

1 Law Offices of
2 **FRANK G. BLUNDO, JR.**
3 A PROFESSIONAL CORPORATION
4 15760 Ventura Boulevard
5 Suite 700
6 Encino, California 91436
7 Ph. 818-986-9585
8 Fax 818-789-6817
9 St. Bar No.: 79793

6 Director, Shareholder and Attorney For
7 The Santa Ynez Rancho Estates
8 Mutual Water Company, Inc.,
9 A Mutual Benefit Corporation

9 **UNITED STATES DEPARTMENT OF THE INTERIOR**
10 **OFFICE OF HEARINGS AND APPEALS**
11 **INTERIOR BOARD OF INDIAN APPEALS**

13 **In Re: June 17, 2013**
14 **DECISION BY PACIFIC REGIONAL**
15 **DIRECTOR TO APPROVE LAND**
16 **CONSOLIDATION AND**
17 **ACQUISITION PLAN OF THE SANTA**
18 **YNEZ BAND OF CHUMASH INDIANS**

[Docket No. _____]

[Not Yet Assigned]

**NOTICE OF APPEAL AND STATEMENT
OF BASIS FOR APPEAL BY SANTA
YNEZ RANCHO ESTATES MUTUAL
WATER COMPANY, INC., A MUTUAL
BENEFIT CORPORATION**

21 The Santa Ynez Rancho Estates Mutual Water Company, Inc., a Mutual Benefit
22 Corporation, with a service area contiguous to a property currently held in fee by the Santa
23 Ynez Band of Chumash Indians, and currently pending a fee-to-trust application, and also
24 contained within the Proposed "Land Consolidation and Acquisition Plan" ("Plan") approved
25 by the Regional Director of the Pacific Region of the Bureau of Indian Affairs on or about
26 June 17, 2013, hereby appeals the granting by the Regional Director of the Plan for the
27 Santa Ynez Band of Chumash Indians on 6/17/13.

28 This appeal is pursuant to 25 C.F.R. Part 2, and 25 C.F.R. Part 4, on behalf of the

1 Appellant herein which provides water services to approximately 90 residential properties in
2 the Santa Ynez Valley located as noted above. The Water Company maintains two large
3 service wells, and in addition, two large storage tanks as well as the water delivery systems
4 by underground pipe. It is directly affected by the Plan as it lies directly within the area
5 denoted by the Plan.

6 As a result of being included within the Plan, and providing necessary services to
7 the property owners within its service area, the Appellant is directly affected by the
8 approval of the Plan and therefore has standing to file this Appeal as noted above.

9 BASIS FOR APPEAL

10 1. The decision to approve the Plan by the Regional Director was erroneous
11 because the plan itself failed to comply with the National Environmental Policy Act (NEPA).
12 No analysis is contained either in the Application, or the Order for Approval, of the potential
13 environmental impact of the Plan which covers approximately 11,000 acres. The approval
14 by the Regional Director does not take into consideration the impacts of the Plan and the
15 expansion of the potential tribal trust area. The failure to comply with NEPA, the failure to
16 consider the effects of the Plan, and the failure to make any findings thereon, voids the
17 Plan and its approval.

18 2. No notice was ever provided to any interested parties, and nor were any
19 interested parties given the opportunity to comment on the proposed plan.

20 The document itself does not indicate any notice was provided to any party,
21 other than the tribe itself as to its submission or approval. The County of Santa Barbara
22 was never provided with notice of the Application, the decision, or given any opportunity to
23 comment thereon. Likewise, no other parties were provided with notice of this Application,
24 and in fact, Notice of the Application and the approval was only discovered when it was
25 contained in an enclosure in a NEPA document for a discussion before the Santa Barbara
26 County Board of Supervisors concerning a fee to trust Application for a property known as
27 Camp 4.

28 The effects of the Plan are profound in that it directly impacts any of the

1 subsequent fee to trust Applications that the tribe may pursue. As such, notice of this Plan
2 would have been of critical importance to the County and to the residents of the County.
3 No such Notice was provided. In fact, the standard of review regarding lands to be brought
4 into trust is much lower when its contained within a Plan area than otherwise. This failure
5 to give notice violated both procedural and substantive due process, and further violated
6 the regulations contained within the BIA process.

7 3. The approval of the Plan by the Regional Director was a misapplication of the
8 land consolidation Plan process, and contrary to existing law. The land contained within
9 the Plan area had never been held by Indian's interest either in trust or fee, and there is no
10 fractionalization of lands held by any tribe owners. The authority cited by the tribe in its
11 Application are totally inapplicable to the situation that exists within the approved Plan
12 area.

13 Although the tribe makes some claims on the lands when it had previously
14 been held by the Catholic church, the claim is fallacious and unsupported by either the
15 evidence or the title history on the subject properties. In this matter, other than the 99 acre
16 reservation established in 1897, upon which the Chumash currently are the beneficiaries,
17 the tribe has never held title to nor been the beneficiary of any trust holding land outside of
18 that reservation. It was a severe abuse of discretion for the Regional Director to grant the
19 Plan without evidence of land title claims or any historical information confirming Indian
20 Land Ownership.

