11, 1937 IN BOOK 108 OF OFFICIAL RECORDS AT PAGE 306, YOLO COUNTY RECORDS, SAID DEED EXECUTED BY SOUTHERN PACIFIC RAILROAD COMPANY TO H. C. MEZGER.

APN: 060-020-018-000

PARCEL SIX:

LOTS 5, 6, 7, 8, 15, 16, 17 AND 18, OF TANCREED SUBDIVISION FILED AUGUST, 1911, IN BOOK 2 OF MAPS, AT PAGE 42, YOLO COUNTY RECORDS.

COMMENCING AT THE NORTHEAST CORNER OF LOT 5 OF TANCREED SUBDIVISION, ACCORDING TO THE MAP THEREOF, FILED AUGUST, 1911, IN BOOK 2 OF MAPS, PAGE 42, YOLO COUNTY RECORDS; THENCE SOUTHEASTERLY FOLLOWING THE EAST LINE OF LOTS 5 AND 16 TO THE SOUTHEAST CORNER OF LOT 16, OF SAID SUBDIVISION THENCE NORTH 73°15' EAST, 100 FEET MORE OR LESS TO THE SOUTHWEST CORNER OF LOT 15 OF SAID SUBDIVISION; THENCE NORTHWESTERLY ALONG THE WEST LINE OF LOTS 15, 8 AND 4 OF SAID SUBDIVISION TO THE NORTHWEST CORNER OF LOT 4 OF SAID TANCREED SUBDIVISION; THENCE SOUTH 73°17' WEST 100 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF LOT 5 OF TANCREED SUBDIVISION.

APN: 060-020-020-000

PARCEL SEVEN:

THE EAST ONE-HALF OF LOT 10 AND ALL OF LOT 11 AS SHOWN ON THE MAP OF TANCREED SUBDIVISION, BEING A PART OF RANCHO CANADA DE CAPAY, FILED ON AUGUST 15TH, 1911, IN BOOK 2 OF MAPS, MAP NO. 42, YOLO COUNTY RECORDS.

ALSO A PARCEL OF LAND KNOWN AS PARCEL II, AS SHOWN ON THE MAP OF TANCRED SUBDIVISION, BEING A PART OF RANCHO CANADA DE CAPAY, AND BOUNDED ON THE WEST BY LOT 11; ON THE NORTH BY THE NORTH LINE OF SAID LOT 11, EXTENDED EASTERLY, ON THE EAST BY LANDS OF S.P. RUSSELL, AND ON THE SOUTH BY THE SOUTH LINE OF LOT 11, EXTENDED EASTERLY.

APN: 060-030-016 PTN.

PARCEL EIGHT:

ALL OF LOT 9, AND THE WESTERLY ONE-HALF OF LOT 10 AS SHOWN ON THE MAP OF TANCRED SUBDIVISION, BEING A PART OF RANCHO CANADA DE CAPAY, FILED ON AUGUST 15, 1911, IN BOOK 2 OF MAPS, AT PAGE 42, YOLO COUNTY RECORDS.

APN: 060-030-016 PTN.

PARCEL NINE:

BEING A PORTION OF LOT 2 OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 10 NORTH, RANGE 3 WEST, M. D. B. & M., PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 2 AND RUNNING THENCE NORTH 6 DEGREES 51" WEST 23.50 CHAINS TO THE TOWNSHIP LINE BETWEEN TOWNSHIP 10 AND 11 NORTH; THENCE EAST 2.80 CHAINS ALONG THE TOWNSHIP LINE; THENCE 23.33 CHAINS TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM ONE-HALF INTEREST IN ALL OIL, GAS, AND MINERALS, ON IN AND UNDER SAID LAND WITH THE RIGHTS AT ALL TIME TO EXPLORE, DRILL FOR, MINE AND REMOVE THE SAME, TOGETHER WITH ALL OTHER RIGHTS AND PRIVILEGES INCIDENT THERETO, AS RESERVED BY GENERAL AMERICAN LIFE INSURANCE COMPANY, A CORPORATION, OF THE CITY OF ST. LOUIS AND THE STATE OF MISSOURI, BY DEED RECORDED APRIL 3, 1936 IN BOOK 104 OF OFFICIAL RECORDS, PAGE 146, YOLO COUNTY RECORDS.

APN: 47-020-001 PTN.

PARCEL TEN:

BEING A PORTION OF LOT 3 SECTION 3, TOWNSHIP 10 NORTH, RANGE 3 WEST, M. D. B. & M., AND PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A STONE CORNER OF THE WINTERS AND MILLER TRACTS ON THE WEST BOUNDARY OF CAPAY BRANT, SOUTH 31 3/4 DEGREES EAST 6.96 CHAINS FROM A FALLEN OAK "CC8" OF THE SURVEY OF CAPAY GRANT, RUNNING THENCE SOUTH 61 DEGREES WEST 8.07 CHAINS TO A POINT 3.23 CHAINS NORTH OF THE MIDDLE OF SECTION 3; THENCE NORTH ALONG THE WEST LINE OF SAID LOT 3 TO THE CAPAY

GRANT LINE; THENCE SOUTH 31 3/4 DEGREES EAST 6.96 CHAINS TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM ONE-HALF INTEREST IN ALL OIL, GAS, AND MINERALS, ON IN AND UNDER SAID LAND WITH THE RIGHTS AT ALL TIME TO EXPLORE, DRILL FOR, MINE AND REMOVE THE SAME, TOGETHER WITH ALL OTHER RIGHTS AND PRIVILEGES INCIDENT THERETO, AS RESERVED BY GENERAL AMERICAN LIFE INSURANCE COMPANY, A CORPORATION, OF THE CITY OF ST. LOUIS AND THE STATE OF MISSOURI, BY DEED RECORDED APRIL 3, 1936 IN BOOK 104 OF OFFICIAL RECORDS, PAGE 146, YOLO COUNTY RECORDS.

APN: 047-020-001 PTN.

PARCEL ELEVEN:

LOT 4 OF SECTION 34, TOWNSHIP 11 NORTH, RANGE 3 WEST, ALSO LOT 1 AND SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 10 NORTH, RANGE 3 WEST, M. D. B. & M.

EXCEPTING THEREFROM ONE-HALF INTEREST IN ALL OIL, GAS, AND MINERALS, ON IN AND UNDER SAID LAND WITH THE RIGHTS AT ALL TIME TO EXPLORE, DRILL FOR, MINE AND REMOVE THE SAME, TOGETHER WITH ALL OTHER RIGHTS AND PRIVILEGES INCIDENT THERETO, AS RESERVED BY GENERAL AMERICAN LIFE INSURANCE COMPANY, A CORPORATION, OF THE CITY OF ST. LOUIS AND THE STATE OF MISSOURI, BY DEED RECORDED APRIL 3, 1936 IN BOOK 104 OF OFFICIAL RECORDS, PAGE 146, YOLO COUNTY RECORDS.

APN: 047-020-001 PTN.

