



IN REPLY REFER TO:

United States Department of the Interior

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

MAY 7 2015

NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7013 2630 0001 5558 3702

Honorable Ryan Garfield
Chairperson, Tule River Reservation
P.O. Box 589
Porterville, CA 932258

Dear Chairman Garfield:

This is our Notice of Decision for the application of the Tule River Reservation to have the below-described property accepted by the United States of America in trust for the Tule River Indian Tribe of the Tule River Reservation, California.

The land referred to herein is situated in the State of California, County of Tulare, and is described as follows:

Parcel 1:

That portion of the Southwest quarter of Section 10, Township 22 South, Range 29 East, Mount Diablo Base and Meridian, in the County of Tulare, State of California, according to the Official Plat thereof, lying Southwesterly of the center line of the County Road.

Excepting therefrom the South 10 acres in the Northwest quarter of the Southwest quarter of said Section 10.

Also excepting therefrom that portion thereof described in the Deed from Antanasia Jaramia to P. Lilinda Kings dated June 25, 1904 recorded in Book 124 Page 43 of Deeds, as follows:

Beginning at a point on the East line of Section 9, Township 22 South, Range 29 East, on the South bank of the South Tule Independent Ditch; thence South 20 rods; thence in an Easterly direction parallel with said ditch 80 rods; North 20 rods; thence Westerly along the South bank of said ditch 80 rods; to the point of beginning, 10 acres being a part of the Southwest quarter of

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Section 10, Township 22 South, Range 29 East Mount Diablo Base and Meridian according to the Official Plat thereof in the County of Tulare, State of California

Also excepting therefrom that portion thereof described in the Deed from Mrs. P Lilinda King, a widow to Henry M. King and Alice King Henderson, dated August 27, 1937, recorded January 7, 1943 in book 1012 Page 36 of Official Records as follows:

Beginning on the West line of the South bank of the ditch; thence East along the Ditch 80 rods; South 20 rods; West 80 rods; thence North to the point of beginning, being approximately 10 acres of land in Section 10, Township 22 South, Range 29 East, Mount Diablo Base and Meridian according to the Official Plat thereof, in the County of Tulare State of California.

Also excepting therefrom an undivided on-half interest in and to all mineral rights in said property, as reserved in the Deed from Jack Souza and Kathryn F. Souza, also known as Catherine F. Souza, husband and wife and Hazel Rocha, also known as Hazel Roche, a widow, as grantor, dated June 24, 1957 and recorded June 26, 1957 in Book 2001 Page 291 of Official Records.

APN: 305-120-006

Parcel 2:

Section 15, Township 22 south, Range 29 East, Mount Diablo Base and Meridian, County of Tulare, State of California, according to the Official Plat thereof.

Excepting therefrom that portion thereof conveyed to South Tule Independent Ditch Company, a Corporation, by Deed dated August 13, 1911, recorded in Book 189 Page 190 of Deeds.

Also excepting therefrom that portion thereof lying North of the South line of the land described in the Deed to the County of Tulare recorded January 22, 1975 in Book 3221 Page 484 as Instrument No. 2743 of Official Records.

Also excepting therefrom all coal and other minerals within and underlying said land, together with rights incidental to the development of the same, as reserved by Southern Pacific Railroad Company, a Corporation in Deed dated July 22, 1907, recorded in Book 146, Page 303 of Deeds.

Also excepting therefrom that portion of said land as described in Grant Deed recorded October 15, 2014 as Instrument No. 2014-0055289 of Official records of Tulare County more particularly described as follows:

All rights, title and interest in that portion of Section 15, Township 22 South, Range 29 East, Mount Diablo Base and Meridian, County of Tulare, State of California, lying Northerly of the centerline of the County Road that may have been conveyed by Deed from J. Harry Lowe to the Tule River Tribal Council recorded July 14, 2004 as Instrument No. 2004-0069405 of Official Records.

APN: 305-130-017

Parcel 3:

The North half of Section 22, Township 22 South Range 29 East, Mount Diablo Base and Meridian, according to the Official Plat thereof

APN: 305-130-011

Parcel 4:

Government Lots 1 and 2, in Section 23, Township 22 South, Range 29 East, Mount Diablo Base and Meridian, in the County of Tulare, State of California, according to the Official Plat thereof.