21 4. The Regional Director further erred by accepting, without comment or review,
22 the so-called evidentiary basis for the tribes petition. The factual assertions set forth in the
23 Application are unsupported by any evidence whatsoever, and the failure to seek public
24 comment voids the decision. The land upon which the tribe sought and received approval
25 for the Plan was never land owned or in trust for any tribe. It was in fact a Spanish Land
26 Grant for the purpose of funding a college in California by the Roman Catholic Church.
27 There is no evidence that the land contained within the Plan was ever the property of the
28 tribe. Hence, there were no facts to support the Regional Director's decision.

1 5. The Regional Director failed to make any findings pursuant to 25 C.F.R.
2 Section 151.2(h) and Section 151.3(a)(1), and therefore, the decision to approve the Plan
3 was arbitrary and capricious, an abuse of discretion, and violates the law. Prior decisions
4 of the IBIA have vacated Area and Regional Director's decisions because of the failure to
5 consider all the relevant facts relating to such decision.

6 Hence, the Appellant herein, requests that the decision of the Regional
7 Director to approve the Plan be reversed and the Plan itself be vacated in its entirety as
8 having no basis in law for approval;

9 1. That any fee-to-trust applications submitted by the tribe which are based in
10 any part on the Plan be stayed until the issues contained in the Appeal are resolved.

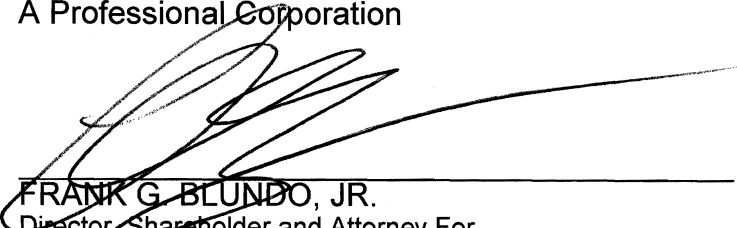
11 2. That the Plan be remanded to the Regional Director for reconsideration of the
12 Plan after proper notice and opportunity to comment by all interested parties.

13 3. That the Regional Director be required to assess the Plan pursuant to the
14 National Environmental Policy Act.

15 4. And finally, that the Plan be remanded to the Regional Director with
16 instructions for the Regional Director to reconsider the Plan after making proper factual and
17 legal findings, including, but not limited to whether land title fractionalization exists, whether
18 the claims of historical ownership are proven, and issuing proper factual and legal findings
19 which provide any support for the Plan.

20
21 DATED: September 28, 2013

22
23 LAW OFFICES OF FRANK G. BLUNDO, JR.
A Professional Corporation

24
25
26 
27 FRANK G. BLUNDO, JR.
Director, Shareholder and Attorney For
The Santa Ynez Rancho Estates
Mutual Water Company, Inc.,
A Mutual Benefit Corporation
28

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing _____ and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am _____ an Officer _____ a partner _____ a _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on _____, at _____, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Type or Print Name

Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF Los Angeles

I am employed in the county of Los Angeles, State of California.

I am over the age of 18 and not a party to the within action; my business address is: 15760 Ventura Boulevard, Suite 700, Encino, California 91436

On, September 27, 2013 I served the foregoing document described as Notice of Appeal and Statement of Basis for Appeal by Santa Ynez Rancho Estates Mutual Water Company, Inc., a Mutual Benefit Corporation on the parties in this action

X by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

X BY MAIL

I deposited such envelope in the mail at 15760 Ventura Blvd., Suite 700, Encino, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on September 27, 2013, at Encino, California.

(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, at _____, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Tamara Clawson

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

***(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

SERVICE LIST

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Legal Affairs Secretary
Office of the Governor of California
State Capitol Building
Sacramento, CA 95814

California State Clearinghouse (ten copies)
Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

Joginder Dhillon, Senior Advisor for Tribal Negotiations
Office of the Governor
State Capitol, Suite 1173
Sacramento, CA 95814

Ms. Sara J. Drake
Deputy Attorney General
State of California Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

Peter Kaufman, Esq.
Deputy Attorney General
Office of the Attorney General
P.O. Box 85266-5299
San Diego, CA 92186-5266

District Director
Office of the Honorable Dianne Feinstein
750 "B" Street, Suite 1030
San Diego, CA 92101

Salud Carbajal
County Board of Supervisors
Santa Barbara County
105 East Anapamu Street, 4th Floor
Santa Barbara, CA 93101

Janet Wolf
County Board of Supervisors
Santa Barbara County
105 East Anapamu Street, 4th Floor
Santa Barbara, CA 93101
Doreen Farr