PARCEL TWELVE:

BEGINNING AT A MOUND ON THE GRANT LINE AT THE NORTHWEST CORNER OF J.C. MURPHY'S LAND AND RUNNING THENCE ALONG MURPHY'S LAND NORTH 72 DEGREES, 45' EAST 83.71 CHAINS TO A STAKE, AT THE NORTHEAST CORNER OF MURPHY'S LAND, THE SAID STAKE BEING ON THE WEST LINE OF LAND BELONGING TO THE ESTATE OF H. B. RICE, DECEASED, THENCE ALONG THE SAID LAST MENTION LINE NORTH 27 DEGREES, WEST 8.64 CHAINS TO THE NORTHWEST CORNER OF THE LAND OF SAID RICE; THENCE NORTH 30 DEGREES, 45' WEST 29.21 CHAINS TO A STAKE AND MOUND; THENCE SOUTH 76 DEGREES, 45' WEST 54 CHAINS TO A STAKE ON THE WEST BANK OF AN ARROYO; THENCE SOUTH 54 DEGREES, 30' WEST 12.47 CHAINS TO A LARGE OAK TREE; THENCE SOUTH 79 DEGREES, WEST 7.17 CHAINS TO A STAKE ; THENCE NORTH 78 DEGREES WEST 4.71 CHAINS TO THE GRANT LINE; THENCE ALONG SAID GRANT LINE SOUTH 12 DEGREES, 15' EAST 34 CHAINS TO A TREE MARKED "CC8"; THENCE ALONG THE GRANT LINE A SOUTHEASTERLY DIRECTION 6 CHAINS TO THE PLACE OF BEGINNING, THE SAME BEING A PORTION OF THE RANCHO CANADA DE CAPAY.

EXCEPTING THEREFROM ONE-HALF INTEREST IN ALL OIL, GAS, AND MINERALS, ON IN AND UNDER SAID LAND WITH THE RIGHTS AT ALL TIME TO EXPLORE, DRILL FOR, MINE AND REMOVE THE SAME, TOGETHER WITH ALL OTHER RIGHTS AND PRIVILEGES INCIDENT THERETO, AS RESERVED BY GENERAL AMERICAN LIFE INSURANCE COMPANY, A CORPORATION, OF THE CITY OF ST. LOUIS AND THE STATE OF MISSOURI, BY DEED RECORDED APRIL 3, 1936 IN BOOK 104 OF OFFICIAL RECORDS, PAGE 146, YOLO COUNTY RECORDS.

APN: 048-230-001-000

PARCEL THIRTEEN:

LOTS 1 THROUGH 10, INCLUSIVE, BLOCK A, TOWNSITE OF TANCREDE, FILED JANUARY 27, 1897 IN BOOK 1 OF MAPS, AT PAGE 15, YOLO COUNTY RECORDS.

APN: 060-014-001-000

PARCEL FOURTEEN:

LOTS 1 THROUGH 10, INCLUSIVE, BLOCK B AND LOTS 1 THROUGH 10, INCLUSIVE, BLOCK C, TOWNSITE OF TANCREDE, FILED JANUARY 27, 1897 IN BOOK 1 OF MAPS, AT PAGE 15, YOLO COUNTY RECORDS, TOGETHER WITH THOSE PORTIONS OF PARK PLACE AND OAKLAND AVENUE OF SAID TOWNSITE OF TANCREDE, ABANDONED DECEMBER 6, 1915, RECORDED IN BOOK M, YOLO COUNTY BOARD OF SUPERVISORS MINUTES, PAGE 526.

APN: 060-010-001-000

PARCEL FIFTEEN:

BLOCK F, TOWNSITE OF TANCREDE, FILED JANUARY 27, 1897 IN BOOK 1 OF MAPS, AT PAGE 15, YOLO COUNTY RECORDS.

APN: 060-013-001-000

PARCEL SIXTEEN:

BLOCK 5, RHODES AND SWEITZER TRACTS, FILED IN BOOK 1 OF MAPS, AT PAGE 18, YOLO COUNTY RECORDS.

APN: 060-020-011-000

PARCEL SEVENTEEN:

A STRIP OF LAND NORTHEASTERLY OF AND ADJACENT TO THE LOCATED CENTERLINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY'S (FORMERLY THE CLEAR LAKE DIVISION OF THE NORTHERN RAILWAY COMPANY), RAILROAD WHERE THE SAME IS

LOCATED THROUGH THE TRACT OF LAND FORMERLY OWNED BY J. M. RHODES AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE CENTER LINE OF SAID RAILROAD WHERE SAID CENTERLINE INTERSECTS THE SOUTHWESTERLY PROJECTION OF THE DIVIDING LINE BETWEEN THE LANDS NOW OR FORMERLY H. C. MEZGER AND THE LANDS NOW OR FORMERLY OF PERCY I. MEZGER; THENCE NORTHEASTERLY ALONG SAID SOUTHWESTERLY PROJECTION OF SAID DIVIDING LINE TO A POINT WHICH IS 125 FEET, MEASURED AT RIGHT ANGLES NORTHEASTERLY FROM SAID CENTERLINE OF SAID RAILROAD; THENCE NORTHWESTERLY PARALLEL WITH AND 125 FEET NORTHEASTERLY AT RIGHT ANGLES FROM SAID CENTERLINE, ALONG THE NORTHEASTERLY RIGHT OF WAY LINE OF SAID RAILROAD COMPANY, FOLLOWING THE CURVATURE THEREOF TO A POINT; THENCE SOUTHWESTERLY AT RIGHT ANGLES, 75 FEET TO A POINT WHICH IS 50 FEET, MEASURED AT RIGHT ANGLES, NORTHEASTERLY FROM SAID CENTERLINE AT ENGINEER'S STATION 770+20; THENCE NORTHWESTERLY CONTINUING ALONG SAID NORTHEASTERLY LINE OF RIGHT OF WAY, PARALLEL WITH AND 50 FEET NORTHEASTERLY AT RIGHT ANGLES FROM SAID CENTERLINE, FOLLOWING THE CURVATURE THEREOF, TO THE NORTHERLY BOUNDARY OF SAID TRACT OF LAND FORMERLY OWNED BY J. M. RHODES; THENCE WESTERLY ALONG SAID NORTHERLY BOUNDARY OF SAID TRACT TO THE INTERSECTION OF SAME WITH SAID CENTERLINE OF SAID RAILROAD AT OR NEAR ENGINEER'S STATION 773+26 OF SAID CENTERLINE; THENCE SOUTHEASTERLY, ALONG SAID CENTERLINE OF SAID RAILROAD AND FOLLOWING THE CURVATURE THEREOF, TO THE POINT OF BEGINNING, BEING A PORTION OF THE LANDS DESCRIBED BY TWO DEEDS FROM CAPAY VALLEY LAND COMPANY TO THE NORTHERN RAILWAY COMPANY, DATED NOVEMBER 30, 1888 AND RECORDED DECEMBER 3, 1888, IN LIBER 44 OF DEEDS, AT PAGE 148 AND VOLUME 44 OF DEEDS, PAGE 152, YOLO COUNTY RECORDS.

APN: 060-020-014-000

PARCEL EIGHTEEN:

LOTS 12, 13 AND 14 AND PARCEL III OF TANCRED SUBDIVISION AS SHOWN ON THE MAP FILED FOR RECORD IN BOOK 2 OF MAPS, PAGE 42, YOLO COUNTY RECORDS.

APN: 060-030-017-000

The subject property consists of fifteen parcels totaling 853.00 acres more or less, commonly referred to as Assessor's Parcel Numbers 060-030-16; 060-030-17 (Chalom); 060-030-001; 060-030-008; 060-030-009; 060-020-018; 060-020-019 (Sekarrobeh Leyo); 060-020-020; 048-230-001; 047-020-001; 060-010-001; 060-013-001; 060-014-001; 060-020-011; and 060-020-014 (Kisi). The property is contiguous to the northern, western and southern boundaries of the Nation. The subject property is located within an unincorporated area of Yolo County, California.

The property is surrounded by undeveloped, open space and agricultural lands. Cache Creek runs along a portion of the eastern boundary of the Property, and State Route-16 traverses the

Property in the north/south direction. Tribal member housing, as well as the Tribe's community center and recreation area, are located adjacent to the Property on lands held in trust for the Tribe.

Currently, the property contains five (5) single family homes, all owned by the Tribe. All are unoccupied, except for the residence on APN 160-030-016, which was restored by the tribe and currently houses the Tribe's Cultural Department. Nearly all of the Property is currently in agricultural production. Thirteen (13) of the fifteen parcels are subject to the California Land Conservation Act of 1965 (commonly referred to the Williamson Act), and notices of non-renewal of the Williamson Act contracts have been filed for each parcel. The Tribe contemplates development on portions of six (6) parcels, and continued use of the remaining portion of those parcels as well as the other nine (9) parcels for agricultural purposes. Of the ±852.9 acres, it is estimated that approximately 753.90 (over 88% of the Property) will remain in agricultural production. The Tribe's proposed use of the Property is the development of 25 residential housing units, a new Tribal school, cultural and educational facilities, a wastewater treatment system, and the remaining as continued use for agricultural purposes.

Federal Law authorizes the Secretary of the Interior, or his authorized representative, to acquire title on behalf of the United States of America for the benefit of tribes when such acquisition is authorized by an Act of Congress and (1) when such lands are within the consolidation area; or (2) when the tribe already owns an interest in the land; or (3) when the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or tribal housing. In this particular instance, the authorizing Act of Congress is the Indian Reorganization Act (IRA) of June 18, 1934 (48 Stat. 984; 25 U.S.C. §465). The applicable regulations are set forth in the Code of Federal Regulations (CFR), Title 25, INDIANS, Part 151, as amended. This land acquisition falls within the land acquisition policy as set forth by the Secretary of the Interior.

The Yocha Dehe Wintun Nation (Rumsey) was originally established by Deed dated September 24, 1907 under the authority of the Acts of June 21, 1906 (34 Stat. 325-333) and April 30, 1908 (35 Stat. 70-77).

Pursuant to 25 U.S.C. § 478, the Secretary held such an election for the Tribe on June 12, 1934, at which the majority of the Tribe's voters voted to accept the provisions of the Indian Reorganization Act of June 18, 1934. See *Ten Years of Tribal Government Under I.R.A., United States Services, 1947*, at Interior's website at <http://www.doi.gov/library/internet/subject/upload/Haas-TenYears.pdf>. The Secretary's act of calling and holding this election for the Tribe informs us that the Tribe was deemed to be "under Federal jurisdiction" in 1934. The Haas List tribes are considered to be under federal jurisdiction in 1934, *See, Shawano County, Wisconsin v. Acting Midwest Regional Director, BIA, 53 IBIA 62 (February 28, 2011) and Stand Up for California, etal, v. U.S. Department of Interior v. North Fork Rancheria of Mono Indians, 919 F. Supp. 2d 51 (January 29, 2013), the District Court for District of Columbia.*

On July 29, 2013 by certified mail, return receipt requested, we issued notice of and sought comments regarding the proposed fee-to-trust application from the California State Clearinghouse, Office of Planning and Research; Mr. Jacob Appelsmith, Legal Affairs Secretary,



Office of the Governor; Sara Drake, Deputy Attorney General, State of California; Devin Rhinerson, District Director, Office of the Honorable Senator Diane Feinstein; Yolo County Assessor; Yolo County Treasurer and Tax Collector; Yolo County Board of Supervisors; Yolo County Sheriff's Department; Yolo County Department of Planning and Public Works; and Superintendent, Central California Agency.

In response to our notification, we received the following comments:

**1. Letter dated November 27, 2013 from the Capay Valley Coalition (CVC), which states:**

- The Tribe has unoccupied residences that will meet the Tribe's housing needs, eliminating the need for additional trust land;
- If the Yocha Dehe are permitted to acquire land in trust when it has no immediate need, other tribes throughout the state will claim entitlement to the same treatment by the Department of Interior pursuant to the provisions of 25 USC section 476 subdivisions (f) and (g) which provide that no agency of the U.S. shall make a determination under the Indian Reorganization Act (IRA) that "classifies, enhances, or diminishes the privileges and immunities available to an Indian tribe relative to other federally recognized tribes by virtues of their status as Indian tribes"; and
- The Tribe states that "the acquisition of the property in trust is essential to the Tribe's ongoing efforts to restore our ancestral land base." Will this be the first of many fee-to-trust requests?

***By letter dated December 13, 2013, the Yocha Dehe Wintun Nation's response for the Capay Valley Coalition is as follows:***

- *The CVC claims the Tribe has five unoccupied single-family homes, obviating the need for the additional tribal housing that would be secured through the trust application. This is false, there are, in fact, no available homes on the Tribe's sovereign lands — all are occupied. The vacant homes that CVC references are on fee land, outside the Tribe's sovereign territory (at least, without the Bureau's approval of the pending application). The homes are insufficient to meet the Tribe's housing needs;*
- *The Environmental Assessment ("EA") that was prepared to evaluate the impacts of the application explained that there were, at one time, five single-family residences on the parcels that are the subject of the application. As the EA also noted, one was demolished in 2010 (EA 3-81); another was to be renovated and used to permanently house the Tribe's Cultural Education Center (EA 3-81, 4-2); and three were vacant, without plans for renovation or occupancy;*
- *The Tribe's housing needs cannot be met with a few scattered homes on fee land. The Tribe intends to use the proposed trust land on which these three unoccupied homes are located to construct a residential development, to meet both the short and long term needs of Yocha Dehe's growing population, with the construction of 25 homes, phased in over time. The fact that three vacant residences happen to be on land the Tribe owns in fee (and on the proposed trust parcels) does not belie the Tribe's need for additional trust lands for housing, as those longer term needs exceed the existing infrastructure by eightfold. Like any government, including the County, the Tribe must plan for its future,*

and to that end, there is no question the Tribe has a legitimate purpose and need to house its citizens outside the flood plain where they currently reside, but to also do so within a well-planned, integrated and cohesive tribal community;