APN: 305-130-010

The subject property consists of four parcels of land consisting of 878.55 acres, more or less, commonly referred to as Tulare County Assessor Parcel Numbers (APN): 305-120-006, 305-130-017, 305-130-011 and 305-130-010. The property is currently undeveloped except for one occupied house and a recently constructed wastewater treatment plant and leach field. The remainder of the property is used for grazing and open space. Most of the property is hilly in topography. A creek runs through a portion of the property. The subject parcels are contiguous to the Tule River Indian Reservation at the westerly boundary.

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 of 1934 (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 Tule River Indian Reservation is listed on the Ten Years of Tribal Government under the I.R.A. by Theodore H. Haas. The Rancheria was originally established by Executive Order of January 9, 1873, October 3, 1873, August 3, 1878, and Presidential Order of February 17, 1912.

Pursuant to 25 U.S.C. § 478, the Secretary held such an election for the Tribe on November 17, 1934, at which the majority of the Tribe's voters voted for 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 February 1, 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, Office of the Honorable Senator Diane Feinstein; Tulare County Office of Public Works; Tulare County Board of Supervisors; Tulare County Tax Assessor; Tulare County Fire Department; Tulare County Sheriff's Department; and California Department of Forestry and Fire Protection. Regular Mail: Superintendent, Central California Agency.

The February 1, 2013 notice superseded the two previous notices dated December 17, 2004 and October 8, 2010 due to the amended application and change in land use.

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

- 1. Letter dated February 14, 2013 from the Native American Heritage Commission stating that they have no objections to the proposed action.**
- 2. Letter dated April 8, 2013 from the State of California, Department of Justice stating the following concerns:**
 - There may be a discrepancy in the total number of acres in the Trust Acquisition;
 - The Trust acquisition will be utilized for the construction and operation of a Membrane Biological Reactor wastewater treatment plant and drain fields (MBR), to be located on 37 acres, while the balance of the property would continue to be utilized as horse pasture under the Tribe's Range Management Ordinance;
 - The application states that the four parcels are contiguous to the Reservation, a review of Tule River County records demonstrates that only one parcel, APN 305-130-010 is contiguous;
 - The purpose and need for the MBR is set forth in the May 2010 Environmental Assessment (EA) prepared by the U.S. Department of Health and Human Services, Indian Health Division;
 - Three of the four parcels, including the one upon which the MBR is to be located, are currently under the Williamson Act Contract that will expire on January 1, 2015;
 - According to an Environmental Protection Agency press release, the EPA is contributing \$6.3 million to the project through the Clean Water Indian Set Aside Program and the Indian Health Service is providing an additional \$1.8 million;
 - The May 2010 EA indicated the MBR will be constructed in two phases. The first is designed to serve existing tribal on-reservation uses. The second phase is anticipated to be constructed over a 15 year period to serve anticipated build-out on the reservation. According to the EA, "the Project would not serve the Eagle Mountain casino or any other areas outside the Reservation";
 - The Tulare County Planning Commission indicated it could approve a special use permit subject to certain conditions (that the project would only serve uses on the reservation

and that the Tribe waive sovereign immunity for purposes of enforcement of the special use permit. Tule River refused to agree to the conditions and the project has stalled on land located outside the reservation;

3. Letter dated April 10, 2013 from the Cathy Christian, County of Tulare, which states:

- The Lowe Property Parcels cannot be considered “contiguous” for purposes of the trust application or the CFR;
- The Tribe’s attempt to label the Lowe Property Parcels as “contiguous” when they are clearly not so, raises questions about the Tribe’s long term intentions with respect to those parcels;
- The Tribe has not demonstrated any need for the McDarment Property in light of the proposed uses of that parcel;
- The Tribe has not satisfied the requirements of 25 CFR § 151.11 with respect to the Lowe Property Parcels, including failing to provide a business plan;
- There is no need to take the Lowe Property into trust in order to construct a Waste Water Treatment Plant (WWTP) because Tulare County is in the process of issuing the need permits to construct the WWTP;
- Contrary to HIS’s assumptions, taking the land into trust will not clear the way for construction of the WWTP to commence;
- Moving the land into trust could undermine the protections provided for in the Williamson Act; and
- The County does not oppose the application so long as either a deed restriction or enforceable agreement is included which limits the uses of the parcels and the WWTP to those expressly stated in the Tribe’s application;
- The completed on the MBR does not require the trust acquisition;
- The Tribe states that the Department of Interior Solicitor has taken the position that even if the Trust Acquisition were accepted, the property would still be subject to the Williamson Act restrictions;
- Even if the need for Tulare County’s special use permit were removed as a result of approval of the Trust Acquisition, the project could not proceed to completion either before or after September 30, 2014, because the MBR project would still need to obtain an encroachment permit for the project pipelines that must utilize a road that will remain under Tulare County jurisdiction even if the acquisition is approved; and
- Treating all four parcels as contiguous to the existing Reservation could create an impermissible conflict with the provisions of the Indian Gaming Regulatory Act (IGRA) by allowing these regulations to be utilized as a means for evading the prohibitions on off-reservation gaming established by IGRA.

By letter dated May 8, 2014 the Tule River Tribe’s response to the State of California’s and Tulare County’s comments are as follows:

- *Based on the record before the BIA and federal law, the Tribe’s Property is clearly contiguous and adjacent to the Reservation. As defined in the July 13, 2011 BIA Fee to Trust Handbook, Version II (“BIA Handbook”), “contiguous parcels” means: Two parcels of land having a common boundary notwithstanding the existence of non-*

navigable waters or a public road or right-of-way, including parcels that touch at a point. Also referred to as "adjacent parcels."

- *The property has been owned by the Tribe for almost 12 years and is currently held in fee. The Tribe's property as a whole is contiguous and adjacent to the Reservation and described as follows: The McDarment Property is contiguous to the western border of the Tribe's Reservation. The southern portion of the Lowe Property¹ that is APN 305-130-11 is contiguous to the McDarment Property. The top portion of the Lowe Property that is APN 305-130-017 touches the McDarment Property at a point. The northern most tip of the Lowe Property, APN 305-120-006, is contiguous and adjacent to APN 305-130-017.*
- *Both the State and the County agree that APN 305-130-017 and APN 305-130-010 touch at a point. The southern portion of the Lowe Property, APN 305-130-011, touches at the same point and its entire eastern boundary is shared with the western boundary of the McDarment Property. APN 305-120-006 shares its southern boundary with the northern boundary of APN 305-130-017.*
- *For the purposes of the proposed acquisition, the BIA should treat the Tribe's property as a whole because they are under common ownership, contiguous to each other, and adjacent to the Reservation;*
- *The Tribe's application for trust acquisition of tribal lands owned in unrestricted fee status which are contiguous and adjacent to the Tribe's Reservation is governed by 25 CFR §151.10, on-reservation acquisitions. 25 CFR §151.11 is not applicable to this fee to trust application;*
- *The Indian Reorganization Act ("IRA") authorizes the Secretary of Interior "in his discretion," to acquire land and hold it in trust "for the purpose of providing land for Indians." 25 U.S.C. § 465. Because the Tribe's Property is adjacent to the Reservation, the presumption under 25 CFR § 151.3(a)(1) that fee to trust transfer will benefit the Tribe applies.²*
- *The trust acquisition of the Tribe's Property is necessary to facilitate self-determination and self-governance, to encourage the beneficial use of the land in accordance with Tribal laws and tradition, to prevent loss of Tribal lands through alienation, and to ensure that the Tribe as a sovereign can determine its own destiny;*
- *The Tribe has worked with the support of various Federal agencies to address a serious public health and safety crisis facing the Tribe and its Reservation, which is a failing waste water treatment facility servicing the Reservation. The Reservation has approximately 270 septic systems, of which an estimated 80 units are nearing failure. The Tribe has been proactive in securing funding, design plans, environmental assessments, and has consulted extensively with the County in developing a new waste water treatment plant ("WWTP") on the northwest portion of the Lowe Property. Once completed and operating, the WWTP will ensure that the Tribe can*

¹ *In fact, the previous owner of the Lowe Property, Harry Lowe, sold it as one contiguous piece of land to the Tribe in 2001, and that Property has been held as such since that time. See Grant Deed dated July 23, 2001.*

² *City of Lincoln v. U.S. Dept. of Interior, et al. 229 F.Supp. 1109, 1129 (Dist.Ct. Oregon 2001).*

help provide for the public health and safety of its Tribal members, guests of the Reservation, and the community at large;

- *The County agrees that the WWTP will improve groundwater, comply with the standards of the Tulare County Environmental Health Division, the Regional Water Quality Control Board and protect water quality from contamination of the Tule River System. See County Planning Commission Resolution No. 8820, April 24, 2013;*
- *The County and State both point out that the WWTP can be constructed and operated of fee lands. Because of the urgency and the need to begin and complete construction within a very short timeframe, the Tribe has been diligently working to obtain applicable governmental permits and approvals through the County;*
- *Trust acquisition of the Tribe's Property is necessary to facilitate self-determination and self-governance, to encourage the beneficial use of the land in accordance with Tribal laws and tradition, to prevent loss of tribal lands through alienation, and to ensure that the Tribe as a sovereign can determine its own destiny;*
- *The Tribe appreciates coordinating with the County to ensure that applicable state and local requirements are followed in order to build a WWTP on the Tribe's Property;*
- *Because disagreements between different governments and jurisdictions are not uncommon and sometimes inevitable, requiring the Tribe to adhere completely to State or local laws with respect to a critical component of the Tribe's Reservation infrastructure such as the WWTP can, and has, led to stalemate and delays, resulting in interruption of critical services to Tribal members on the Reservation;*
- *The Tribe and its members have both individually and collectively experienced in the past, the protections of trust status are essential to facilitate growth for the Tribe, promote tribal policies an governance, and ensure the beneficial use of the Tribe's property for future generations;*
- *Having the Tribe's property in trust status promotes continuity by allowing the Tribe to consolidate its land holdings and exercise tribal sovereign powers of the subject property;*
- *Federal courts support the Tribe's viewpoint. Citing South Dakota v. U.S. Dept. of Interior, 423 F.3d 790, 798-99 (8th Cir.2005), the State correctly asserts in its comments that, in general:*

The purpose and benefit of a trust acquisition lies in the protection it affords tribes from state and local taxation and land use and other civil regulation that threatens a tribe's ability to house its members, secure its political existence, and develop a tribal economy in order to become self-sufficient and restore the damage resulting from the federal government's prior allotment policies.

- *State of California April 8, 2013 letter, p. 5. The Tribe could not agree more. In South Dakota, the Court agreed with the Lower Brule Sioux Tribe that "it would be*

an unreasonable interpretation of 25 CFR §151.10(b)³ to require the Secretary [of the Interior] to detail specifically why trust status is more beneficial than fee status in the particular circumstances.”⁴

- *The County expressed concern that the Tribe is only going to use a fractional share of the entire whole. Nowhere in the Regulations or in the BIA Handbook is there a requirement that the Tribe articulate a land use for each and every acre or square foot of real property in order to demonstrate a tribe's need for the lands;*
- *The Tribe seeks to put the proposed property into trust for the purposes of developing housing and a WWTP to serve its members;*
- *The Tribe has no plans or intentions of using the property for purposes related to gaming;*
- *The Tribe has expended considerable resources and time towards obtaining federal funding and applicable local approvals needed to begin construction of the WWTP on the Lowe Property. The WWTP approvals process has included extensive environmental review and approvals under both CEQA and NEPA;*
- *The issue of gaming is not before the BIA on the proposed acquisition. Thus, the State or County allegations that the Tribe plans to game on the Lowe Property down the road is entirely speculative;*
- *The Tribe is willing to consider a memorandum of understanding with the County – or an agreement to agree – providing a framework for a future mitigation agreement between the Tribe and County addressing any off-reservation impacts in the event the Tribe decides to engage in gaming elsewhere within Tulare County;*
- *The Tribe understands that in all likelihood, any expansion of gaming by the Tribe will require cooperation between the Tribe and local governments including the County to address appropriate mitigation of impacts through intergovernmental agreements and federal environmental review prepared specifically for a gaming project;*
- *The United States nor the Tribe can be forced to agree to any type of land use restrictions through the fee to trust process;*
- *As indicated in both CEQA and NEPA environmental review documents prepared for purposes of the WWTP, the WWTP will not service the Tribe's Eagle Mountain Casino, which will remain on the existing system;*
- *As noted in State and County comments and as illustrated by the Tribe's diligent efforts to obtain and retain federal funding for the project, moving the construction of the WWTP forward is of the utmost priority;*
- *Expiration of the Williamson Act contract takes place gradually over a nine-year period until the property is taxed at full value and the Williamson Act contract expires. Cal. Gov't Code §§ 51245;*
- *A Notice of Nonrenewal of the Williamson Act was recorded on September 22, 2005. On or before January 1, 2015, the Williamson Act contract on the Tribe's Property would expire;*

³ *Under 25 CFR § 151.10(b), among the factors the Secretary is to consider in evaluating requests for trust acquisitions is the need of the individual Indian or the tribe for additional land.*

⁴ *South Dakota, 423 F.3d at 801.*

- *Under County zoning laws, the establishment and operation of a sewage treatment facility on lands subject to a Williamson Act contract is permitted only if a special use permit ("SUP") is first secured pursuant to the County Zoning Ordinance. As such, the Tribe applied for and provided the County with all of the requisite documentation for approval of a SUP, including the requisite environmental impact studies under CEQA and NEPA;*
- *On April 24, 2013, the Tulare County Planning Commission, by Resolutions 8819 and 8820, adopted the IS/MND for the Tribe's Special Use Permit No. PSP 10-002 under CEQA subject to mitigation measures; found there were no significant environmental impacts, since any impacts have been and will be mitigated by the Tribe; approved any encroachment permits needed for project implementation; and approved the issuance of a SUP to the Tribe for the WWTP, subject to numerous conditions. The SUP has thus been approved with the caveat that the Tribe restricts use of the WWTP for residential, community buildings, and small commercial uses;*
- *The County requests a deed restriction or in the alternative, a binding agreement to enforce the SUP. The Tribe is not required to enter into a binding agreement or a deed restriction for the Tribe's Property to be accepted by the Secretary for trust status. Such restrictions are in the nature of restraints on alienation and are not permitted;*
- *"In order to protect the economic future of the Indians and to protect the Government itself against the loss and disintegration of the Indian property, it is most essential to prevent alienation of Indian lands outside of Indian ownership" and the United States has a duty "to hold the acquired Indian lands so as to prevent continued alienation."*⁵;
- *With respect to zoning, both the State and the County agree that the WWTP is consistent with the Williamson Act designation once a SUP is issued to the Tribe. The County has approved the Tribe's SUP subject to certain conditions. Now that the dispute over a sovereign immunity waiver appears to be resolved, the SUP should issue and any WWTP constructed pursuant to the SUP is fully permitted notwithstanding the Williamson Act. Thus, the current and future use of the Tribe's Property is fully compatible with the Contract; and*
- *The SUP itself is issued to the Tribe directly for use and operation of the Tribe's WWTP. That facility will belong to and be owned by the Tribe as personal property, even if the land itself is held under trust title. Therefore, the Tribe would remain the holder of the permit for as long as needed, not the United States, and any violations of the permit by the Tribe are personal to the Tribe.*

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

⁵ *Hydaburg Cooperative Association and Virginia Morrison v. U.S.*, 229 Ct. Cl. 250, 255; 667 F.2d 64, 67, citing 78 Cong. Rec. 11730 (1934).

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 current properties are contiguous to the Tule River Reservation and the conveyance of this property is an important opportunity for the Tule River Tribe to “reclaim” some of its historical territory and incorporate the land back into its Tribal land holdings. The Tribe will be able to utilize its historical territory for housing, cultural purposes, and wildlife habitat: the transfer of property into trust would allow the Tribal Government to exert civil jurisdiction; and make future land use and zoning decisions.

The Tribe has approximately 1,200 acres of developable land through the Reservation. The subject property will add additional buildable land for the building of homes. According to the Indian Housing Plan (IHP) a five-year housing plan for the Tribe, 100 housing units are needed just to meet the demand for affordable housing.

The parcels are located approximately 1.2 miles from the Reservation core which includes educational facilities, recreation opportunities and the gymnasium, and access to Tribal programs. A portion of the property is suited for the operation of a wastewater treatment plant to serve the Reservation and the future development of 21-single family units.

It is our determination that the Tule River Reservation has established a need for additional lands to protect the environment and preserve the reservation.

Factor 2 - Proposed Land Use

The California Area Indian Health Service (IHS) and the U.S. Environmental Protection Agency (USEPA) Region 9 have provided funding for a wastewater system on the subject property in order to provide safe and reliable wastewater service to existing tribal homes and community facilities and for future tribal residential development. Funding for the Tule River Tribe Wastewater System is provided under the American Recovery and Reinvestment Act (ARRA), as well as HIS regular funding and the USEPA Clean Water Act Indian Set Aside Program. (HIS OEHE).

The Waste Water Treatment Plant (WWTP) and disposal fields were proposed to be constructed on approximately 37 acres. The balance of the property (839.12 acres) will be used for horse pasture under the Tribe’s Range Management Ordinance. No other land uses are proposed in the short-term for the property. Possible future uses (10-15 years in the foreseeable future) include up to 21-single family homes subject to appropriations under the Native American housing and Self-Determination Act.

The property now houses a Reservation-wide Wastewater Treatment Plant (WWTP) recently constructed in 2014. WWTP includes a treatment gallery and effluent disposal facilities. The WWTP reflects the Tribe's preferences as to the scope and nature of the proposed wastewater system, as refined through the scoping process and preparation of a Feasibility Study and Supplement by the Indian Health Service (IHS). The wastewater treatment plant became operational in early 2014 and cost approximately \$10.7 million dollars. The Tribe intends to provide connections initially to 284 homes, tribal facilities, and one business.

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 2014-2015 tax years, the total tax assessed on the subject parcels was \$13,418.54. The loss of property taxes and impact on Tulare County tax roll is equal to 0.0000816% of the assessments collected.

Pursuant to the Tribe's Tribal-State Gaming Compact, a certain portion of gaming revenues are contributed by the Tribe to the Special Distribution Fund (SDF) for payment of local government grants for such items as law enforcement, fire protection, road maintenance amongst other local government programs. Those funds are transferred to the Tulare county Indian Gaming Local Community Benefit Committee who administer the grant application process and is responsible for selecting grants pursuant to the priorities and other requirements stated by law. The 2014 funded applicants include \$108,000 to the City of Porterville for extended weekend transit service, \$40,000 for improved communications for the Tulare County Fire Department, \$265,000 for Reservation Road improvements to the Tulare County Resource Management Agency, and \$93,870 to Sierra View Local Health Care District for digital mammography equipment.

Transferring the subject property into trust will not have a significant impact on the State of California or Tulare 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.

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 by the Tribe through the Special Distribution Fund and the Tulare County Indian Gaming Local Community Benefit Committee.

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 subject property into trust.

Zoning - A Special Use Permit was granted by the County of Tulare (PSP 10-002) for the construction of a community wastewater treatment plant and disposal fields that will serve the Tule River Indian Reservation. This Special Use Permit will become null and void at the time of acceptance of the property in trust.

Williamson Act - The subject property was under a Williamson Act contract that expired on January 1, 2015 and is not a jurisdictional issue.

The land presently is subject to the full civil/regulatory and criminal/prohibitory jurisdiction of the State of California and Tulare County. Once the land is accepted into trust and becomes part of the Reservation, 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 counties 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.

Law Enforcement - The Tule River Indian Tribe has established a Tribal Police Department pursuant to the Constitution and Bylaws of the Tribe. In addition, the Tribe has entered into a Cross Deputation Agreement with the U.S. Department of the Interior, Bureau of Indian Affairs, Office of Law Enforcement & Justice Services, which provides for Tribal Peace Officers to be cross-deputized as Federal Peace Officers. Law enforcement conflicts are not anticipated.

Fire Protection – The Tule River Indian Tribe established its own structural Fire Department nine years ago to serve the fire needs of the Reservation. The fire facility is 2.2 miles from the project site. The Tribal Fire Department has assumed primary fire protection responsibilities for the site which would have a seven-minute response time. Additionally, the Tribe and the Bureau of Indian Affairs have entered into a mutual aid agreement with the Tulare County Fire Department in the event that additional mutual aid assistance is needed.

The Wildland Fire Management Plan (WFMP) completed in 2013 and was developed to assist the Tule River Fire Department and the Bureau of Indian Affairs in meeting the U.S. Department of Interior's prescribed and wildfire policies and direction. There are several inter-agency fire agreements between the Tribe and Tulare County, State of California, the USFS and CAL FIRE that would provide wildfire protection for the site.

Schools – The project site is within the Porterville Unified School District. The eventual construction of 21 single-family homes will create additional demand at educational facilities. However, if the subject property is conveyed into trust, local school districts will be eligible for Indian Impact Aid from the U.S. Department of Education. The impact Aid law provides financial assistance to local school districts with concentrations of children residing on Indian lands, military bases, low-rent housing properties, or other Federal properties. Payments for Federal Property assist local school districts that have lost a portion of their local tax base due to the Federal ownership of the property.

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 existing Tule River Reservation. Since the property does not contain significant

merchantable timber stands, the National Indian Forest Resources Management Act of 1990 (P.L. 101-630) would not apply. Therefore, any additional responsibilities resulting from this transaction will be minimal.

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 August 4, 2014, 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 3, 2013 and ending July 3, 2013. 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 22, 2013.

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 Tule River Indian Tribe of the Tule River Reservation, California in accordance with the Indian Reorganization Act of 1934 (25 U.S.C. § 465). The applicable regulations are set forth in the Code of Federal Regulations, Title 25, INDIANS, Part 151, as amended.

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

DISTRIBUTION LIST

cc: BY CERTIFIED MAIL – RETURN RECEIPTS REQUESTED TO:

California State Clearinghouse (ten copies) – 7013 2630 0001 5558 3597
Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

Ms. Sarah J. Drake, Deputy Attorney General – 7013 2630 0001 5558 3603
State of California
Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

Mr. Joe Dhillon – 7013 2630 0001 5558 3610
Senior Advisor for Tribal Negotiations
Office of the Governor
State Capitol Building, Suite 1173
Sacramento, CA 95814

U.S. Senator Dianne Feinstein – 7013 2630 0001 5558 3627
331 Hart Senate Office Building
Washington, DC 20510

Tulare County Office of Public Works – 7013 2630 0001 5558 3634
291 N. Main St.
Porterville, CA 93257

Tulare County Board of Supervisors – 7013 2630 0001 5558 3641
2800 W. Burrel Avenue
Visalia, CA 93291

Tulare County Tax Assessor – 7013 2630 0001 5558 3658
221 S. Mooney Blvd., 104E
Visalia, CA 93291

Tulare County Fire Department – 7013 2630 0001 5558 3665
1968 S. Lover's Lane
Visalia, CA 93292

Tulare County Sheriff's Department – 7013 2630 0001 5558 3672
County Civic Center
Visalia, CA 93291

California Department of Forestry & Fire Protection – 7013 2630 0001 5558 3689
P.O. Box 798
Springville, CA 93265

Regular Mail:

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

Email:

Assistant Secretary- Indian Affairs

Office of the Secretary, Interior

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

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

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

§4.306 Time for payment.

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

§4.307 Title.

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

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

§4.308 Disposition of income.

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

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

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

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

§4.310 Documents.

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

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

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

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

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

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

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

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

§4.311 Briefs on appeal.

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

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

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

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

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

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

§4.312 Decisions.

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

§4.313 Amicus Curiae; intervention; joinder motions.

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

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

§ 4.314 Exhaustion of administrative remedies.

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

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

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

§ 4.315 Reconsideration.

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

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

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

§ 4.316 Remands from courts.

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

§ 4.317 Standards of conduct.

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

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

§ 4.318 Scope of review.

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

APPEALS TO THE BOARD OF INDIAN
APPEALS IN PROBATE MATTERS

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

§ 4.320 Who may appeal.

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

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

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

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

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

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

§4.321 Notice of transmittal of record on appeal.

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

§4.322 Docketing.

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

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

§4.323 Disposition of the record.

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

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

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

§4.330 Scope.

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

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

- (1) Tribal enrollment disputes;

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

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

§4.331 Who may appeal.

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

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

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

(c) Where otherwise provided by law or regulation.

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

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

(1) A full identification of the case;

(2) A statement of the reasons for the appeal and of the relief sought; and

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

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

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

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

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

§4.333 Service of notice of appeal.

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

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

§4.334 Extensions of time.

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

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

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

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

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

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

§4.336 Docketing.

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

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

§4.337 Action by the Board.

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

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

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

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

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

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

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

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

§4.340 Disposition of the record.

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

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

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

§4.350 Authority and scope.

(a) The rules and procedures set forth in §§4.350 through 4.357 apply only to the determination through intestate succession of the heirs of persons who died entitled to receive compensation under the White Earth Reservation Land Settlement Act of 1985, Public Law 99-264 (100 Stat. 61), amended by Public Law 100-153 (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: