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Summer King,
Statistician.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

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Navajo Nation Trust Leasing Act of 2000 Approval of Navajo Nation Regulations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: On May 16, 2014, the Bureau of Indian Affairs (BIA) approved the Navajo Nation General Leasing Regulations under the Navajo Nation Trust Leasing Act of 2000. With this approval, the Tribe is authorized to enter into leases without BIA approval.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Morales, Office of Trust Services—Division of Realty, Bureau of Indian Affairs; Telephone (202) 768–4166; Email cynthia.morales@bia.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of the Navajo Nation Trust Leasing Act of 2000

The Navajo Nation Trust Leasing Act authorizes the Nation to issue leases for purposes authorized under 25 U.S.C. 415(a) without the approval of the Secretary, provided the lease is executed under tribal regulations approved by the Secretary. Congress enacted the Leasing Act in 2000, to “establish a streamlined process for the Navajo Nation to lease trust lands without having the approval of the Secretary of the Interior for individual leases,” and “[t]o maintain, strengthen, and protect the Navajo Nation’s leasing power over Navajo trust lands.” Public Law 106–568 § 1202, 114 Stat. 2933 (Dec. 27, 2000). See also S. Rpt. 106–511 (Oct. 31, 2000). The Navajo Nation Trust Leasing Act requires the Secretary to approve tribal regulations if the tribal regulations are consistent with the Department’s leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the Act.

This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the tribal regulations for the Navajo Nation.

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 72,440, 72,447–48 (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 Navajo Nation Trust Leasing Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 465, 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)). 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 72,447–48, 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 Navajo Nation Trust Leasing

Act. The Navajo Nation Trust Leasing Act was intended to “revitalize the distressed Navajo Reservation by promoting political self-determination, and encouraging economic self-sufficiency, including economic development that increases productivity and the standard of living for members of the Navajo Nation.” Public Law 106–568 § 1202, 114 Stat. 2933 (Dec. 27, 2000). Moreover, the Navajo Nation Trust Leasing Act was the model for the HEARTH (Helping Expedite and Advance Responsible Tribal Homeownership) Act of 2012, for which 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).

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*, 134 S. Ct. 2024, 2043 (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 2043–44 (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).

Just like BIA’s surface leasing regulations, tribal regulations under the Navajo Nation Trust Leasing Act pervasively cover all aspects of leasing. Furthermore, the Federal government remains involved in the tribal land leasing process by approving the tribal leasing regulations in the first instance. The Secretary also retains authority to take “all appropriate actions . . . in furtherance of the trust obligation of the United States to the Navajo Nation” and necessary actions remedy violations of tribal regulations, including cancelling the lease or rescinding approval of the tribal regulations and reassuming lease approval responsibilities. 25 U.S.C. 415(e). 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 Navajo Nation.

Dated: November 2, 2015.

Kevin K. Washburn,

Assistant Secretary, Indian Affairs.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF ENERGY

Western Area Power Administration

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LVRWG14G0790 14XL5017AP]

Notice of Availability of the Southline Transmission Line Project Final Environmental Impact Statement (DOE/EIS-0474), New Mexico and Arizona

AGENCY: Bureau of Land Management, Interior; Western Area Power Administration, DOE.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) and the Western Area Power Administration (Western) have prepared a Final Environmental Impact Statement (EIS) for the proposed Southline Transmission Line Project (Project), and by this notice are announcing its availability.

DATES: Neither the BLM nor Western will issue a final decision on the proposed Project for a minimum of 30 days after the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: Copies of the Southline Transmission Line Project Final EIS have been sent to affected Federal, State, and local government agencies as well as to other stakeholders. Copies of the Final EIS are available for public inspection at the BLM Las Cruces District Office, 1800 Marquess Street,

Las Cruces, New Mexico 88005; the BLM New Mexico State Office, 301 Dinosaur Trail, Santa Fe, New Mexico 87508; the BLM Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004; the BLM Safford Field Office, 711 14th Avenue, Safford, Arizona 85546; and the BLM Tucson Field Office, 3201 East Universal Way, Tucson, Arizona 85756. The Final EIS and supporting documents are available electronically on the Project Web site at: <http://www.blm.gov/nm/southline>.

FOR FURTHER INFORMATION CONTACT:

Mark Mackiewicz, PMP, BLM Senior National Project Manager; telephone (435) 636-3616; email: mmackiew@blm.gov. For information about Western's involvement, contact Mark Wieringa, Western NEPA Document Manager; telephone (720) 962-7448; email: wieringa@wapa.gov. For general information on the Department of Energy's (DOE) NEPA review procedures or on the status of a NEPA review, contact Carol M. Borgstrom, Director of NEPA Policy and Compliance, GC-54, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585-0119, telephone (202) 586-4600 or toll free at (800) 472-2756, fax (202) 586-7031, email askNEPA@hq.doe.gov.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Southline Transmission, LLC (Southline), the proponent, has filed a right-of-way (ROW) application with the BLM pursuant to Title V of FLPMA, proposing to construct, operate, maintain, and eventually decommission a high-voltage, alternating current electric transmission line. The BLM and Western agreed to be joint lead agencies in accordance with 40 CFR 1501.5(b). Western is a power-marketing agency within the DOE and is also a participant in the proposed Project with Southline.

The proposed Project would consist of two sections. The first section would entail construction of approximately 240 miles of new double-circuit 345-kilovolt (kV) transmission line in a 200-foot ROW between the Afton Substation, south of Las Cruces, New Mexico, and Apache Substation, south of Willcox, Arizona (Afton-Apache or New Build Section). The second section would

entail the upgrade of approximately 120 miles of Western's existing Saguaro-Tucson and Tucson-Apache 115-kV transmission line in a 100-foot existing ROW to a double-circuit 230-kV transmission line in a 100 to 150-foot ROW (Apache-Saguaro or Upgrade Section). The Upgrade Section would originate at the Apache Substation and terminate at the Saguaro Substation northwest of Tucson, Arizona. Both new permanent ROWs and temporary construction ROWs would be required in the New Build Section and in some portions of the Upgrade Section for the transmission line, access roads, and other permanent and temporary Project components.

The proposed Project would involve the interconnection with and expansion and upgrade of 14 existing substations in southern Arizona and New Mexico, as well as the potential construction of a new 345-kV substation facility in New Mexico. The Project would also include installation of a fiber optic network communications system. Fee ownership would only be considered for substations or substation expansions; all other land rights acquired on non-federal lands would be through easements or leases. The New Build Section (Afton-Apache) would include construction and operation of:

- 205 miles of 345-kV double-circuit electric transmission line as well as associated roads and ancillary facilities in New Mexico and Arizona with a planned bidirectional capacity of up to 1,000 MW. This section is defined by endpoints at the existing Afton Substation, south of Las Cruces in Doña Ana County, New Mexico, and Western's existing Apache Substation, south of Willcox in Cochise County, Arizona;

- 5 miles of 345-kV single-circuit electric transmission line between the existing Afton Substation and the existing Luna-Diablo 345-kV transmission line;

- 30 miles of 345-kV double-circuit electric transmission line between New Mexico State Route 9 and Interstate 10 east of Deming in Luna County, New Mexico, to provide access for potential renewable energy generation sources in southern New Mexico. This segment of the proposed Project is included in the analysis, however, development of this segment would be determined at a later date;

- One potential new substation on approximately 25 acres of land in Luna County, New Mexico (proposed Midpoint Substation), to provide an intermediate connection point for future interconnection requests; and