1 County Board of Supervisors
Santa Barbara County
2 100 East Locust Avenue, Suite 101
3 Lompoc, CA 93436
4 Peter Adam
County Board of Supervisors
5 Santa Barbara County
511 E. Lakeside Parkway, Suite 141
6 Santa Maria CA 93455-1341
7 Steve Lavagnino
8 County Board of Supervisors
Santa Barbara County
9 511 E. Lakeside Parkway, Suite 141
Santa Maria CA 93455-1341
10 Chief of Police
11 Lompoc Police Department
12 107 Civic Center Plaza
Lompoc, CA 93436
13
14 Mr. Brad Vidro
City Manager
15 City of Solvang
1644 Oak Street
16 Solvang, CA 93463
17 Honorable Holly Sierra
City of Buellton
18 107 W. Highway 246
19 Buellton, CA 93427
20 Santa Barbara City Hall
735 Anacapa Street
21 Santa Barbara, CA 93101
22 City Hall, Planning Department
23 City of Santa Barbara
630 Garden Street
24 Santa Barbara, CA 93 101
25 Mr. Joseph Holland
Santa Barbara County Assessor
26 105 E. Anapamu Street, #204
27 Santa Barbara, CA 93101
28

1 Ms. Bonnie A. Ottoman, General Manager
Santa Ynez Community Services District
2 P.O. Box 667
3 Santa Ynez, CA 93460

4 Santa Ynez Valley Alliance
Post Office Box 941
5 Santa Ynez, CA 93460

6 Mr. Bob Field
7 Santa Ynez Rancho Estates
Mutual Water Company

8 5475 Happy Canyon Road,
9 Santa Ynez, CA 93460

10 Mr. Charles Jackson, Co-Chair
11 The Santa Ynez Valley Concerned Citizens
P.O. Box 244
12 Santa Ynez, CA 93460

13 Honorable Lois Capps
14 U.S. House of Representatives
30-J.-East Carrillo Street, Suite A
15 Santa Barbara, CA 93101

16 Ms. Jena A. MacLean
Perkins Coie, LLP
17 700 Thirteenth Street, N.W.
18 Washington. DC 20005-3960

19 Brenda L. Tomaras
Tomaras & Ogas, LLP
20 10755-F Scripps Poway Pkwy. #281
21 San Diego, California 92131

22 Marzulla Law, LLC
Re: Santa Ynez Band of Chum ash Mission Indians
23 1150 Connecticut Avenue, NW Suite 1050
Washington, D.C. 20036

24 Alston & Bird, LLP
25 Preservation of Los Olivos and
26 Preservation of Santa Ynez
333 South Hope Street, 161 Floor
27 Los Angeles, CA 90071-1410

28

1 County Executive Officer
County of Santa Barbara
2 105 E. Anapamu Street
3 Santa Barbara, CA 93101

4 Superintendent
Southern California Agency, BIA
5 1451 Research Park Drive, Suite 100
6 Riverside, CA 92507

7 Honorable Vincent Armenta, Chairman
Santa Ynez Band of Chumash Indians
8 P.O. Box 517
Santa Ynez, CA 93460

9
10 Bill Brown, Sheriff
County of Santa Barbara
11 4434 Calle Real
Santa Barbara, CA 93110

12
13 Senator Barbara Boxer
112 Hart Senate Office Building
14 Washington, D.C. 20510

15 Preservation of Los Olivos
P.O.L.O.
16 P.O. Box 722
Los Olivos, Ca. 93441

17
18 Kenneth R. Williams
Attorney at Law
19 980 9th Street, 16th Floor
Sacramento, CA 95814

20
21 Dennis A. Marshall, County Counsel
Kevin E. Ready, Sr., Senior Deputy County Counsel
County of Santa Barbara
22 105 E. Anapamu Street, Suite 201
23 Santa Barbara, CA 93101

24 Roy Hanley, Esq.
Solvang City Attorney
25 8930 Morro Road
26 Atascadero, CA 93422

27 James Marino, Attorney at Law
1026 Camino Del Rio
28 Santa Barbara, CA 93110

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cathy Christian, Esq.
NIELSEN MERKSAMER
1415 L Street, Suite 1200
Sacramento, California 95814

Office of the Solicitor
Pacific Southwest Region
2800 Cottage Way Rm E-2753
Sacramento CA 95825-1890

Regional Director
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825

Interior Board of Indian Appeals (original and four copies)
Office of Hearings and Appeals
U.S. Department of the Interior
801 N. Quincy Street, Suite 300
Arlington, VA 22203

- 1 Cathy McHenry
W.E. Watch, Inc.
- 2 P.O. Box 830
Solvang, CA 93464
- 3
- 4 Sharon Currie
Santa Ynez Valley Association of Realtors
1623 Mission Drive, #2
- 5 Solvang, CA 93463
- 6 G.B. Shepherd
Santa Ynez Valley Concerned Citizens
- 7 P.O. Box 244
Santa Ynez, CA 93460
- 8
- 9 Meadowlands Ranch Association
P.O. Box 606
Santa Ynez, CA 93460
- 10
- 11 A. Barry Cappello
Wendy D. Welkom
CAPPELLO & NOEL LLP
- 12 831 State Street
Santa Barbara, CA 93101
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28