- CVC separately claims that, "if there is truly a [housing] need going forward," such can be met through Yolo County's existing ordinances and regulations, given the County's purported willingness to work with the Tribe. The suggestion that a federally-recognized tribe can meet its needs, and provide for its people, by relying upon the beneficence of the local government is ironic. It also ignores an entire federal policy driving the Indian Reorganization Act, which is not simply to enable a tribal government to provide housing for its people, but to empower the tribe to govern its own citizens and affairs, and to do so within its own sovereign territory. See 25 C.F.R. § 151.3(a)(3) (showing standards allowing federal trust acquisition including not simply housing, but tribal self-determination);
- CVC Distorts The Basis For Demonstrating "Need" Under The IRA. The regulations governing federal trust acquisitions do not require that the Tribe's proposed use of trust land be contrary to, or prohibited by, local zoning laws and regulations. Rather, the federal standard allowing trust land acquisition is otherwise, allowing acquisitions where the Bureau finds the acquisition necessary to facilitate tribal self-determination, economic development, or tribal housing. 25 C.F.R. § 151.3(a)(3);
- CVC erroneously suggests the IRA only allows trust applications for unsuccessful tribal governments without assets. CVC contends the Tribe cannot establish the requisite need for additional trust lands because it "has achieved economic self-determination..." Of course, neither the statute nor the regulations governing the trust land acquisition process require that the acquisition of trust lands be necessary for purposes of "economic self-determination." In fact, as noted in the Tribe's application letter, the requisite "need" for trust land need not be financial, but instead can be satisfied by a showing that existing trust lands have been fully developed, and that additional land is necessary in order to improve the economic and social well-being of the Tribe. See *Avoyells Parish, Louisiana, Police Jury v. Eastern Area Director, Bureau of Indian Affairs*, 34 IBIA 149, 153 (1999);
- The Tribe's application shows, acquisition of the proposed trust parcels is critical to the Tribe's present and future housing needs, agricultural operations, restoration of its sovereign land base, protection of cultural resources, and continued and renewed traditional land use practices;
- Granting Yocha Dehe's application will not open the feared fee-to-trust floodgates. Each and every one of the Tribe's current and planned uses and reasons for the trust acquisition of the proposed trust parcels falls squarely within the federal government's standards for acquiring trust lands. Accordingly, acquisition of the subject parcels in trust would not set any precedent that is inconsistent with the federal laws, regulations or policies governing the federal trust land acquisition process; and
- While the Tribe has no current plans to submit additional trust land acquisition requests, the possibility that the Tribe might do so is irrelevant here. As the Bureau is well aware, when evaluating a fee-to-trust request, the agency need only consider facts presented to it regarding the purpose(s) for which the subject property will be used, and the Bureau has no obligation to speculate as to what may occur in the future. See, e.g., *Village of Ruidoso v. Albuquerque Area Director*, 32 IBIA 130, 139 (1998); *Rio Arriba, New*

*Mexico, Board of County Commissioners v. Acting Southwest Regional Director, 38 IBIA 18, 22 (2002).*

**2. Letter dated September 9, 2013 from the California Department of Transportation (Caltrans), which states:**

- Caltrans anticipates potential significant impacts to SR 16 if and when an intensification of traffic-generating development occurs. Therefore, a Traffic Impact Study may be required to assess the impact of this particular project;
- Caltrans requests the lead agency to provide a drainage report with a project map; and
- Any work or traffic control that would encroach onto the State Right of Way (ROW) requires an encroachment permit that is issued by Caltrans.

***By letter dated December 13, 2013, the Yocha Dehe Wintun Nation's response for the California Department of Transportation is as follows:***

- *Caltrans suggests that a Traffic Impact Study (or "TIS") may need to be prepared before the Tribe's trust land application is approved. Caltrans' "Guide to the Preparation of Traffic Impact Studies" specifies that a TIS should be prepared if more than 100 peak hour trips will be added to a state highway. See EA at 4-21. Approval of the trust land application would result in a maximum of 45.25 new peak hour trips on SR-16. Id. Caltrans does not dispute this trip generation estimate. Therefore, no further analysis is required;*
- *Caltrans requests that the Tribe provide a drainage report and project map before the trust land application is approved. The requested information has been provided to Caltrans in multiple ways and on multiple occasions: (i) as part of the draft and final versions of the EA and (ii) by direct communication with Mr. Gurdeep Ghattal on September 15 and September 28, 2011;*
- *The drainage report, project map, and other hydraulic information in the EA demonstrate that approval of the trust land application will not increase flood flows or create drainage problems. EA at 4-1 to -7, 5-1 to -3; EA Appendix B. In fact, the EA shows that drainage infrastructure and best management practices associated with the trust land application are likely to improve existing drainage conditions along SR-16. Caltrans does not dispute the analysis in the EA; and*
- *Caltrans notes that the Tribe must obtain an encroachment permit before undertaking any work that would encroach into State Route 16 ("SR-16"). Approval of the trust land application is not anticipated to require any encroachment into SR-16. The Tribe will make sure that all work is properly permitted.*

**3. Letter dated September 24, 2013 from the County of Yolo, Board of Supervisors, which states:**

- The County objects to the scope of the application, stating that  $\pm 752.9$  acres of the  $\pm 852.9$  acres is unnecessary, requesting the Bureau to dramatically reduce the acres accepted into trust to approximately 100 acres;

- If the Bureau decides to approve the application without reduction, the Bureau should restrict the Tribe's future use of the parcels;
- The County supports the 100 acres described as needed for residential, cultural and related purposes;
- There is no demonstrated reason, purpose or need to transfer the ±752.9 described as indicated for agricultural purposes;
- Existing Yolo County General Plan and zoning provisions protect this already designated agricultural land and since it is owned by the Tribe, there is no threat of any change in that status;
- The County requests that the deed restrict the portion designated as agricultural purposes;
- The Yocha Dehe Wintun Nation has been a valuable partner to the County of Yolo and the broader community through years of collaborative relationships and extensive charitable giving;
- Some of the parcels are currently subject to the Williamson Act contract that is in non-renewal. Those assessed values will be increasing to their Proposition 13 base year value over the next few years, resulting in approximately a 10% greater loss of tax to the County of Yolo;
- The County requests that the BIA require the Tribe to prepare an Environmental Impact Statement;
- The Tribe has stated no change in land use, there is enough information and prior experience indicating a strong possibility of future change in use to some degree of commercial activity;
- The County is concerned that once the parcels are in trust, the Tribe may proceed with any development they desire; and
- The County is opposed to the application as drafted, while the BIA initiated deed restriction is supportable.

***By letter dated December 13, 2013, the Yocha Dehe Wintun Nation's response for the County of Yolo is as follows:***

- *The County's argument rests on a false premise unsupported by reason, fact or law. Specifically, it erroneously assumes that a tribe can establish the requisite "need" for trust land only if the proposed development is prohibited by county zoning and land use planning, and/or where a county's zoning ordinances and land use plan do not protect the planned use. Of course, if this were true, no land could be placed into trust for a tribal government unless the particular tribe planned to use the land in a manner inconsistent with existing local land use protections;*
- *The regulations governing federal trust acquisitions provide that land may be moved into trust for the particular tribe's benefit where, among other things, the Bureau finds the acquisition is necessary to facilitate tribal self-determination, economic development, or tribal housing. 25 C.F.R. § 151.3(a)(3);*
- *The County has no objection to federal trust ownership of the approximately 100 acres of land the Tribe intends to develop, even though that development is inconsistent with the County's General Plan and zoning laws;*
- *As the application shows, the Tribe intends to use those lands to build homes for a growing population, and to expand governmental and community facilities, along with*

*the needed infrastructure, to provide for the health and welfare of the Yocha Dehe people;*

- *The Tribe needs to house its people, who are growing in numbers, and who presently live in a flood plain on federally owned land set aside for their benefit more than 70 years ago;*
- *The Tribal government lacks adequate administrative office space on this same trust parcel, and needs additional space to accommodate its growing governmental operations, as well as to develop and enhance cultural and educational facilities for Yocha Dehe citizens;*
- *As for the balance of the trust land — the approximate 753 acres about which the County does object — the Tribe intends to use this land for economic development, as well as to fulfill its right of self-determination. Each of these purposes is relevant to, and independently supports, the requested trust acquisition under federal law;*
- *The Tribe intends to grow and strengthen its agricultural operation, which constitutes an increasingly important means of economic development for the Tribal government;*
- *The Tribe seeks to grow, strengthen and enhance its agricultural operation on these lands, through the support of livestock and cultivation of grapes, olives, almonds, and various other fruits and vegetables, all pursuant to environmentally sustainable practices;*
- *Yocha Dehe's agricultural operation is increasingly impactful within the Capay Valley, with an organic farm that the Tribe operates at a level that exceeds the strictest of standards, and a state-of-the-art olive mill designed to serve not simply the Tribe's custom crushing needs, but those of local farmers;*
- *Agriculture, regulated and controlled by the Tribe on its own lands, is a critical path to diversifying the Yocha Dehe Wintun Nation's economic base, as it provides an economic alternative to gaming on which the Tribe has exclusively depended for the past 25 years. While Yocha Dehe's gaming facility is indeed successful, gaming is itself an activity whose future is necessarily uncertain, since it depends on the vagaries of federal law and it is therefore always subject to congressional discretion, not to mention, the ever changing market conditions;*
- *The trust acquisition is an essential part of the Tribe's on-going efforts to restore its ancestral land base so that the Tribe may use its sovereign jurisdiction to protect and use the property in a manner serving the needs and values of the Yocha Dehe community now, and in the future. Securing this land base, and exercising sovereign authority over these lands, is an important part of the Tribe's effort to achieve the tribal self-determination federal law explicitly contemplates;*
- *Contrary to the County's assumptions, Yocha Dehe's needs, and its people's cultural traditions and values, cannot be fulfilled so long as the lands are within the County's (and State's) jurisdiction and subject to their respective regulatory authority;*
- *As even the County must concede, the Tribe's dedication to preserving and protecting its lands, and indeed restoring its lands to their native state, cannot be disputed, and in fact, the effect of this federal trust acquisition will be to eliminate a county-approved residential subdivision that could be built within the Capay Valley if the Tribe ever lost ownership of these land;*
- *The hoped-for trust acquisition is replete with cultural sites the Tribe seeks to protect in perpetuity, and such is meaningful since state and local laws are less protective than*

*Yocha Dehe laws and policies. Taking these lands into federal trust ownership is unquestionably a means of preserving them, and thus, quite opposite to the County's assertion, not a threat to them;*

- *With the lands maintained under state and local regulatory control, the Tribe possesses traditions and customs that cannot be exercised on those lands if they happen to conflict with a state regulation;*
- *The Tribe's ability to exercise its sovereign authority over all of the subject parcels — including undeveloped lands to be used for agriculture but also for cultural uses and practices involving open space — is essential to enabling the Tribe to govern its own people, and thereby control its own sovereign destiny. This purpose and need is important as any other, for it goes to the heart of Yocha Dehe's right to self-determination through the protection of its land and people, and cultivation of its culture;*
- *As the Tribe noted in its application letter, the Tribe need not be literally "landless" in order to establish the requisite "need" for additional trust lands. See *State of Kansas v. Acting Southern Plains Regional Director, Bureau of Indian Affairs*, 36 IBIA 152, 155 (2001). Likewise, the requisite "need" for trust land need not be financial; a showing that existing trust lands have been fully developed, and that additional land is necessary in order to improve the economic and social well-being of the Tribe, is enough to satisfy the "need" requirement. See *Avoyells Parish, Louisiana, Police Jury v. Eastern Area Director, Bureau of Indian Affairs*, 34 IBIA 149, 153 (1999);*
- *To be fair, the prior trust acquisition to which the County alludes requires a measure of factual detail, detail the County notably omits. By correspondence dated August 31, 1994, the Tribe applied to have 300 acres of land known as the Schilling Ranch taken into trust "for new tribal residences — approximately fifteen single family homes on one acre parcels, a tribal Community Center and a burial site." The Tribe's cemetery (located in Rumsey) had become inaccessible. (Id.) The County objected to the trust acquisition of the Ranch, which was subject to Williamson Act contracts and which (pursuant to the existing federal policy) the Bureau had indicated had to run their course, or be rescinded with the County's blessing, before federal ownership could be taken. Accordingly, the Tribe entered a Memorandum of Understanding with the County, under which the Tribe agreed, among other things, to scale back the scope of its pending application to 83.5 acres, in exchange for the County's support.*

*Upon the entry of the MOU, the State sued the County for failing to comply with the California Environmental Quality Act, contending its rescission of the Williamson Act contracts triggered that state environmental law's requirements. (Tab B (attaching complaint).) While the CEQA litigation ultimately resolved favorably through a settlement with the State, allowing the Tribe and County to conduct the environmental reviews necessary for the trust acquisition to proceed, years passed. With these intervening years of delay, the Tribe's people, still living in HUD homes near the Tribe's bingo hall and on what is now the parking lot of the gaming facility, opted to build homes on the existing trust parcel to the north, acquired by the United States in or about 1938, and on which they still reside, within the flood plain. Naturally, with the Tribe having taken this new course to provide for the residential needs of its members — because of delays brought on by years of litigation and environmental reviews — it then had to*

*identify alternative uses for the Schilling Ranch property that was the subject of its trust application.*

*The possibility of a change in land use was explicitly contemplated by both the County and the Tribe when they entered the MOU in 1995: "The Tribe will not change its intended use of the Schilling Ranch unless and until the Tribe presents a proposal for such change in use accompanied by an environmental assessment prepared by the Tribe in accordance with the National Environmental Policy Act to the Board of Supervisors for its consideration...."*

*In the end, because of Yocha Dehe citizens' ongoing and unmet need for housing, they opted to build elsewhere, and the Tribe naturally had to find a use for the Schilling Ranch. Accordingly, the Tribe proposed a golf course for this site, consisting of both fee and trust land, and the Tribe did so consistent with the Tribe's MOU with the County, and with the County's complete blessing, and indeed, pursuant to a development agreement entered by the County and the Tribe. The County's approval for the golf course project came in 2005, more than a decade after the Tribe first asked the Bureau to take land into trust so that it could house its people, and years after the people had opted to move elsewhere because of interminable delays caused by litigation.*

*While the County states "there is enough information in the attached exhibits and experience" to suggest the Tribe will develop the agricultural land commercially, the County nowhere identifies the "information" that supposedly justifies its fears, and its bare assertions are disingenuous at best. As the County well knows, the Tribe was forced to change the land use for the Schilling Ranch only because of litigation-related delays in which both the County and Tribe became ensnared, and due to Tribal citizen housing needs that had to be met with the passing years.*

- *The Bureau need not consider the County's comments regarding the Tribe's potential future use of the proposed trust parcels. Rather, in evaluating a fee-to-trust request, the Bureau need only consider facts presented to the Bureau regarding the purpose(s) for which the subject property will be used. See Village of Ruidoso v. Albuquerque Area Director, 32 IBIA 130, 139 (1998) ("In order to demonstrate that it has considered the relevant facts related to the purpose of which a proposed land acquisition will be used, BIA should include in its decision a discussion of the facts which are, or should be, within the BIA's knowledge and which have some bearing on the present or future use of the property."); City of Eagle Butte, South Dakota v. Acting Great Plains Regional Director, 49 IBIA 75, 82 (2009) ("The Regional Director...has no obligation to consider the City's speculation about what might happen in the future."); Rio Arriba, New Mexico, Board of County Commissioners v. Acting Southwest Regional Director, 38 IBIA 18, 22 (2002) ("The Acting Regional Director was not required to engage in speculation.").*
- *There is no evidence that the Tribe intends to use the land for any purpose other than the purposes presented in its application;*
- *As for the County's final request — that the Bureau should restrict the Tribe's future use of the proposed trust parcels as a condition to approving the Tribe's request — the Tribe respectfully submits that the Bureau lacks such authority. See City of Lincoln City,*

*Oregon v. Portland Area Director*, 33 IBIA 102, 107 (1999) (“Nothing in...25 U.S.C. § 465, or 25 C.F.R. Part 151 authorizes the Department to impose restrictions on the Tribe’s future use of land which is taken into trust.”);

- *The County provides the current assessed tax values for the proposed trust parcels, and notes that these values would increase by 10% to their Proposition 13 base year values over the next few years, given the Tribe’s cancellation of the Williamson Act contracts for these parcels (as noted in the Tribe’s application). It is a bit artificial for the County to reference the 10% increase in tax revenues that would be collected by virtue of the Tribe’s cancellation of the Williamson Act contracts for these parcels, since the Tribe only cancelled those contracts because of the pending trust application. In other words, if it was not for the application to take these lands into trust, these parcels would remain subject to the decreased property tax levels under the Williamson Act, and the County would not, in fact, collect the 10% increase in taxes that it claims it stands to lose by virtue of the cancelled contracts;*
- *The actual amount of property taxes the Tribe pays for these fee lands, and the corresponding amount the County will lose if the land is taken into federal trust ownership. That omission may not be inadvertent, since the tax revenue the County stands to lose is a mere pittance, at \$12,500 per year;*
- *By comparison, and as demonstrated by a fiscal and economic impact analysis commissioned by the Tribe from a respected Sacramento firm and a copy of which is submitted herewith, Yocha Dehe contributes many millions of dollars every year directly to the County — money that far exceeds any public service costs the County must bear, or off-reservation impacts the County may fairly claim must be mitigated, because of the Tribe’s gaming facility. (See *Fiscal and Economic Impact Analysis, Economic & Planning Systems, Inc., May 2012.*) According to this study, the County must spend approximately \$1 million per year to mitigate impacts associated with the Tribe’s gaming facility, when it collects more than \$5 million every year under an intergovernmental agreement with the Tribe, thereby reaping a surplus of more than \$4 million;*
- *This money the County collects directly from the Tribe does not even include the following economic and financial contributions from which the County necessarily benefits, indirectly if not directly: (1) the “special distribution fund” money the County receives from the State under the Tribe’s Tribal-State Compact to mitigate off reservation impacts identified by a special committee including County representatives; in 2011/2012, the County collected \$60,000 and in 2010/2011, the County received more than \$235,000; (2) the positive economic impacts on the County, through direct and indirect spending by virtue of the Tribe’s government, its gaming enterprise and its golf club operation, representing \$376 million in direct, indirect and induced economic impacts every year; (3) the economic and financial contributions of the Yocha Dehe Fire Department, which serves not only the Tribe’s facilities on Tribal lands, but plays a vital role in providing countywide emergency response and life safety services through mutual aid agreements, to the direct benefit of the County and area agencies; (4) the contributions to the local economy and agricultural industry by the Yocha Dehe Farm & Ranch, which, among other benefits, provides local jobs, cultivates a variety of food products pursuant to environmentally sustainable practices, rents and leases lands for cattle grazing, provides custom crush olive mill services to area farmers through its state-of-the-art olive mill, and assists in the development of agri-tourism for the Capay*



Valley; and (5) the more than \$18 million in philanthropic contributions the Tribe has made through its Yocha Dehe Community Fund to a variety of diverse organizations, many of which are non-profit entities with County-based programs, and for which the County receives an obvious indirect benefit;

- The County correctly comments that it provides a variety of services to the rural, unincorporated area that includes the subject trust parcels, including road maintenance, mutually aided emergency services, public and environmental health services, law enforcements/crime prevention and prosecution/defense, and recreation and natural resources services. The trust acquisition will have no meaningful impact on any of these services;
- The Tribe has developed a collaborative working relationship with public service agencies, and this collaboration will continue. Not only does the Tribe work effectively with local law enforcement, but also with fire service and emergency service providers, for which the Tribe has provided funding and with whom Yocha Dehe has entered a variety of mutual aid agreements;
- Under NEPA, an EIS is only required for major federal actions that could significantly affect the human environment. 42 U.S.C. 4332(2)(c). For actions with less-than-significant environmental effects (or where the significance of an action's environmental effects is uncertain), an Environmental Assessment ("EA") is sufficient. 40 U.S.C. § 1508.9. Because the Bureau reasonably concluded, based on a comprehensive EA, that the proposed trust acquisition does not pose potentially significant effects for the human environment, no such EIS is required;
- In its capacity as the lead agency, the Bureau has already thoroughly evaluated the potential environmental consequences of the trust land application, through the preparation of a comprehensive EA. The EA complies with NEPA, with the Council on Environmental Quality's NEPA regulations (40 C.F.R. parts 1500 to 1508), with the Department of the Interior's NEPA regulations (43 C.F.R. part 46), and with the Bureau's NEPA Guidebook (59 IAM 3-H);
- The Bureau directed a comprehensive environmental review for an application that would involve developing less than 12 percent of the proposed trust lands, and based on that review; reasonably found there would be no potentially significant effects on the human environment. That conclusion is supported by hundreds of pages of technical studies and analyses, none of which is disputed in the County. In short, no EIS is required. 42 U.S.C. § 4332(2)(c); 40 C.F.R. §§ 1508.9, 1508.13;
- With all of the positive contributions the Yocha Dehe Wintun Nation has made to and within the County of Yolo — ranging from the creation of thousands of jobs; to the public and private financial contributions, both contractual and philanthropic; to leadership in environmental stewardship and sustainability; to the development of agri-tourism and support for local growers within the agrarian Capay Valley; to the collaborative relationship building among public service agencies, including, but not limited to, a fire department that serves and protects people and property both within and beyond the Tribe's own lands — the County's opposition to the Tribe's request to have approximately 853 acres taken into federal ownership for the Tribe's sovereign benefit is both revealing and disappointing; and
- The entire premise of the County's position must be rejected as contrary to the tribal self-determination the Indian Reorganization Act was enacted to cultivate. Yocha Dehe

*submits that no governmental agency, no entity, no person, has more incentive to protect the beauty and aesthetic of the Capay Valley than the people who live there, and whose ancestors have lived and died there from time immemorial.*

Pursuant to 25 CFR 151.10, the following factors were considered in formulating our decision: (1) the need of the tribe for additional land; (2) the purposes for which the land will be used; (3) impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls; (4) jurisdictional problems and potential conflicts of land use which may arise; (5) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of land in trust status; (6) the extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions; Hazardous Substances Determinations. Accordingly, the following analysis of the application is provided.

#### Factor 1 - Need for Additional Land

The Tribe need not be literally "landless" in order to establish a "need" for additional trust lands. *See State of Kansas v. Acting Southern Plains Regional Director, Bureau of Indian Affairs 36 IBIA 152, 155 (2001)*. Likewise, the requisite "need" for trust land need not be financial; in other words, the Tribe need not be suffering financially in order for the United States to accept additional lands in trust for the Tribe. *See Avoyells Parish, Louisiana, Police Jury v. Eastern Area Director, Bureau of Indian Affairs, 34 IBIA 149, 153 (1999)*. A showing that existing trust lands have been fully developed, and the additional land is necessary in order to improve the economic and social well-being of the Tribe, is enough to satisfy the "need" requirement.

Acquisition of the property in trust is essential to the Tribe's on-going efforts to restore their ancestral land base. The Capay Valley, which encompasses the property, is the Tribe's ancestral homeland. It is the heart of the Tribe's culture and heritage, and nothing is more vital to the continuation of their traditional way of life than the unique and long standing connection with the land. Maintaining the rural character of the Nation and the surrounding lands is of vital importance to the Tribe. Acquisition of the property in trust will help create a "buffer zone," and will provide the members greater personal security and privacy. This trust acquisition is necessary in order for the Tribe to exercise its sovereign jurisdiction over the land at its fullest extent.

The Nation, as originally established, consists of approximately sixty-three (63) acres in total, is largely developed, and cannot continue to support the growing population. The small tract encompasses the Tribe's gaming facility, hotel, gas station and fire department, Tribal administrative facilities, the Yocha Dehe Wintun Academy, the Tribal community center and recreation area. Due to the lack of space for future development, some of the government offices are currently housed in temporary trailers, and some are housed on Tribal fee lands. Acquiring the property in trust would provide much needed space for expansion and growth of the Tribe.

There is inadequate space within the boundaries of the Nation to accommodate the rising housing needs of its growing population. The Tribe estimates that twenty-five (25) Tribal members will

reach adulthood in the foreseeable future and will require housing. Additionally, all on-reservation development (excluding the casino, hotel facility, and fire department) is serviced by a septic system which is insufficient to accommodate continued growth. Acquisition of the property in trust would allow the Tribe to develop a wastewater treatment plant that would not only replace the existing septic system, but would also provide recycled water to be used for agricultural purposes.

It is our determination that the Yocha Dehe Wintun Nation has established a need for additional lands to protect the environment and preserve the Nation and its lands.

### Factor 2 - Proposed Land Use

Currently, the property is used for agricultural purposes. The Tribe contemplates development on portions of six (6) parcels, and continued use of the remaining portions of those parcels as well as the other nine (9) parcels for agricultural purposes. The project will take place in phases, as the anticipated needs of the members arise; the Tribe has not yet developed a concrete timeline for development. It is anticipated that development will take place in phases, over years, particularly the residential development, which will occur as homes are needed. Of the ±852.90 acres, it is estimated that approximately 753.90 (over 88% of the property) will remain in agricultural production.

The Tribe's proposed use of the property is summarized as follows:

Residential Housing - The Tribe plans to build twenty-five (25) residential housing units on APN 048-230-001 and 047-020-001, neither of which is subject to the Williamson Act contract. Construction of these residential units will necessitate the development of a domestic well, domestic water storage tank, and improved access roads, driveways and utilities, also within these parcels. Residential development will be phased over several years as new homes become needed by members.

Tribal School – The Tribe also plans to use APN 48-230-001 for relocation of the Yocha Dehe Wintun Academy, the Tribal school. Relocation of the Academy will provide sufficient space for expansion of the school to accommodate five (5) additional Academy employees, so that the Academy may grow along with the Tribal student population. Once the Academy is relocated, the existing structure will be used by the Tribe to house Tribal administration staff who are currently located in temporary trailers. The existing structure provides enough space to accommodate existing staff in need of permanent office space, as well as twenty (20) additional Tribal employees.

Cultural and Educational Facilities – The Tribe plans to develop three (3) cultural/educational facilities on the property. An existing residence on APN 060-030-016 will be modified and expanded to house the Tribe's Cultural Education Center. An Outdoor Cultural Activity Center, representative of a historic Tribal village, will be developed on APN 060-030-017. At some point in the future, the Tribe plans to use APN 060-030-017 to develop a third cultural/educational facility. Water will be supplied to these facilities either via a new well and storage tank on the parcels or through an existing well and water storage system located on the

trust land lying north of APN 060-030-016. The proposed use is consistent with the permitted and conditionally-permitted uses identified in Yolo County's Agricultural Preserve zoning.

Wastewater Treatment and Disposal Facilities – A wastewater treatment plant may be needed to support existing homes and facilities on the Nation, as well as the development contemplated herein. If constructed, the wastewater treatment facility will be built on APN 060-020-020, and may act as a single system for all Tribal housing and government buildings on the Nation and property. Pipelines linking the network may traverse APN 060-020-019. Operation of the wastewater treatment facility will comply with applicable regulations of the U.S. Environmental Protection Agency.

Agricultural Use – The Tribe has no plans to change the agricultural nature of the use of any of the remaining parcels in the foreseeable future, and in particular, parcels identifies as APN 060-030-001, 060-030-008, 060-030-009, 060-020-018, 060-010-001, 060-013-001, 060-014-001, 060-020-001, and 060-020-014. The parcels will continue to be used consistent with the Williamson Act requirements, for at least as long as the remaining term of any Williamson Act contract that presently exists and would be consistent with permitted and conditionally-permitted uses identified in Yolo County's Agricultural Preserve zoning.

### Factor 3 – Impact on State and Local Government's Tax Base

Parcels accepted into federal trust status are exempt from taxation and would be removed from the County's taxing jurisdiction. In the 2013-2014 tax years, the total tax assessed on the subject parcels was \$110,065.16. During the comment period, *County of Yolo, Board of Supervisors* indicated adverse impacts would result from the removal of the subject parcel from the tax rolls. The Tribe responded to the comments in its letter dated December 13, 2013.

Based on the Tribe's comments, transferring the subject property into trust will not have a significant impact on the State of California or Yolo County's tax revenue because the amount of property taxes assessed on these parcels is small in comparison to the County's annual property tax revenue.

In considering the impact of removing the property from Yolo County's tax rolls, the Tribe's generous contributions both directly to, and to entities and organizations within, Yolo County cannot be ignored. As a result of the operation of several enterprises in Yolo County, including the Tribe's administrative offices, Cache Creek Casino Resort, Yocha Dehe Gold Club, Yocha Dehe Wintun Academy, and Yocha Dehe Fire Department, the Tribe is the largest private employer in Yolo County. Operation of these enterprises also results in purchases of goods and services from vendors within Yolo County, resulting in significant tax revenue for Yolo County and benefitting local business. Moreover, through the Yocha Dehe Community Fund, the Tribe has provided nearly \$18 million in financial support to nonprofit organizations and service providers in Both Yolo and Sacramento Counties since the Fund's inception in 2000. In 2010, the Community Fund donated over \$2.4 million to 79 organizations, \$900,000 of which was donated to 34 organizations in Yolo County.

In addition, the Tribe also makes substantial payments to the State of California pursuant to the Gaming Compact between the Tribe and the State. Finally, the Tribe also makes sizable contributions to Yolo County to provide and also fund services traditionally funded by property tax revenue, including law enforcement, fire protection and emergency services.

It is our determination that no significant impact will result from the removal of this property from the county tax rolls given the relatively small amount of tax revenue assessed on the subject parcel and the financial contributions provided to the local community by the Tribe through employment and purchases of goods and services.

#### Factor 4 - Jurisdictional Problems and Potential Conflicts of Land Use Which May Arise

The Tribe does not anticipate that any significant jurisdictional conflicts will occur as a result of transfer of the property into trust. The property lies at the heart of the Tribe's ancestral territory, in the unincorporated area of Yolo County and contiguous to the Nation. The lands surrounding the property are substantially undeveloped, open space and agricultural lands.

The land presently is subject to the full civil/regulatory and criminal/prohibitory jurisdiction of the State of California and Yolo County. Once the land is accepted into trust, the State of California will have the same territorial and adjudicatory jurisdiction over the land, persons and transactions on the land as the State has over other Indian lands within the State. Under 18 U.S.C. § 1162 and 28 U.S.C. § 1360 (P.L. 83-280), except as otherwise expressly provided in those statutes, the State of California would retain jurisdiction to enforce its criminal/prohibitory law against all persons and conduct occurring on the land.

The Tribe will no longer be bound by Yolo County's regulatory jurisdiction with respect to the subject property does not give rise to concern. Under the proposed project, the overwhelming majority of the property will be used for purposes consistent with permitted and conditionally-permitted uses identified in Yolo County's Agricultural Preserve zoning, and roughly 88% of the property will remain in agricultural production. Moreover, the Tribe shares Yolo County's interest in maintaining the rural character of the property, and protecting its natural and cultural resources, is one of the reasons why the Tribe is requesting acquisition of the property in trust.

As indicated above, the Tribe provides and funds law enforcement, fire protection and emergency services not only in the Nation, but throughout Yolo County:

Law Enforcement – The Capay Augmented Patrol (CAP), a partnership between the Tribe and the Yolo County Sheriff's Department, was established over a decade ago in order to provide expanded law enforcement services in the Capay Valley. CAP, which is funded by the Tribe, employs three full-time deputies and a fully equipped patrol vehicle. CAP allows the Sheriff's Department to serve the Capay Valley 24 hours per day, five days per week.

Fire Protection – The Yocha Dehe Fire Department is the designated first responder to fire and emergency incidents (including search and rescue) within the area between Interstate 505 to the east, and the Yolo County line to the west, both in and outside of the Nation. The Tribe has invested a significant sum of money in the creation of a fully equipped, state-of-the-art fire

station. The Tribe's Fire Department is the first (and so far, only) tribal fire department to have achieved accreditation from the Commission on Fire Accreditation International, and is, in fact, one of the only 147 departments internationally that possess this accreditation. Until the Yocha Dehe Fire Station was constructed in 2005, the Tribe augmented the Capay Fire Department budget by \$300,000 over the course of two years to cover the costs associated with services.

Emergency Services – The Yocha Dehe Fire Department is the only fire department in Yolo County to provide paramedic services in Yolo County. This costly and valuable service is provided at no charge to the general public. If not for the Tribe, this level of service would simply not exist in the Capay Valley. Additionally, the Tribe shares in the Yolo County Office of Emergency Services' (OES) costs in the provision of emergency services throughout Yolo County and continuing to work with several other jurisdictions in Yolo County to share in OES' costs.

Mutual & Automatic Aid Agreements – Through mutual aid agreements, the Yocha Dehe Fire Department assists other departments with the provision of fire and emergency services. Approximately 12% of the Department's calls involve incidents located outside of the Nation. Additionally, the Department, Capay Valley Fire Department, and Esparto Fire Protection District maintain an Automatic Aid Agreement, which commits the three departments to aid one another when necessary, in order to provide sufficient coverage to the entire Capay Valley.

The Tribe and Yolo County have developed a positive working relationship over the years, and the Tribe has every intention of continuing to foster that relationship both as a good neighbor and in the spirit of government-to-government relations.

Factor 5 - Whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status

Acceptance of the acquired land into Federal trust status should not impose any additional responsibilities or burdens on the BIA beyond those already inherent in the Federal trusteeship over the Nation. The Tribe does not anticipate that significant Bureau services or assistance will be required, with the exception of ministerial actions such as review, approval and recording of possible leases and easements, recording of transfer documents, and approval of extended contracts affecting trust lands. The Tribe will continue to ensure that essential government services – security, fire protection, emergency services, and natural resource protections – are provided to the property using existing federal allocations and/or Tribal funds. The Tribe is committed to working with the Bureau, to the greatest extent possible, to minimize the additional burdens that may result from acceptance of the property in trust.

Factor 6 – The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 1-7, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determination

In accordance with Interior Department Policy (602 DM 2), we are charged with the responsibility of conducting a site assessment for the purposes of determining the potential of, and extent of liability from hazardous substances or other environmental remediation or injury.

The record includes a negative Phase 1 "Contaminant Survey Checklist" dated April 2, 2013, reflecting that there were no hazardous materials or contaminants.

#### National Environmental Policy Act Compliance

An additional requirement that has to be met when considering land acquisition proposals is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The BIA's guidelines for NEPA compliance are set forth in the Bureau of Indian Affairs Manual (59 IAM). An environmental assessment (EA) for the proposed action was distributed for public review and comment for the period beginning June 15, 2011 and ending July 14, 2011. The EA documents and analyzes potential impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions, resources use patterns (transportation and land use and agricultural), public services, public health/hazardous materials, and other values (noise and visual resources). Additionally, a Finding of No Significant Impact was published November 6, 2012.

Based on the analysis disclosed in the EA, review and consideration of the public comments received during the review period, responses to the comments, and mitigation measures imposed, the Bureau of Indian Affairs has determined that the proposed Federal action is not a major Federal action significantly affecting the quality of human environment within the meaning of NEPA. Therefore, preparation of an Environmental Impact Statement (EIS) is not required.

#### Conclusion

Based on the foregoing, we at this time issue notice of our intent to accept the subject real property into trust. The subject acquisition will vest title in the United States of America in trust for the Yocha Dehe Wintun Nation of California in accordance with the Indian Reorganization Act of 1934 (25 U.S.C. § 465).

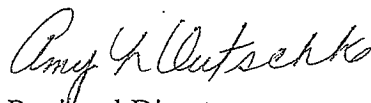
Should any of the below-listed known interested parties feel adversely affected by this decision, an appeal may be filed within thirty (30) days of receipt of this notice with the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340 (copy enclosed).

Any notice of appeal to the Board must be signed by the appellant or the appellant's legal counsel, and the notice of the appeal must be mailed within thirty (30) days of the date of receipt of this notice. The notice of appeal should clearly identify the decision being appealed.

If possible, a copy of this decision should be attached. Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior 1849 C Street, N.W., MS-3071-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures. If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b). No extension of time may be granted for filing a notice of appeal.

If any party receiving this notice is aware of additional governmental entities that may be affected by the subject acquisition, please forward a copy of this notice to said party or timely provide our office with the name and address of said party.

Sincerely,



Regional Director

Enclosure:

43 CFR 4.310, et seq.

cc: Distribution List



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Department of Justice  
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P.O. Box 894  
Esparto, CA 95627

Yolo County Assessor - 7009 3410 0000 1318 8287  
625 Court Street, Rm. 104  
Woodland, CA 95695

Yolo County Treasurer/Tax Collector - 7009 3410 0000 1318 8294  
625 Court Street, Rm. 102  
Woodland, CA 95695

Yolo County Board of Supervisors - 7009 3410 0000 1318 8300  
Julie Dachtler, Deputy Clerk of the Board  
625 Court Street, Room 204  
Woodland, CA 95695

Yolo County Sheriff's Department - 7009 3410 0000 1318 8317  
140 Tony Diaz Drive  
Woodland, CA 95776

Yolo County Department of Planning and Public Works - 7009 3410 0000 1318 8324  
292 West Beamer Street  
Woodland, CA 95695

Stand Up For California - 7009 3410 0000 1318 8331  
Cheryl Schmit- Director  
P.O. Box 355  
Penryn, CA 95663

Regular Mail:

Superintendent, Central California Agency, BIA  
650 Capitol Mall, Suite 8-500  
Sacramento, California 95814

Email:

Assistant Secretary- Indian Affairs

Office of the Secretary, Interior

§4.310

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.

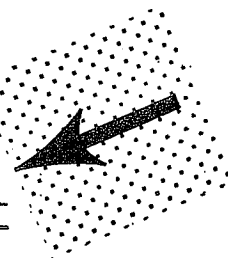
GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

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;

(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.

#### § 4.334

(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

#### 43 CFR Subtitle A (10-1-03 Edition)

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



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 100-153 (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: