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NOTICE OF APPEAL

INTERIOR BOARD OF INDIAN APPEALS

11
12 **IN THE MATTER OF THE JANUARY 4,**
13 **2011, DECISION TO TAKE CERTAIN**
14 **LAND IN TULARE COUNTY,**
15 **CALIFORNIA INTO TRUST**

Docket Number:

**STATE OF CALIFORNIA'S NOTICE OF
APPEAL TO THE INTERIOR BOARD OF
INDIAN APPEALS**

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17 NOTICE IS HEREBY GIVEN that the State of California hereby appeals the January 4,
18 2011¹ Notice of Decision of the Regional Director, Pacific Regional Office of the Department of
19 the Interior, Bureau of Indian Affairs (BIA), giving notice of the BIA's intent to accept
20 approximately 40 acres of land in Tulare County, California into trust for the Tule River Indian
21 Tribe of the Tule River Reservation, California (Tribe) pursuant to the Indian Land Consolidation
22 Act of 1983, 25 U.S.C. § 2202. This appeal is filed pursuant to 43 C.F.R. §§ 4.320-4.340 and 25
23 C.F.R. § 2.20. The decision being appealed is attached as Exhibit A.

24 **I. OFFICIAL WHOSE DECISION IS BEING APPEALED.**

25 Amy L. Dutschke, Regional Director of the BIA Pacific Regional Office, located at 2800
26 Cottage Way, Sacramento, California, 95825.

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28 ¹ The Notice of Decision was incorrectly stamped with the date January 4, 2010.

1 **II. FULL IDENTIFICATION OF THE CASE.**

2 On January 4, 2011, the Regional Director of the BIA Pacific Regional Office mailed a
3 Notice of Decision to the interested parties regarding the BIA's decision to accept into trust for
4 the Tribe that real property located in Tulare County, California described as "Parcels No's [sic] 1
5 through 17 inclusive, of Parcel Map No. 4343, in the City of Porterville, County Tulare, State of
6 California, according to the map thereof recorded in Book 44, Page 47 of Parcel Map" and
7 identified as Assessor's parcel numbers 302-400-001 through 017, containing 40 acres, more or
8 less (Property). The Property is located approximately twenty miles mile west of the Tribe's
9 reservation. The State of California, Office of the Governor received the BIA's decision on
10 January 6, 2011.

11 **III. APPELLANT.**

12 Appellant the State of California is represented by Jennifer T. Henderson, Deputy Attorney
13 General, 1300 I Street, Suite 125, Sacramento, California, 95814, telephone (916) 324-5366,
14 facsimile (916) 327-2319, e-mail: Jennifer.Henderson@doj.ca.gov.

15 **IV. REASONS FOR APPEAL.**

16 The State of California believes the decision is incorrect for the following reasons²:

17 A) Although the land was being acquired for business purposes, the Tribe did not
18 provide any information regarding future use of the land and did not provide a plan as
19 required by 25 C.F.R § 151.11 (c);

20 B) The Tribe's application did not provide information that was adequate to allow
21 the Secretary to determine pursuant to 25 U.S.C. § 465 that the land was necessary to
22 facilitate Tribal self-determination, economic development, or Indian Housing;

23 C) Although the subject land is approximately 20 miles away from the Tribe's
24 reservation and is located within the City of Porterville city limits, more weight was not
25 given to the impact of the removal of the land from the tax roles;

26 _____
27 ² The State of California reserves the right to supplement or amend the listed reasons for
28 appeal. In addition to this Notice of Appeal, the State's formal "Statement of Reasons" shall be
filed thirty (30) days after the Notice of Appeal in accordance with 25 C.F.R. § 2.10.

1 D) There was not sufficient information provided to allow the Secretary to
2 determine that the establishment of a tribal sovereign enclave within the City of Porterville
3 city limits would not result in jurisdictional conflicts;

4 E) The draft environmental assessment did not include any specific project
5 description, and as a result it was not possible to evaluate the potential impacts to the
6 environment after the land was conveyed into trust;

7 F) The draft environmental assessment was not sufficient to allow for the issuance
8 of a Finding of No Significant Impact (FONSI) because it did not include any specific
9 project description, and did not evaluate the potential impacts to the environment after the
10 land was conveyed into trust;

11 G) The economic benefits claimed by the Tribe in the FONSI were based on
12 future commercial development and therefore inconsistent with the draft environmental
13 assessment which stated that the proposed conveyance would not result in any change in
14 the present use of the land;

15 H) The draft environmental assessment did not contain enough information to
16 allow the Secretary to comply with his obligation under the National Environmental Policy
17 Act (NEPA) to consider all reasonably foreseeable uses to which the land could be put.

18 **V. RELIEF SOUGHT.**

19 The State of California seeks the following relief:

20 A) rescission of the notice of decision; and

21 B) preparation of a full Environmental Impact Statement that adequately describes
22 the Tribe's proposed development plans for the land, analyzes all of the direct, indirect and
23 cumulative impacts of those plans, examines a reasonable range of alternatives, and
24 proposes adequate mitigation measures to offset the significant impacts identified.

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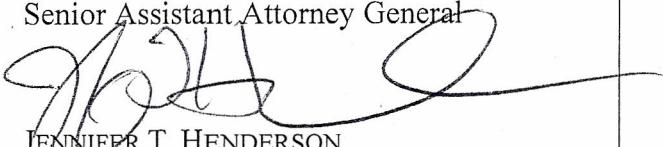
VI. SERVICE UPON INTERESTED PARTIES.

The State of California has served this Notice of Appeal upon all known interested parties, the official whose decision is being appealed, and the Assistant Secretary – Indian Affairs as required by 43 C.F.R. § 4.333(a), as set forth in the attached Declaration of Service.

Dated: February 4, 2011

Respectfully Submitted,

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