

associated with the construction of two water tanks over a 7.15-acre (ac) project site in Orcutt, Santa Barbara County, California. The project site incorporates a 1.3-mile waterline segment, two water tanks, and an existing staging area. The waterline segment will be constructed within an existing road and will not impact California tiger salamander upland or aquatic habitats. The water tanks will be constructed on 0.68 ac of undeveloped lands that support annual grasslands and coyote brush scrub. The water tank site supports suitable California tiger salamander upland habitat. The applicant developed the draft HCP as part of their application for an ITP. The Service prepared a draft low-effect screening form and environmental action statement in accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) to evaluate the potential effects to the natural and human environment resulting from issuing an ITP to the applicant. We invite comments from the public and Federal, Tribal, State, and local governments on all of these documents.

Background

The Service listed the Santa Barbara County DPS of the California tiger salamander as endangered on September 21, 2000 (65 FR 57242). Section 9 of the ESA prohibits take of fish and wildlife species listed as endangered (16 U.S.C. 1538). Under the ESA, “take” is defined to include the following activities: “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” (16 U.S.C. 1532). Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), we may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered species are in the Code of Federal Regulations (CFR) at 50 CFR 17.22. Issuance of an ITP also must not jeopardize the existence of federally listed fish, wildlife, or plant species, pursuant to section 7 of the ESA and 50 CFR 402.02. The permittee would receive assurances under our “No Surprises” regulations (50 CFR 17.22(b)(5)).

Proposed Activities

The applicant has applied for a permit for incidental take of the Santa Barbara County DPS of the California tiger salamander. The take would occur in association with the construction of two

water tanks permanently impacting 0.68 ac in Orcutt, Santa Barbara County, California, over a 7.15-acre (ac) project site in Orcutt, Santa Barbara County, California. The project site incorporates a 1.3-mile waterline segment, two water tanks, and an existing staging area. The waterline segment will be constructed within an existing road and will not impact California tiger salamander upland or aquatic habitats. The water tanks will be constructed on 0.68 ac of undeveloped lands that support annual grasslands and coyote brush scrub that supports suitable California tiger salamander upland habitat.

The HCP includes avoidance and minimization measures for the Santa Barbara County DPS of the California tiger salamander and mitigation for unavoidable loss of habitat. As mitigation, the applicant proposes to purchase credits from a Service-approved conservation bank.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22), and National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Stephen Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2231A2100DD/AAK001030/
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HEARTH Act Approval of Miccosukee Tribe of Indians Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Miccosukee Tribe of Indians Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into agriculture, business, and wind and solar leases without further BIA approval.

DATES: BIA issued the approval on December 23, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Carla Clark, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, carla.clark@bia.gov, (702) 484-3233.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal Leasing regulations, including an environmental review process, and then must obtain the Secretary’s approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior’s (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Miccosukee Tribe of Indians.

II. Federal Preemption of State and Local Taxes

The Department’s regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR

162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation v. Thurston County*, 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because “tax on the payment of rent is indistinguishable from an impermissible tax on the land.” See *Seminole Tribe of Florida v. Stranburg*, 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of “traditional notions of Indian self-government,” requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department’s leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress’s overarching intent was to “allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.” 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes “flexibility to adapt lease terms to suit [their] business

and cultural needs” and to “enable [Tribes] to approve leases quickly and efficiently.” H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. See *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that “[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding”). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. See *id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA’s surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. See 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests

may be subject to taxation by the Micosaukee Tribe of Indians.

Bryan Newland,

Assistant Secretary—Indian Affairs.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOG000000–L18200000–234L1109AF]

Northwest Resource Advisory Council Schedule of Quarterly Public Meetings, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Colorado’s Northwest Resource Advisory Council (RAC) is announcing three public meetings.

DATES: The Northwest Colorado RAC will meet in 2023 as follows:

- The RAC will host a field tour on January 25 and a meeting on January 26.
- The RAC will host a field tour on June 21 and a meeting on June 22.
- The RAC will host a field tour on October 4 and a meeting on October 5.

All field tours will be held from 10 a.m. to 4 p.m. but may conclude earlier depending on the needs of the group. All meetings will be held from 8 a.m. to 3 p.m. All field tours and meetings are open to the public.

ADDRESSES:

- The January 25 field tour will commence at the Grand Junction Field Office, 2815 H Road Grand Junction, CO 81503. Attendees will then travel to McInnis Canyons National Conservation Area. The January 26 meeting will be held at the Grand Junction Field Office.

- The June 21 field tour will commence at the Kremmling Field Office, 2103 E Park Ave., Kremmling, CO 80459. Attendees will then travel to the Upper Colorado River Special Recreation Management Area. The June 22 meeting will be held at the Kremmling Field Office.

- The October 4 field tour will commence at the White River Field Office, 220 E Market St., Meeker, CO 81641. Attendees will travel to the Hunter Fire burn scar. The October 5 meeting will be held at the White River Field Office.