



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

2012 JUN 22 PM 12:49

FILED
EPA REGION VIII
TREASURY BLDG

Ref: 8ENF-L

HAND-CARRIED

The Honorable Elyana R. Sutin, Regional Judicial Officer
U.S. Environmental Protection Agency, Region 8 (RC)
1595 Wynkoop Street
Denver, CO 80202-1129

Re: In the Matter of Lake Sakakawea &
Associates, LLC
Docket No. CWA-08-2011-0017
Response to Order to Clarify and
Supplement the Record

Dear Judge Sutin:

This letter responds to your Order to Clarify and Supplement the Record (Order) issued in the above-referenced matter on May 24, 2012. Specifically, I am writing to clarify the correct acreage of the Indian allotment where the Eagle Catch Casino & Resort Site (Site) was proposed and initially developed.

The Order states that the court cannot discern the correct acreage at issue due to a discrepancy in the Complainant's reference to the Indian allotment where the Site was planned for development and underwent initial construction before the project was permanently discontinued in the fall of 2008. It notes that while the Complaint, dated June 22, 2011, refers to the Indian allotment as 25 acres, the Memorandum in Support of Motion for Default (Support Memorandum) accompanying the Complainant's Motion for Default, dated April 2, 2012, states that the Indian Allotment is 75 acres.

With apologies to the court for the error, the correct size of the Indian allotment where the Site was to be developed is 25 acres. Please refer for verification to the enclosed Title Status Report, United States Department of the Interior, Bureau of Indian Affairs, for land owned by Dale Little Soldier located in Section 17, Township 146 North, Range 88 West, Mercer County, North Dakota, Fort Berthold Indian Reservation.

As a further point of clarification, please note that the Site disturbed approximately 12 acres within Mr. Little Soldier's allotment. (See Respondent's Response to Feb-01-2010 letter, nos. 7(b) and (c); Complaint, p. 7, Paragraph 33; Support Memorandum, p. 3, 1st paragraph, 3rd sentence, p. 12, last paragraph, 1st sentence, and p. 13, 1st paragraph, 3rd sentence. The overall

size of the allotment was included in the General Allegation section of the Complaint for background purposes but is not critical to the Complainant's prima facie case.

Nor is the overall allotment size critical to the Complainant's penalty calculation. The Complainant did not take into consideration the size of the allotment in calculating the proposed penalty amount. The penalty solely was calculated in accordance with the statutory factors set forth in section 309(g)(2)(B) of the Act, including the nature, circumstances, extent and gravity of the violation, ability to pay, prior history degree of culpability, economic benefit, and other matters as justice may require. (See Declaration of Natasha Davis.) As a result, the \$84,000 penalty proposed in the Complaint for the alleged 402 violation of the Clean Water Act is not affected by the Complainant misstating the total acreage of Mr. Little Soldier's Indian allotment in the Memorandum in Support of Motion for Default.

On behalf of the Complainant, the undersigned attorney represents to the court that the record is sufficient for determining whether to grant the Complainant's Motion for Default, filed April 3, 2012, including finding the Respondent liable for the violations alleged and ordering the penalty sought.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Amy Swanson', with a long horizontal flourish extending to the right.

Amy Swanson
Senior Attorney

Enclosure

cc: Mr. Dale Little Soldier, Lake Sakakawea & Associates, LLC

RE. ID: TA00071R
REQUESTOR: ALABATTE

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
TITLE STATUS REPORT
TITLE INTERESTS HELD IN FEE OR TRUST

PAGE: 1
DATE: 2/17/2006
CST TIME: 8:54:07

605-226-7393

TRACT ID	TITLE	STATE	MERIDIAN	LAND AREA	RESOURCES	DATE OF LAST
RES PFX NUMBER SFX	PLANT					CERTIFICATION / VERIFICATION
301 5419	ABERDEEN	NORTH DAKOTA	Fifth Principal	FORT BERTHOLD	Surface	2/16/2006

SEC TOWNSHIP RANGE COUNTY
17 146.00N 088.00W MERCER

LEGAL DESCRIPTION

ACRES
25.000

CUM. LAND DESCRIPTION NOTES
ACRES REMARK OR EXPLANATION
25.000 MINERALS RESERVED.

METES & BOUNDS DESCRIPTION:

BEGINNING AT THE SE CORNER OF SAID SWSW; THENCE WESTERLY ALONG THE
SOUTH LINE OF SAID SEC. 17 TO THE SW CORNER THEREOF; THENCE
NORTHEASTERLY TO THE NW CORNER OF SAID WWSW; THENCE EASTERLY ALONG
THE NORTH LINE OF SAID WWSW TO THE NE CORNER THEREOF; THENCE
SOUTHWESTERLY TO THE POINT OF BEGINNING.

TOTAL SECTION ACRES: 25.000 25.000

OWNER	DOCUMENT	NAME IN WHICH ACQUIRED FRACTION OF TRACT	AGGREGATE SHARE	AGGREGATE
TRB NUM/DOB TYP OT INT	CLS TYP NUMBER	(SURNAME/FIRST NAME) (+/-) AS ACQUIRED	CONVERTED TO LCD	DECIMAL
301 U001045 I T A 10	20909---	LITTLE SOLDIER	1	1
6/19/1938		DALE	1	1 1.0000000000
			IN TRUST:	1
				1 1.0000000000
			IN FEE:	0
				1 .0000000000
			TOTAL:	1
				1 1.0000000000

NO SPECIAL INTEREST SEPARATELY RECORDED

TITLE IS SUBJECT TO THE FOLLOWING ENCUMBRANCES AND NOTES:

NO TRACT NOTES FOUND.

REPORT CONT. . . .

0002/010

BIA LTRO

02/17/2006 09:29 FAX 605 226 7654

0003/010

RE: A-ID: TA0007IR
REQUESTOR: ALABATTEUNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
TITLE STATUS REPORT
TITLE INTERESTS HELD IN FEE OR TRUSTPAGE: 2
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RES PFX NUMBER SFX	PLANT					CERTIFICATION / VERIFICATION
301 5419	ABERDEEN	NORTH DAKOTA	Fifth Principal	FORT BERTHOLD	Surface	2/16/2006

NO REALTY DOCUMENTS FOUND.

NATURE OF ENCUMBRANCE	ENCUMBRANCE HOLDER	EXPIRATION DATE	DOCUMENT CLS TYP NUMBER	DESCRIPTION / EXPLANATION
DITCHES & CANALS	U.S.	PERPETUAL 01	2802--- IMAGE NO.: 0	R/W for Ditches & Canals Act of 8-30-90 (26 Stat 391). Void. See 58 ID 319, 59 ID 461.
BUSINESS LEASE	THREE AFFILIATED TRIBES	PERPETUAL 23	BS 21440--- IMAGE NO.: 0	PARTICIPATING LEASE, APPD01/09/03, 17 YRS WITH AN OPTION TO RENEW UPON RE-NEWAL OF THE TRIBAL-STATEGAMING COMPACT, 25.00 AC.

REPORT CONT. . . .

BIA LTRO

02/17/2006 09:29 FAX 605 226 7654

004/010

RL T-ID: TA0007IR
REQUESTOR: ALABATTE

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
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-----TRACT ID-----				TITLE	STATE	MERIDIAN	LAND AREA	RESOURCES	-----DATE OF LAST-----
RES	PFX	NUMBER	SFX	PLANT					CERTIFICATION /VERIFICATION
301		5419		ABERDEEN	NORTH DAKOTA	Fifth Principal	FORT BERTHOLD	Surface	2/16/2006

AS OF THE 16TH DAY OF FEBRUARY, 2006, THE FOREGOING CONSISTING OF 3 PAGES, IS A TRUE AND CORRECT REPORT OF THE STATUS OF THE TITLE TO THE REAL ESTATE DESCRIBED HEREIN ACCORDING THE OFFICIAL LAND RECORDS MAINTAINED IN THIS OFFICE.

THIS REPORT DOES NOT COVER ENCROACHMENTS, OR QUESTIONS OF LOCATION, BOUNDARY, ACCURATE SURVEY MAY DISCLOSE; RIGHTS OR CLAIMING TO BE IN POSSESSION; EASEMENT ENCUMBRANCES, INCLUDING, BUT NOT LIMITED TO IRRIGATION CHARGES, UNPAID CLAIMS, WHICH ARE NOT FILED FOR RECORD IN THIS OFFICE; ANY OTHER RIGHTS WHICH MIGHT BE PHYSICAL INSPECTION OF THE PREMISES.

EXAMINED BY

MANAGER, LAND TITLES AND RECORDS OFFICE
ABERDEEN, SD

* * * * * END OF REPORT * * * * *

BIA LTRO

02/17/2005 09:30 FAX 505 226 7654