

18-2227

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

VERNON MOODY AND ANITA MOODY,

Plaintiffs-Appellants,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee,

Appeal from the United States Court of Federal Claims,
Case No. 16-107C, Senior Judge Edward J. Damich

CORRECTED APPELLANTS' BRIEF AND APPENDIX

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CERTIFICATE OF INTEREST

Counsel certifies that the only parties represented in this matter are Vernon and Anita Moody, the real parties in interest, and that there are no corporations involved in or represented by me in these proceedings. The only attorney who appeared in the proceeding below or who will appear in the present is myself. There are no cases known to counsel to pending in this or any other court or agency that will be affected by this court's decision in the pending appeal.

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STATEMENT OF RELATED CASES

Plaintiffs are not aware of any case pending in this or any other court or agency that will directly affect or be directly affected by the decision in this case.

STATEMENT OF JURISDICTION

The Court of Federal Claims (CFC) had jurisdiction over this matter pursuant to 28 U.S.C § 2491(a)(1)&(2). The action was one involving express or implied contracts relative to leases involving Indian trust land to which the United States held legal title. The CFC dismissed the case, a final judgement, on July 10, 2018. The notice of appeal was filed and served on August 7, 2018. This Court has jurisdiction pursuant to 28 U.S.C § 1295(a)(3). Appellant's brief is due October 10, 2018.

STATEMENT OF ISSUES

1. Whether the Court has jurisdiction over a breach of contract action where the Bureau of Indian Affairs on its own without any involvement from the tribe wrongfully terminates leases of Indian trust to which the United States holds legal title in trust for the beneficiary Indian Tribe or individual Indian.
2. Whether the Complaint stated a claim where the Bureau of Indian Affairs terminated leases then revived and breached them.
3. Whether the Complaint stated a taking claim if the Court can and does

assume with the concurrence of the plaintiff that the Bureau of Indian Affairs did not violate any regulation in so doing.

STATEMENT OF THE CASE

Vernon and Anita Moody (plaintiffs) commenced this case on or about January 21, 2016. Appx 13, DT 1. The government moved for dismissal on the grounds of lack of jurisdiction and failure to state a claim upon which relief could be granted. Both parties submitted briefs in support of their positions and oral arguments were conducted. Plaintiffs filed an amended complaint on January 1, 2017. The case was transferred from Judge Firestone to Judge Damich and further briefing was requested from both parties by Judge Damich. On or about October 13, 2017, Judge Damich granted the government's motion to dismiss count I for lack of jurisdiction and counts II and III were dismissed for failure to state a claim upon which relief can be granted. Appx 1-10. The government was directed to file an answer to count IV. Subsequent to the answer being filed, the parties on June 28, 2018 stipulated to dismissal of count IV and entry of final judgment. Appx 17, DT 46. The court dismissed the action on July 20, 2018. Appx 11.

STATEMENT OF FACTS

A. Overview

This controversy involves Indian trust land on the Pine Ridge Indian

Reservation in southwestern South Dakota, the second largest Indian reservation in the country when measured by acres. The legal title to the trust land is held by the United States for either Indian tribes or individual Indians as beneficiaries of the trust. 25 C.F.R § 162.004 (definition of trust land). As trustee and legal owner of the land held in trust, the land cannot be transferred, sold, leased, rented, or otherwise utilized without permission and approval of the United States. See, e.g., 25 U.S.C § 415; 25 C.F.R part 162.

B. Complaint

Plaintiffs, as set out in the complaint, were leasing the land set out in the 5 leases described in the complaint in the year 2011. Amended Complaint (AC) ¶¶ 5-6, Appx 91-92. These leases were for a period of 5 years commencing in 2011. Id. After completing the second year of the leases, in November, 2012, plaintiffs began to settle up for the year 2012 so that they could proceed with year 2013. AC ¶ 9, Appx 92. They had the money in hand to pay for the leases. AC ¶ 10, Appx 92. Following Bureau of Indian Affairs's (BIA) instruction, they sent \$25,000 to the BIA collection repository. AC ¶ 9, Appx 70-71, 92. They knew further amounts would be due. AC ¶ 10, Appx 92. The \$25,000 was returned to plaintiffs and the BIA said the full amount was due, but would never tell plaintiffs the dollar value of the full amount, even though plaintiffs made numerous requests

for that amount. AC ¶ 12-14, Appx 92-93. Finally in February, 2013, plaintiffs were told the total amount was \$43,465.64. AC ¶ 15, Appx 74-75, 93. Plaintiffs sent that amount to the BIA repository. AC ¶16, Appx 93. Nevertheless, the BIA threatened to cancel two of the leases even though the BIA had the lease money in the amount of \$43,465.64. AC ¶ 17, Appx 93.¹ In April, 2013, the BIA returned the check in the amount of \$43,465.64 to plaintiffs and instructed plaintiffs that a cashier's check would be required. AC ¶ 18, Appx 74, 93.² On April 22, 2013, plaintiff Vernon Moody handed the Superintendent, Pine Ridge Agency, the cashier's check in the amount of \$43,465.64. AC ¶ 19, Appx 75, 93. Almost simultaneously, plaintiffs were informed that 4 of the leases were going to be terminated.

¹ From the time that leases were first entered into in 2011, the Superintendent told plaintiffs that no bonding would be required, presumably because payment was to be a percentage of crops, no crop insurance report was needed, and that any crops would be sold immediately after harvesting making the need for warehouse receipts unnecessary. Moreover, if there were no crops harvested, there would be no warehouse receipts.

² The requirement of a certified check is not required by the regulations. 25 CFR 162.227 (b) (1). This was the first step in a long saga of unreasonable conduct by the BIA in this case.

Id. ³ Plaintiff Vernon Moody went to the BIA Pine Ridge Agency Office and inquired whether plaintiffs should appeal the notice of cancellation because they had paid the \$43,465.64. AC ¶ 20, Appx 93. ⁴ The BIA Superintendent advised that the leases were paid and plaintiffs should proceed to farm the leases under the terms of the written leases, but declined to put anything in writing being of the opinion that no writing was needed. ⁵ Id. Plaintiffs, acting on the basis of their written leases confirmed by the oral affirmation of the Superintendent, proceeded to farm the land investing substantial amounts of money in chemicals, seed corn, fuel, and other necessities of the farming operation. AC ¶ 21, Appx 82, 93. Plaintiffs then received trespass notices from the BIA in June, 2013. AC ¶ 22,

³ Appx 76, 78, and 80, dated April 18, 2013, contain erroneous information. On April 4, 2013, Appx 72, BIA sent a letter to Vernon Moody, but not to Anita Moody, stating that if lease monies were not paid within 10 business days after receipt on April 10, 2013, the leases 1 and 2 would be would be canceled. But the BIA had plaintiffs' personal check in their possession in the amount of \$43,465.64 since February 28, 2013, Appx 93 ¶ 16, and cashier's check since April 22, 2013, within 10 business days. Appx 75, 93 ¶ 19. The money due was in possession of the BIA.

⁴ After handing the cashier's check to Superintendent Bob Ecoffey, plaintiff Vernon Moody asked Ecoffey the procedures for making a verbal appeal of the lease terminations. Ecoffey said no appeal was necessary; the check took care of everything; and that Moody should get the farming done. Appx 93, ¶ 20.

⁵ None of the letters of April 4, Appx 8, or April 18, 2013, Appx 76, 78, and 80, are signed by either Harold Compton or Bob Ecoffey, rather they are only stamped. Additionally, Harold Compton's signature is forged.

Appx 93. Plaintiff Vernon Moody went to the BIA Pine Ridge Agency Office and spoke with Cleve Her Many Horses, who had succeeded the previous Superintendent. AC ¶ 23, Appx 94. The Superintendent told plaintiffs he was going to follow the previous decision by the former Superintendent who had orally reaffirmed the written leases and that plaintiffs should continue to farm. Id. Plaintiffs called the BIA Great Plains Regional Office in Aberdeen, South Dakota, to confirm that they could continue to farm and were told that they could. AC ¶ 24, Appx 94. Plaintiffs based on oral reaffirmation of the leases, invested substantial funds into farming the trust land. AC ¶¶ 27-29, 31, Appx 82, 94. A short time after that, Superintendent Her Many Horses and his agents told plaintiffs to remove their belongings and cease farming and canceled their leases to Moody's financial ruin. AC ¶ 25, Appx 94. Plaintiffs were never reimbursed for the substantial costs incurred and profits that likely would have resulted from sale of the crops which they had planted for the time remaining on the leases. AC ¶ 27-29, 31, Appx 84, 85, 86, and 94.⁶

The amended complaint in this case reflects that all communication, administration, decisions, directions, and payment of monies forming the basis of

⁶ Plaintiffs never received a notice of cancellation after they were told to continue farming except appx 83 on lease T367B-12-16.

the present action was by, with, and to the BIA, not the Oglala Sioux Tribe or individual Indians. See 25 C.F.R § 162.108. Neither the Tribe or individual Indians had any participation in the leasing process from start to finish.

SUMMARY OF ARGUMENT

The CFC erred in holding that there is no jurisdiction over Count I of the complaint. Appx 4-7. The United States held legal title to the real property and was privy to the leases. The BIA exercised its authority over, exclusively administered, and took all action in wrongfully canceling the leases and as trustee can be held liable for its conduct. As to Count II of the complaint, the BIA canceled the leases and then orally revived them on the same terms as the original leases. BIA had authority to revive the leases, written agreements were in existence, the parties agreed to the revival, and there was no need to appeal the original cancellation. A claim upon which relief could be granted was alleged and the CFC erred in holding otherwise. Appx 7-9. As to Count III, an adequate claim was alleged for a Fifth Amendment taking. Plaintiffs could bring their taking action based on the premise that the BIA's taking actions were lawful without previously administratively challenging the lawfulness of the such taking. The claim should not have been dismissed. Appx 9-10.

ARGUMENT

A. Lower Court Ruling.

The Court of Federal Claims (CFC) determined that in Count I the Bureau of Indian Affairs (BIA) was not a party to or in privity with the leases between the plaintiffs and Oglala Sioux Tribe (OST), only holding legal title to the land as trustee, and therefore the CFC lacked jurisdiction over the action, citing primarily O'Bryan v. United States, 93 F3d Fed. Cl. 57, aff'd 417 Fed. App'x x 979, and United States v. Algoma Lumber Co., 305 U.S. 415 (1939). Appx 4-7. As to Count II, the CFC held that there could be no new implied in fact or oral leases created pertaining to the leases when an express contract was still in existence, citing Trauma Serv. Grp. v. United States, 104 F3d 1321, 1326 (Fed. Cir. 1997), and Seven Resorts, Inc. v. United States, 112 Fed. Cl. 745, 780 (2013). Appx 7-9. And, lastly, the CFC determined that there could be no taking claim because plaintiffs' claimed that the United States violated a regulation. A taking claim can only be premised on authorized and lawful action. Appx. 9-10.

The last paragraph of Judge Damich's opinion at Appx. 10 sets forth the following:

A final note: This Court has ruled in the Defendant's favor on this Motion; however, it has a lingering doubt about the justness of this decision, despite the fact that it is confident that the decision is in accordance with the law. All of the actions pertaining to the lease, once executed, were performed by

the BIA. The Oglala Sioux Tribe seems to have done nothing but appear in and sign the leases. Yet, the *Algoma* decision instructs courts to ignore the massive involvement of the BIA in the management of Indian affairs and focus instead on the narrow language of the leases. It appears that the only persons that the Moodys dealt with regarding the leases were BIA officials. The BIA officials – not the Tribe – sent notices of violations and letters of cancellation. The BIA officials told the Plaintiffs to continue to farm the land (if this allegation is true). Under these circumstances, it seems that a reasonable person would take the officials at their word and continue to farm the land. Something is wrong here, when the law requires the Court to focus entirely on the technicality that the tribe is the lessor and to ignore the BIA officials who are the real actors. One is reminded of the *Wizard of Oz* movie: “Pay no attention to the man behind the curtain!” Nevertheless, in the end, it is not this Court’s role to make law or to ignore binding authority.

B. Standard of Review.

The Claims Court dismissed Counts I for lack of jurisdiction. Counts II and III were dismissed for failure to state a claim upon which relief can be granted.

Questions of law are reviewed de novo. E.g., Salve Regina College v. Russell, 499 U.S. 225, 238 (1991). Lack of jurisdiction determinations involve questions of law, which are reviewed de novo. E.g., Dainippon Screen Mfg. Co. Ltd. v. CFMT, Inc., 142 F3d 1266, 1269 (Fed. Cir. 1998); Hunter Douglas Inc. v. Harmonic Design, Inc., 153 F3d 1318, 1325 (Fed. Cir. 1998); Puryear v. County of Roanoake, 214 F3d 514, 517 (4th Cir. 2000). Failure to state a claim determinations also involve questions of law which are reviewed de novo. E.g., Boyle v. United States, 200 F3d 1369, 1371 (Fed. Cir. 2000); Dunn v. Borta, 369 F3d 421 (4th Cir. 2004); Andrews v. Ohio, 104 F3d 803, 806 (6th Cir. 1997).

C. The United States Was A Party To The Leases That It Authorized With Plaintiffs And Can Be Held Responsible For Damages That Plaintiffs Suffered As A Result Of Government Action And Conduct.

The United States has a trust responsibility to protect, conserve, utilize, and manage Indian agricultural lands consistent with its fiduciary obligation and its unique relationship with Indian tribes. 25 U.S.C § 3701 (2). The Secretary is authorized to lease or permit Indian Agricultural lands. 25 U.S.C § 3715 (a); 25 C.F.R § 162.013.

All of the land encompassed within any lease is legally owned by the United States although it holds the land in trust for individual Indians or the Oglala Sioux Tribe. 25 C.F.R § 162.004 (trust and restricted land defined). A review of the leases in this case, at Appx 18-31 (exhibit 1), Appx 32-34 (exhibit 2), Appx 35-46 (exhibit 3), Appx 47-60 (exhibit 4), and Appx 61-69 (exhibit 5), AC exhibits 1 through 5 respectively, show that they are on BIA forms issued from Department of Interior, BIA, Pine Ridge Agency. The forms are stated to be leases. While the forms say the leases are “by and between the Indian or Indians named below (the Secretary of the Interior acting for and on behalf of the Indians)”, no Indian or Indians are specifically denominated as lessors in the leases. The leases at page 5 say the “lessor hereunto has caused to be attached his legal acceptance” followed by the signature of the BIA official under seal. The

leases give plaintiffs the right to use the described real property in consideration of sharing the proceeds of planted crops. The leases state that the land forming the basis for each lease is held in trust or restricted status by the United States, the legal owner of the trust lands and the only entity that can authorize any lease of the land. Appx 21, ¶ 26. The United States charges and receives administrative fees. Appx 18 ¶ 2; Appx 21, ¶ 20. Cancellation and violation procedures are those promulgated by federal law. Appx 18, ¶ 2; Appx 20, ¶ 10. Only the BIA can authorize the purchase of crop shares, Appx 19, ¶ 4, and approve subleases and assignments. Appx 19, ¶ 5. All disputes under reservations are made by the BIA. Appx 19, ¶ 6. All aspects and obligations of the leases are binding upon all parties, including the United States. Appx 20, ¶ 12. The United States is specifically said not to be responsible for any damage to lessee. Appx 20, ¶ 14. BIA has the right to enter the leases at any time. Appx 20, ¶ 16. All lease payments are to be made to the BIA unless direct payments to others are authorized. Appx 21, ¶ 23. All insurance payments are to be made to the BIA. Appx 21, ¶ 4-A.

A lessee is defined “as a person or entity who has acquired a legal right to possess Indian land by a lease.” 25 C.F.R § 162.003 (lessee defined). A lease is defined as a written contract between Indian landowners (the United States as

legal owner and Indians as beneficiaries) and a lessee (Moody's). 25 C.F.R. § 162.003 (lease defined). The lease is recorded in the BIA Land and Title Records Office (LTRO). 25 C.F.R. § 162.004 (b) (2) (iii). Reference is made in the regulations to "owners" of the land, which encompasses the United States as title holder. 25 C.F.R. § 162.005. The BIA can grant leases. 25 C.F.R. § 162.209 (on behalf of individual landowners where necessary to protect their interests) and 25 C.F.R. § 210 (authority to grant permits). It can also enforce the provisions of or cancel a lease or permit. 25 U.S.C. § 415 (h) (7).

A contract is defined as an agreement between two or more persons which creates an obligation to do or not to do a particular thing. Black's Law Dictionary 322 (Sixth Edition 1999). The leases in this case are clearly contracts. The leases were issued pursuant to federal law that was published in the Federal Register under the APA and have the force of law. See Anderson v. Eby, 998 F.2d 858, 863 (10th Cir. 1993).

The United States claimed, and the CFC agreed, that the leases in this case were only between Indian owners and plaintiffs in this case. The facts and law show differently. One, the leases at issue do not anywhere on their face even mention specific owners. Two, the leases are signed by BIA with the proviso that "lessor hereunto has caused to be attached his legal acceptance." E.g., Appx 22.

Pine Ridge Agency officials are the Secretary of Interior's designee with regard to all matters pertaining to Indian affairs on the Pine Ridge Indian Reservation, including responsibility for signing permits and leases. Where an official of the Tribe has signed any leases, there is no indication of the capacity in which the official signed. Three, the leases indicate at the top that they were issued at the BIA Pine Ridge Agency on a date certain. E.g., Appx 18. No one but the BIA has authority to issue leases of Indian land which makes it undisputable that the leases were signed and issued by the United States. The BIA did not merely approve leases issued by someone else; it signed the leases. E.g., Appx. 22. Four, the very first sentence of the leases indicate that the BIA acting on behalf of the unspecified Indians is the lessor. E.g., Appx 18. Five, the legal title to the land is held not by the landowners, but by the United States of America, and therefore any lease would have to be signed, as it is with the Moody leases, by a representative of the United States, such as its Agency Realty Officer, here Frieda Marshall. E.g., Appx 22.

The United States' sole argument that the leases are between Indian landowners and Moodys rests upon the definition of a lease under 25 C.F.R §§ 162.003 and 162.101 as being between Indian landowners and lessees. First, these definitions do not specifically exclude the United States as a required party

because of its status as legal title holder of the property. Second, the argument that the United States is not a party is belied by points raised in the preceding paragraph. Third, the definitions implicitly recognize that Indians are beneficiaries of the trust that the United States holds for them and that as beneficiaries their preferences as to their land can be honored. Four, as legal title holder to the lands held in trust, which are the subject of the leases in this case, the United States is required to enter into leases for the use of the land with third parties, such as the Moody's, to generate income for the beneficiaries. The leases by the United States as trustee are nevertheless contracts by the trustee. It is incomprehensible that any person would pay thousands of dollars for leases comprised of land held in trust if the legal title holder was not party to the leases. If the United States as trustee breaches the leases, as in this case, it can be held liable. Restatement 2d, Trusts, §§ 261-262 (trustee liable to third parties for breach of contract). See, e.g., Sherr v. Winkler, 552 F2d 1367, 1373 (10th Cir. 1977). This has to be the case where it was the United States through its BIA, not the Indians, that undertook all action to cancel the leases in question to the damage of the Moody's.

The authorities cited by the United States in support of their motion to dismiss are not applicable to this case. United States v. Algoma Lumber

Company, 305 U.S. 415 (1939), involved an effort to collect overpayments from the United States made for the purchase of lumber from an Indian school. Algoma entered into 21 individual contracts with individual allottees. The timber was sold pursuant to an agreement between Algoma and the Superintendent of the Indian school. “Neither the United States nor any officer purporting to act on its behalf is named a party to the contract.” Id. 305 U.S. 421. “As in any other case of a written contract, those who are parties to and bound by it are to be ascertained by an inspection of the document, and its provisions are controlling in the absence of some positive rule of law or provision of statute requiring them to be disregarded.” Id. 305 U.S. 421-422. Algoma has no applicability to the present case. In the present case, the United States, acting through its agents, was a party to the contract, a fact which was not present in Algoma.

Although it would seem to be rather an ordinary conclusion that a party, such as the United States in this case, who holds legal title to and enters into a contract for use of the land which it later breaches, should be held liable for contractual damages, the government in this case relies upon the American Indian Agriculture Resource Management Act (AIARMA), 25 §§ U.S. C. 3701-3746, and the regulations promulgated thereunder, for the proposition that the United States cannot be held liable for its own actions breaching an agreement because it

is acting on behalf of Indian landowners. AIARMA in the first place recognizes that the United States has a trust responsibility to manage Indian lands. 18 U.S.C § 3701 (2). There is nothing in AIARMA or the regulations under 25 C.F.R Part 162 that states that the United States though its Bureau of Indian Affairs cannot be held liable for breach of a lease that it drafted, authorized, and signed. Nothing in the leases state that the United States was not bound by the leases and obligated to honor the leases without breach on its own. Simply because AIARMA and its regulations give Indian tribes and individuals some part in leasing their land cannot overcome the fact and legal conclusion that the leases were granted and signed by BIA officials. Allowing tribes or individual Indians some say in how their land will be leased is not inconsistent with the exclusive authority of the United States to enter into leases allowing Moody's to use the land to which the United States holds legal title as occurred in this case.

The United States maintained, and the CFC agreed, that there is no privity of contract between the United States and the Moodys in this case. None of the cases cited by the United States, including Cienega Gardens v. United States, 194 F3d 1231(Fed Cir. 1998), support the contention. Privity is the connection or relationship between two parties, each having a legally recognized interest in the same subject matter, such as a transaction, proceeding, or piece of property.

Black's Law Dictionary, Ninth Edition, Garner at 1320. The United States holds legal title to the property which was leased by the plaintiffs in this case. No more classic privity could exist.

O'Bryan v. United States, 93 Fed Cl. 57 (2010), *aff'd*, 417 Fed. Appx. 979 (Fed. Cir. 2011), does not support the motion to dismiss by the United States. First, the Tribe and its agencies, including the Tribe's Allocation Committee and Land Committees, were in that case intricately involved in dealings with O'Bryan. That is not the case with Moody's. Their involvement was solely with BIA officials from the time that they entered into the leases until they were directed to remove themselves and their property from the leased land. It was the BIA officials who canceled their leases and who told them to continue farming after Moodys had tendered the required amount for the leases at issue here. Against the abovebackground of significant tribal involvement, not present in the case at bar, the O'Bryan court found that grazing regulations provide for significant control and involvement by the Tribe and individual landowners and given those facts concluded "that defendant is correct in its assertion that the permits are contracts with Indian landowners and not with the United States." *Id.* 93 Fed. Cl. 60-61, 63. Second, O'Bryan dealt with tribal grazing permits that are governed and regulated by an entirely different set of regulations than leases. Third, there are significant

differences in the facts of O'Bryan when compared to those in the present case.

Sugaro Chevrolet Inc v. United States, 77 Fed. Cl. 572 (2007), and Sangre de Cristo Development Co. v. United States, 932 F2d 891, 893 (10th Cir. 1991), are equally unavailing to the United States here. First, the United States exercised none of the extensive control in either case as compared to the control exercised over the leases that the Moody's had. Second, both cases involved only the approval and nothing else of the leases involved there. Third, it was the Tribes in Sugaro and Sangre de Cristo that claimed breach and canceled the lease (Sugaro) or sought to avoid the lease (Sangre de Cristo) not the United States as here. Moreover, unlike the present situation, in Sangre de Cristo, the United States held no property interest in the Pueblo's land. *Id.* 932 F2d 895.

In conclusion, the United States had written leases with plaintiffs and those leases were breached entitling plaintiffs to compensation. The United States has the power to take action in derogation of tribal property interests, by granting leases and rights of way on Indian lands, 25 U.S.C § 399 (granting mineral leases without tribal consent), by taking property through eminent domain, Cherokee Nation v. S. Kans. Ry. Co., 135 U.S. 641 (1890), or by disposing of Indian property without the consent of the Indian owners. Lonewolf v. Hitchcock, 187 U.S. 553, 567-568 (1903). It has the power to manage tribal and individual

property that it holds in trust. Johnson v. McIntosh, 21 U.S. 543, 592 (1823). The BIA has the management of all Indian Affairs and all matters arising out of Indian relations, 25 U.S.C § 2, including terminating leases comprised of Indian trust lands.

D. The BIA Terminated Moodys' Leases And Then Orally Revived Them On The Same Terms As Set Forth In The Terminated Written Leases.

BIA Superintendent Ecoffey and Superintendent Her Many Horses, after the BIA indicated that the leases would be terminated, made an oral agreement with Vernon Moody to continue with the farming of the trust lands under the same conditions and provisions as the original leases. See, e.g., Habert/Lummus v. United States, 36 Fed. Cl. 494 (1996), rev'd at 142 F3d 1429 on ground no oral agreement established; Narva Harris Constr. Corp. v. United States, 216 Ct Cl. 238 (1978) (quantum merit and recovery on oral implied in fact contract). This new oral agreement was entered into by federal officials who had authority to lease the land to which they had legal title after cancellation. 25 C.F.R § 162.013. See also 25 U.S.C § 2; 25 U.S.C § 9; 25 U.S.C § 415.

“To establish the existence of an oral, implied in fact contract, a plaintiff has the burden of proffering evidence establishing four criteria, the very same criteria needed to demonstrate an express contract: (1) mutuality of intent to contract (2) lack of ambiguity in offer and acceptance (3) consideration, and (4) actual

authority of the government representative whose conduct is relied upon to bind the government in contract. Trauma Serv. Group v. United States, 104 F3d 1321 (Fed. Cir. 1997); Lewis v. United States, 70 F3d 597 (Fed. Cir. 1995); City of El Centro v. United States, 922 F2d 816, 820 (Fed. Cir. 1990).” Night Vision Corp. v. United States, 68 Fed Cl. 68 Fed. Cl. 368, aff’d at 469 F3d 1369 (Fed. Cir. 2006). “An implied in fact contract is one founded upon a meeting of the minds and is inferred, as a fact, from the conduct of the parties showing, in light of the surrounding circumstances, their tacit understanding. Hamlin v. United States, 316 F3d 1325, 1328 (Fed Cir. 2003) (citation omitted). The elements of an implied-in-fact are the same as those of an oral express contract. Trauma Serv. Group v. United States, 104 F3d 1321, 1325 (Fed. Cir. 1997).” Night Vision Corp. v. United States, 469 F3d 1369, 1375 (Fed. Cir. 2006).

After the United States gave notice of termination of the lease agreements they had initially approved, it through its Superintendents orally directed the Moodys to reassume the farming operation. This constituted a new lease under the terms of the previous leases given by agents of the United States. The Moodys reassumed farming the land. They had already paid for the leases. Mutuality of intent, lack of ambiguity, consideration, and authority of the Superintendents is established. An express oral contract or implied in fact oral contract came into

being that was breached by removal of plaintiffs from the land.

The government argued that the leases were not actually canceled on April 18, 2013, as set forth in Appx 14, DT 17, AC ¶ 29. The CFC agreed. A review of Appx 76-77, 78-79, and 80-81, exhibits 11, 12, and 13 of the AC shows differently: each one says “This letter will serve as your official notification that effective April 18, 2013, (described leases) are hereby canceled for non-compliance... .” Upon receiving this cancellation Vernon Moody asked Superintendent Ecoffey if they needed to appeal and he indicated that since the leases had been paid with the certified check they should reassume farming the land. There was no need to wait 30 days or to appeal. Both Moodys and the Superintendent treated the leases as having been cancelled on April 18 and then revived on April 22, 2013. The intention of both parties was clear. The Moodys had the authority to forego any need to wait 30 days and the BIA could act upon that forbearance. The Moodys were at a crucial time in their operation. It was spring and planting had to proceed. To require them to wait 30 days would have been disastrous to the year’s farming operation.

The government argues that, because there were express contracts covering the lease of the trust property at issue, there could be no oral or implied in fact contracts covering the same leases. The government’s argument must be premised

on the conclusion that the written contracts had not been terminated, contrary to the written and oral notices given to the Moodys prior to the time that they were told to proceed with farming the leases. If that is not the government's argument, then there were no express or oral and implied in fact contracts covering the same subject matter at the same time as the government argues.⁷

⁷ That the United States was not a party to the written leases is irrelevant because the United States administers the leases pursuant to their trust responsibility and federal statutes. Thus, for example, had the Tribe breached the leases here the government's argument that they cannot be held responsible may have weight. But that is not the case. BIA employees signed all the letters alleging trespass and lease violations and did all the oral communication involving the administration of the leases, including revival after the terminations. The BIA and hence the United States is clearly liable for their own breaches of the leases and agreements with the Moodys.

Contrary to the intimation of the United States in the lower court, it was not plaintiffs' position that Cleve Her Many Horses or Diane from the Great Plains Regional Office created separate contracts from the earlier one by Robert Ecoffey. Robert Ecoffey, as Superintendent responsible for enforcement and administration of the leases, after the leases had been terminated, revived (act of restoring validity or legal force of a contract, Black's Law Dictionary, Ninth Edition) or ratified the leases on the same terms as the original leases. See Ziegler Furniture and Funeral Home v. Cicmanec, 709 NW2d 350 (2006) (ratification can be express or implied by conduct); Restatement (Second) of Contracts § 380. Clearly that was the intent of Ecoffey and reaffirmed by Her Many Horses and the Great Plains Regional Office. See Cole v. Melvin, 441 F.Supp. 193 (D. S.D. 1977) (intent of parties to be ascertained).⁸

It was also argued by the government and accepted by the CFC that oral leases are not permitted. There were originally written leases that were terminated but then orally revived on the same terms as in the previous written leases. The

⁸ However, the trespass notices on June 3, 2013, Appx 93 ¶ 22, could be viewed as an attempt to oust Moody's from the leases constituting an effective termination of the leases for the second time. Superintendent Her Many Horses and the Great Plains Regional Office revived the leases and informed the Moody's to continue farming under the same terms as originally conceived by the written leases that had been terminated.

revival was of the prior written leases. A writing was in existence. It was also argued, and accepted by the CFC in its opinion, that a terminated contract could not be revived by the BIA because authorization would have had to be given by the Indian owners. This would be redundant under the circumstances because the owners had already given their authorization to the written agreement that had been terminated but then revived on the same terms. BIA already had secured the authorization required.

The BIA has authority to terminate a written lease, as they did in this case, and then to revive and ratify anew the previous written lease.⁹ See 25 C.F.R § 162.107 (a) (In granting a lease on the landowners behalf, we will obtain a fair annual rental). 25 C.F.R § 162.108 (a) and (b), entitled “BIA’s responsibilities in administering and enforcing agricultural lands” states that “ (a) We will ensure that tenants meet their payment obligations to Indian landowners, through the collection of rent on behalf of the landowners and the prompt initiation of appropriate collection and enforcement actions.” Under (b), it states that “We will ensure that tenants comply with the operating requirements in their agricultural

⁹ The BIA clearly intended to terminate the leases prior to the time Vernon Moody hand delivered the \$43,465.64 cashiers check to replace the previous personal check he had given to the BIA for the leases. The letters indicate as much. It was clearly the BIA’s intent at that time to terminate all five leases, not just four as suggested by the United States below.

leases, through appropriate inspections and enforcement actions... . We will take appropriate action to recover possession from trespassers operating without an agricultural lease, and take other emergency action as needed to preserve the value of the land.” Ratification and revival was necessary to insure that the spring planting was undertaken so that income could be realized from the leases. The BIA Procedural Handbook at Appx 96, entitled Leasing and Permitting, Chapter 2—Agricultural Leasing, March 6, 2006, under Lease Amendment, Assignment, and Sublease, states “(t)his procedure includes processing of any subsequent amendments, assignments, subleases or other leasehold documents to an agricultural lease.” Clearly the BIA had authority to terminate the lease and then to revive or ratify it on the same conditions as in the original lease. See Martin v. Companaro, 156 F2d 127 (2nd Cir. 1946) (where contract ends and performance continues, implication arises of mutually agreed new contract).

The government argues that the BIA lacks authority to grant leases on behalf of Indian landowners. First, the issue is not whether the BIA had authority to enter into leases in the circumstances of this case, but rather whether the BIA had the authority to terminate a written lease and then to revive and ratify the terminated written lease anew. The BIA has such authority as shown above. Secondly, the Superintendents and Great Plains Regional Office had the authority

to terminate and then revive and ratify the leases that had been terminated. Under 25 U.S.C §§ 2, 9, and 415 (h) (7) (B) (enforce the provisions of and cancel leases), the BIA has management of all Indian affairs and of all matters arising out of Indian relations. Under BIA Procedural Handbook, Appx 97, under Lease Compliance at page 27 “(t)he Agency Superintendent (here Ecoffey and Her Many Horses) is responsible for ensuring lessees comply with the terms of their leases.” The Handbook at Appx 98, ¶ 2.4, says “(t)he authority of the Secretary has been delegated to the Director, Bureau of Indian Affairs, by the Assistant Secretary-Indian Affairs in 230 DM 1 and redelegated to the Regional Directors. This delegation can be reviewed in the Indian Affairs Manual Release #00-03, Part 3, Chapter 4. Unless otherwise limited, the Regional Directors may redelegate this authority at their discretion.” Superintendents at the Agency level, like Ecoffey and Her Many Horses, are given authority to administer and enforce leases, including to terminate and revive or ratify, on the Pine Ridge Indian Reservation where leases at issue in this case are located. See also, e.g., Digicon Corp. v. United States, 56 Fed. Cl.425 (2003) (institutional ratification).

The United States maintained that an implied in fact contract is prohibited because the lease agreement must be in writing. After the lease was terminated, Superintendent Ecoffey, Superintendent Her Many Horses, and Diane at the Great

Plains Regional Office revived and ratified the original lease which was in writing.

Plaintiffs also are entitled to be compensated by the United States in quantum merit. Although there was not a count that specifically alleged quantum merit, there certainly were facts pled that established the claim and such a claim certainly could not be a surprise to the United States. Quantum merit is not unlike a taking claim. On the basis of the representations of the United States to continue farming the leases, Moody's invested thousands of dollars in fuel, seed, equipment, and labor before they once again were directed by the United States to remove their persons and property from the leases. Appx 82. The fuel, seed, equipment, and labor, and the money utilized to pay for those items, were confiscated by the United States. Plaintiffs were not reimbursed for the costs and were not allowed to be paid from the sale of the crops that were grown and harvested at their expense. Plaintiffs request that they be allowed to amend their complaint on remand to make a specific claim of quantum merit if not reviewable otherwise here. See Forman v. Davis, 371 U.S. 178, 182 (1962); A & D Auto Sales v. United States, 748 F3d 1142, 1158 (Fed. Cir. 2014).

E. A Taking Claim Was Adequately Stated And Could Be Adjudicated On The Basis That The Action Taken By The BIA Was Authorized.

Plaintiffs in this case had 5 leases each for a term of 5 years. In the year 2013, the United States through its BIA notified plaintiffs that its leases would be

canceled, but then thereafter were told by 2 BIA Superintendents and confirmed by the BIA Great Plains Regional Office, that they should continue to farm the leases as they had in the past. On that basis, plaintiffs invested thousands of dollars in seed, spray, equipment, and labor to farm for 2013. After the investment had been made and farming had begun, see A & D Auto Sales, Inc. v. United States, 748 F2d 1142, 1152 (Fed. Cir. 2014) (challenged restriction after plaintiffs' property interest acquired), the United States notified plaintiffs that they were to remove their persons and all of their property from the leases forcing them to abandon all of the fruits of the farming that had commenced and basically forfeit the thousands of dollars that had been expended for seed, spray, equipment, and labor. Had plaintiffs not been informed to proceed with the farming, they would not have invested in farming operations with the risk that the leases would be terminated and their investment never realized in any fashion.

When a claim is challenged for failure to state a claim upon which relief can be granted under Rule 12 (b) (6), the court presumes that all well pleaded allegations of the complaint are true, resolves all reasonable doubts and inferences in the pleader's favor, and views the pleading in the light most favorable to the non-moving party. Fitzgerald v. Barnstable Sch. Comm., 555 U.S. 246, 249 (2009); Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007).

No claim should be dismissed merely because the trial judge disbelieves the allegations or believes that recovery is remote or unlikely. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-556 (2007). Fair notice should be given of complainant's claims and grounds therefore. Tellabs, Inc. v. Makor Issues & Rights, Ltd., supra at 319.

The Fifth Amendment of the United States Constitution prohibits the government from taking property without just compensation. U.S. Const. Am. 5. Real and tangible property can be the subject of takings claims. Conti v. United States, 291 F3d 1334, 1339-1339 (Fed. Cir. 2002). A taking can occur by physical invasion or by regulation. Lucas v. S.C. Coastal Council, 505 U.S. 1003 (1992). When evaluating whether governmental action may constitute a taking, a court employs a two part test. First, as a threshold matter, the court determines whether a claimant has identified a cognizable Fifth Amendment property interest that is asserted to be the subject of the taking. Second, if the court concludes that a cognizable property interest exists, it determines whether the property was taken. Heart Bluffs Game Ranch, Inc. v. United States, 669 F3d 1326, 1329 (Fed. Cir. 2014). A claimant seeking compensation from the government for a taking of private property must, at a minimum, assert that its property interest was actually taken by government action. Air Pegasus of D.C. v. United States, 424 F3d 1206,

1215 (Fed. Cir. 2005); A & D Auto Sales, Inc. v. United States, 748 F.3d 1142, 1150-1151 (Fed. Cir. 2014) (direct governmental appropriation, physical invasion or destruction, or ouster from their property).

In the present case, plaintiffs were deprived of the five leases in this case as well as the money that they expended to farm the land after they were told by the BIA Superintendents to proceed with farming. Leaseholds and contract rights can be the subject of a taking under the Fifth Amendment. *See* United States v. General Motors, 323 U.S. 373 (1945) (leases); Lynch v. United States, 292 U.S. 571 (1934) (contract rights); Pumpelly v. Green Bay Co., 80 U.S. (Wall) 166 (1872) (floodlands). Moreover, the government's appropriation of money itself may be the subject of a taking, as where the government seizes currency or levies upon a bank account. *See* Kitt v. United States, 277 F.3d 1330, 1336 (Fed. Cir. 2000); Small Property Owners of San Francisco v. City and County of San Francisco, 141 Cal. App. 4th 1388, 1398 (Court Appeals 2006); Ruckelshaus v. Monsanto, 467 U.S. 986 (1984) (trade secrets).

A physical taking of land occurs when the government itself occupies the property or "requires the landowner to submit to physical occupation of its land, Yee v. City of Escondido, 503 U.S. 519, 527 (1992), whether by the government or a third party. *See* Preseault v. United States, 100 F.3d 1525, 1551 (Fed. Cir.

1996) (en banc).” Forest Props, Inc. v. United States, 177 F3d 1360, 1364 (Fed. Cir. 1999) (physical taking or invasion).

Plaintiffs’ property were taken as well as the monies expended in farming after plaintiffs were informed that their leases would not be canceled and they should continue to farm the leases.

The government argues plaintiffs’ taking claims are based on a violation of regulations and the CFC agreed with the government in dismissing the taking count. The government cited Rith Energy, Inc. v. United States, 247 F3d 1355, 1365 (Fed Cir. 2001), where this Court stated as follows at 1365-1366:

In Del Rio, 246 F3d 1358 (Fed. Cir. 1998), we held that the plaintiff could bring a takings claim without first challenging the lawfulness of the government’s action, or establishing the scope of its property interest, in an administrative proceeding. That is so because a taking claim lies, as long as the government’s action was authorized, even if the government’s action was subject to legal challenge on some other ground. We explained that an uncompensated taking and an unlawful government action constitute “two separate wrongs [that] give rise to two separate causes of action,” and that a property owner is free either to sue in district court for asserted improprieties committed in the course of the challenged action or to sue for an uncompensated taking in the Court of Federal Claims. *Id.* at 1364. To proceed on the second cause of action does not require that the plaintiff first litigate, and lose, on the first. Nor is the plaintiff required to use the administrative review proceeding to establish the scope of the property right that it contends was taken. See *id.*

If the plaintiff claims that its property was taken regardless of whether the agency acted consistently with its statutory and

regulatory mandate, Del Rio stands for the proposition that the taking claim can be litigated in the Court of Federal Claims without the need to litigate the issue of lawlessness in administrative proceedings before the agency.

Plaintiffs' Fifth Amendment taking claim is not based on a violation of statutes or regulations, but on the fact that the government first canceled their leases and then subsequently instructed plaintiffs to continue farming. Acting on those representations, plaintiffs expended thousands of dollars in seed, spray, equipment, and labor to plant for the year 2013. After plaintiffs invested these monies, they were evicted and told to leave the property, which they did. They were not only deprived of the monies expended to plant the crops for 2013, but they were deprived of the value of the crops that grew and were harvested and sold by either the government or another contractor.

Plaintiffs are not asking the Court to review the validity of any administrative action, although administrative regulations offer some background to the factual circumstances surrounding the taking claim. None of the claims cited in the amended complaint ask this Court to pass on the rightness or wrongness of any administrative action. Whether the government action constituting the taking in this case was right or wrong, the government confiscated for its own use the money used to plant crops for 2013 and the subsequent value of those crops when they were harvested. Appx 82, 84-86.

The government cites the isolated phrase “contrary to applicable regulations” at 19 of its brief as the basis for its argument that plaintiffs’ taking claim is based on violation of a regulation. For the reasons stated above, the government’s magnification and inflated significance of the four words is without basis and erroneous. However, in reviewing whether plaintiffs have stated a taking claim, the court should disregard the four words “contrary to applicable regulations” and it is readily apparent that a taking claims has been properly stated and the taking count should not have been dismissed. See Court of Federal Claims Rule 15 (a) (2); Forman v. Davis, 371 U.S. 178, 182 (1962); and A & D Auto Sales v. United States, 748 F3d 1142, 1158 (Fed. Cir. 2014) (leave to amend to be granted freely).

CONCLUSION

For all the above reasons, the judgment of the CFC should be reversed and this case remanded for discovery and a trial.

Respectfully submitted this 9th day of October, 2018.



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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the page limitations of F.R.A.P. 32(a)(7)(b) and (c) and the brief contains 8204 words of text and is printed in proportional typeface of 14 points. The undersigned further certifies that the attached appendix complies with the requirements and page limits of F.C.R 30(b)(1)(2).


Terry L. Pechota

CERTIFICATE OF SERVICE

I certify that on this 9th day of October, 2018, I served upon Margaret J. Jantzen, Attorney, Civil Division, Commercial Litigation Branch, United States Department of Justice, a copy of Appellant's Brief and Appendix via CM/ECF Electronic Submission and by U.S. Mail, First Class, Postage Paid to Box 480, Washington, D.C. 20040.


Terry L. Pechota

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In the United States Court of Federal Claims

No. 16-107C
(Filed: October 13, 2017)
FOR PUBLICATION

**VERNON MOODY and ANITA
MOODY,**

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

*

*

* Partial Motion to Dismiss under RCFC 12 (b)(1)

* and 12 (b)(6); American Indian Agricultural

* Resources Management Act, 25 U.S.C. §§ 3701

* *et seq*; Bureau of Indian Affairs (“BIA”); Privity

* of Contract; Express Lease; *United States v.*

* *Algoma Lumber Co.*, 305 U.S. 415 (1939);

* 25 C.F.R. § 162.101; Oral and Implied in Fact

* Contract; *Quantum Meruit*; U.S. Const. amend. V

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OPINION AND ORDER

Damich, Senior Judge:

Before the Court is the Defendant’s partial motion to dismiss the first three counts of Plaintiffs’ four-count amended complaint for lack of jurisdiction and for failure to state a claim upon which relief can be granted. This case concerns five agricultural leases entered into between Plaintiffs and the Oglala Sioux Tribe. In their amended complaint, Plaintiffs allege that the Defendant breached the leases by terminating them for failure to submit payments and other required documentation (“Count I”), or in the alternative, by terminating five oral and implied-in-fact contracts when it ordered them to vacate the land (“Count II”), and they allege a taking of Plaintiffs’ property without just compensation under the Fifth Amendment (“Count III”). Plaintiffs also claim that the Defendant “illegally exacted” \$43,465.64 (“Count IV”).¹ The Defendant moves to have Count I dismissed for a lack of jurisdiction and Counts II and III dismissed for failure to state a claim upon which relief can be granted. The motion is fully briefed and is now ripe for decision.

For the reasons discussed below the Court **GRANTS** the Defendant’s partial motion to dismiss. Count I is **DISMISSED** for lack of jurisdiction. Counts II and III are **DISMISSED** for failure to state a claim upon which relief can be granted.

¹ In its motion Defendant does not move to dismiss Count IV.

I. Statement of Facts

A. Facts of the Case

In June 2011, Plaintiffs, Vernon and Anita Moody, entered into five-year leases for five parcels of land with the Oglala Sioux Indian landowners on their Pine Ridge Indian Reservation in South Dakota, which were approved by the BIA's Pine Ridge Agency. Def.'s Mot. at 5. All five parcels of land were located on the Indian reservation in Shannon County, South Dakota. See Am. Compl. ¶ 6. The Oglala Sioux Tribe was a signatory to all five leases; no individual Indians signed the lease. Mr. Moody was a party to the first three, and Mrs. Moody a party to the remaining two. Def.'s Mot. at 6. The leases were also signed by a BIA official as "Approving Official," e.g. Compl. at Ex. 1, and the leases were issued at the BIA Pine Ridge Agency. Pls.' Opp. at 6.

While the leases did not contain the same language, each specifically outlined that the "lessors" were the Tribe and the "lessee" was either Mr. or Mrs. Moody. Def.'s Mot. at 6. The following provision from lease 1 is identical to the language in leases 3, 4, and 5:

THIS LEASE, made and entered into on this 1st day of June 2011 by and between the Indian or Indians named below (the Secretary of the Interior acting for and on behalf of Indians), hereinafter called the LESSOR, and VERNON MOODY, 602 NORTH GREELY SCOTIA NE 68875 hereinafter called the LESSEE, in accordance with the provisions of existing law and the regulations (25 CFR 162), which, by reference, are made part hereof.

See Compl. at Ex. 1. See also Compl. at Ex. 3-5 (containing the same language, but for, the interchanging of Plaintiffs' names as lessee). Lease 2 also contains similar language:

It is hereby agreed by and between The Oglala Sioux Tribe (Lessors), and Vern Moody, 602 N. Greely St., Scocia, NE 68875, (Lessee), that Lease No. 1-T0561-11-15, described as: All of section 12-37-42, is hereby MODIFIED as follows.

Compl. at Ex. 2.

In their amended complaint, Plaintiffs claim that they made all of their land payments in 2011, but, in 2012 they allege there was some confusion concerning the amount they owed the Indian landowners. To resolve the confusion, Plaintiffs visited the BIA Pine Ridge Agency "to settle up." Am. Compl. ¶ 15. When Plaintiffs visited the BIA Pine Ridge Agency on February 27, 2013, they became aware that they owed \$43,465.64 on the 2012 leases. Am. Compl. ¶ 15. Plaintiffs claim that on the next day they wrote a personal check in that amount. Am. Compl. ¶ 16. However, between April 10 and 15, 2013, the BIA returned the check and informed them

that the payment could not be processed and requested new payment be made in the form of a money order or cashier's check.² Am. Compl. ¶ 18.

On April 4, 2013, the BIA notified the Moodys of violations, and then on April 18, 2013, the BIA sent a letter to Plaintiffs cancelling Leases 1 and 2 for failure to submit payment and bonding. Compl. at Ex. 12. On the same day, the BIA cancelled Leases 4 and 5 for failure to submit bonding and crop insurance. Compl. at Ex. 13. These documents stated that, "this letter will serve as your official notification that effective April 18, 2013, [the leases are] hereby cancelled for non-compliance." Compl. at Ex. 8. They further instructed Plaintiffs of their appeal rights and notified that the lease would officially be cancelled in thirty days, per the regulation. Compl. at Ex. 8.

After receiving the notice and letters, Plaintiffs went to the BIA Pine Ridge Agency on April 22, 2013, and provided a cashier's check in the amount of \$43,465.64 to Robert Ecoffey (the superintendent of the Pine Ridge Agency) in order to pay off the 2012 leases. Am. Compl. ¶ 19. The complaint then alleges that Mr. Ecoffey, after Plaintiffs asked him whether or not they needed to appeal the lease cancellations, told them that they did not need to appeal and they should continue to farm Leases 1, 2, 4, and 5 Am. Compl. ¶ 20. Based on this advice, Plaintiffs continued to farm the leases, but they were given a notice of trespass on June 3, 2013. Am. Compl. ¶ 22. Upon receiving this notice, Plaintiffs went to the Pine Ridge Agency and spoke with Cleve Her Many Horses (who replaced the recently retired Mr. Ecoffey as superintendent). Am. Compl. ¶ 23. Mr. Her Many Horses (and a person named Diane) then advised Plaintiffs as Mr. Ecoffey had done: continue farming the land. Am. Compl. ¶ 24. Nevertheless, shortly thereafter, Mr. Her Many Horses instructed the Plaintiffs to vacate the land. Am. Compl. ¶ 25. On July 9, 2013, the BIA also informed Plaintiffs that it was cancelling Lease 3, the final lease, for failing to submit required bonding, crop reports, and negotiable warehouse receipts. Am. Compl. ¶ 26. Plaintiffs then filed this complaint on January 21, 2016 alleging \$1,500,000 in damages for the cancellation of the five leases. Am. Compl. ¶ 27-30.

B. Statutory Framework Under 25 U.S.C. §§ 3701 et seq.

The American Indian Agricultural Resources Management Act ("AIARMA") authorizes the Secretary of the Interior "to take part in the management of Indian agricultural lands." 25 U.S.C. § 3702(2). In section 3711(a), Congress directed the Secretary to manage Indian lands to achieve several objectives. 25 U.S.C. § 3711(a). Included among the objectives is the duty to help Indian agricultural landowners to lease their lands. 25 U.S.C. § 3711(a)(6). Congress did not allow AIARMA to explicitly waive sovereign immunity, or authorize the tribal justice systems to review actions of the Secretary. 25 U.S.C. § 3712(d).

The Secretary has delegated his statutory authority to the BIA, which has in turn promulgated regulations governing agricultural leases on Indian land. The BIA regulations require Indian landowners to obtain approval from the BIA before granting leases on their lands.

² Also, on March 7, 2013, the BIA sent the Moodys a similar message stating that the check was being returned as it could not be process due to a Magnetic Ink Character Recognition error. Compl. at Ex. 9.

25 U.S.C. § 3715(a)-(b); 25 C.F.R. §§ 162.107; 162.207; 162.214. Generally, the BIA will approve any lease that is in the best interest of an Indian landowner, 25 C.F.R. § 162.214, and often defer to the Indian landowner's determination as to what is in their best interest. 25 C.F.R. § 162.107(a). The AIARMA regulations make clear that the Indian tribe has the sole authority to grant leases on their land. *See* 25 C.F.R. § 162.252(a) ("Tribes grant leases of tribally-owned agricultural land, including any tribally-owned undivided interest(s) in a fractionated tract, subject to our approval."). However, AIARMA carves out six scenarios where the BIA has the ability to lease the land on their own.³

In addition to approval authority, the BIA is the enforcement mechanism of the lease on behalf of the Indian landowners, including the cancellation. When the BIA cancels a lease for the Indian landowners, it must send a letter to the lessee detailing: the grounds for cancellation, notice of any unpaid rent, appeal rights, and an order to vacate the property within thirty days unless a timely appeal is filed. 25 C.F.R. § 162.252(c)(1)-(4). The lease is considered to be cancelled and final at the expiration of the thirty days. 25 C.F.R. § 162.254. If the land is not vacated after the thirty day notice, the continued possession of the land constitutes a trespass and the BIA will take action to recover the land. 25 C.F.R. § 162.256.

The BIA regulations define a lease as a "written agreement between Indian landowners and a tenant or lessee, whereby the tenant or lessee is granted a right to possession of Indian land, for a specified purpose and duration. Unless otherwise provided, the use of this term will also include permits, as appropriate." 25 C.F.R. § 162.101.

II. Discussion

The Defendant moves to dismiss Count I for lack of jurisdiction as it alleges that it was not a party to the express leases. Further, the Defendant claims that Count II fails to state a claim and must be dismissed because the express/written leases preclude the existence of implied in fact contracts. In addition, the Defendant alleges that Count III fails to state a proper takings claims and should also be dismissed.

A. Lack of Jurisdiction

Subject matter jurisdiction is a threshold requirement that must be determined for a court to hear the case. *Dow Jones & Co. v. Abblaise Ltd.*, 606 F.3d 1338, 1348 (Fed. Cir. 2010). When considering a motion to dismiss, the Court considers the facts alleged in the complaint to be true. *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 747 (Fed. Cir. 1988). However, the plaintiff bears the burden of establishing subject matter jurisdiction by preponderant evidence. *Taylor v. United States*, 303 F.3d 1357, 1359 (Fed. Cir. 2002). If the court finds that at any time

³ The BIA may grant agricultural leases on behalf of "(1) Individuals who are found to be non compos mentis . . .; (2) Orphaned minors; (3) The undetermined heirs and devisees of deceased Indian owners; (4) Individuals who have given us a written power of attorney to lease their land; (5) Individuals whose whereabouts are unknown . . .; and (6) The individual Indian landowners of fractionated Indian land, when necessary to protect the interests of the individual Indian landowners;" or in circumstances when land is not being used. 25 C.F.R. § 162.209.

it lacks subject matter jurisdiction, it must dismiss the action. RCFC 12(h)(3). Also, if a plaintiff fails to state a claim upon which relief can be granted, under RCFC 12(b)(6), the complaint must be dismissed. *Lindsay v. United States*, 295 F.3d 1252, 1257 (Fed. Cir. 2002) (stating that a complaint must be dismissed “when the facts asserted by the claimant do not entitle him to a legal remedy.”).

Pursuant to the Tucker Act, the Court of Federal Claims possesses jurisdiction over express or implied contracts with the United States. 28 U.S.C. § 1491(a)(1). “In other words, there must be privity of contract between the plaintiff and the United States.” *Cienega Gardens v. United States*, 194 F.3d 1231, 1239 (Fed. Cir. 1998). In this case, because there is no contract between Plaintiffs and United States, Counts I and II of the complaint must be dismissed for lack of subject matter jurisdiction. Also, because Plaintiffs fail to properly state a takings claim, Count III must be dismissed.

In its motion to dismiss Count I, the Defendant argues that it is not a party to the express leases, but merely manages it on behalf of the Indian landowners. It maintains that these specific leases are between the Moodys as lessees and the Sioux Tribe as lessors, AIARMA specifically defines a lease as a contract between the Indian tribe and lessee, and judicial precedent has held in similar situations that the BIA is not in privity of contract.

Plaintiffs respond that the Defendant is a party to the leases because the leases do not mention specific owners (i.e.: no Indian or Indians are specifically denominated as lessors in the leases), the leases are signed by BIA officials, they were issued at the BIA Pine Ridge Agency, legal title to the land belongs to the Defendant, and “the very first sentence of the leases indicate that the BIA[,] acting on behalf of the unspecified Indians[,] is the lessor.” Pls.’ Opp. at 6. Plaintiffs’ main claim is that the “BIA did not merely approve leases issued by someone else; it signed the leases.” Pls.’ Opp. at 6.

Beginning with the lease provisions, this Court holds that the Defendant is not a party to the lease. Demonstratively, each lease contains this language, “THIS LEASE, made and entered into . . . by and between the Indian or Indians named below (the Secretary of the Interior acting for and on behalf of Indians), hereinafter called the LESSOR, and VERNON MOODY” This language specifically names three parties: the “Indian or Indians,” the Secretary of the Interior, and Vernon Moody (or Anita Moody depending on the specific contract). However, the contract states that “the Secretary of the Interior [is] acting for and on behalf of the Indians.” Thus, although the Secretary is mentioned in the lease, subsequent language clarifies that his or her role is as a fiduciary. The combination, on the one hand, of the language that the Indians and the Moodys are the lessors and lessees respectively with, on the other hand, the language of the Secretary’s fiduciary role, leads the Court to the conclusion that the Defendant is not in privity of contract with the Moodys. The Court’s conclusion is bolstered by that fact that the regulations explicitly define a lease as a “written agreement *between Indian landowners and a tenant or lessee*, whereby the tenant or lessee is granted a right to possession of Indian land, for a specified purpose and duration.” 25 C.F.R. § 162.101. The Court does not consider it significant that individual Indians were not signatories to the lease, as the regulations permit tribes to be lessors. 25 C.F.R. § 162.101. Nor, given the language of the lease discussed above, is it significant that

the lease form was provided by the BIA and that the lease was executed at the BIA Pine Ridge Agency.

In addition to the lease, statutory, and regulation language, the Defendant relies on two cases: *O'Bryan v. United States*, 93 Fed. Cl. 57 (2010), *aff'd* 417 Fed. App'x 979 (Fed. Cir. 2011), holding that the BIA did not have privity of contract with permittees for grazing permits, and *United States v. Algoma Lumber Company*, 305 U.S. 415 (1939), noting that the Secretary of the Interior is not liable to third parties when it contracts on behalf of Indian tribes. Plaintiffs contend that these cases are inapplicable, since it argues that the BIA was a party to the contract, not acting on behalf of the Sioux Tribe. Pls.' Opp. at 8.

In *O'Bryan*, the court granted the defendant's motion to dismiss on the grounds that there was no privity of contract. *O'Bryan*, 93 Fed. Cl. at 59. The case dealt with the BIA's administration of grazing permits on Indian land. After the plaintiff sued the government for breach, the court held that "the permits are contracts with the Indian landowners and not with the United States." *O'Bryan*, 93 Fed. Cl. at 63. The court highlighted the fact that the plain language of the permits provided that they were between the plaintiff and the Indian landowners. *O'Bryan*, 93 Fed. Cl. at 64. The court also noted that the United States acting through the BIA, "cannot be understood as acting for its own account . . . but must instead be seen as acting in its role as trustee for the Indians." *O'Bryan*, 93 Fed. Cl. at 64.

The Supreme Court in *Algoma*, held that there was no privity of contract between the United States and plaintiff when the Secretary of the Interior approved of the sale of timber between the Klamath Indian Tribe and plaintiff. *Algoma Lumber Co.*, 305 U.S. at 422. The Court explained that the supervisory role of the Secretary of Interior in the execution of contracts involving Indians is "consistent with the exercise of its function as protector of the Indians," without the assumption by the United States of any express or implied obligation toward performance. *Algoma Lumber Co.*, 305 U.S. at 422. In other words, "the United States is not liable to third parties when it contracts with them on behalf of Indian tribes." *Sangre de Cristo Development Company v. United States*, 932 F.2d 891, 895 (10th Cir. 1991).

Similar to the grazing permits in *O'Bryan* and the sale of timber in *Algoma*, the United States does not have privity of contract when it signs the leases as an approval authority pursuant to a statute or as an administrator of that contract. As expressed in AIARMA, neither the Secretary nor BIA could have granted or approved the leases on behalf of the United States, but instead, could have only acted on behalf of the Sioux Tribe.

The fact that the Defendant has legal title to the leased land in trust for the Sioux Tribe does not establish privity of contract and only reinforces the holding in *O'Bryan* and *Algoma*. AIARMA and the leasing regulations are grounded on the trust responsibilities of the United States for the management of Indian land. Therefore, the United States cannot be seen as acting on its own behalf in authorizing and managing leases, but instead, should be seen as performing its duty as trustee to the Indian landowner. And in this capacity, the United States neither intends nor creates a contract right in the lessees' favor. *Algoma Lumber Co.*, 305 U.S. at 422.

In conclusion, the contract was between the Sioux and the Moodys, and the BIA acted pursuant to its authority under AIARMA as trustee to the Indian landowners. As such, this Court holds that there is no privity of contract between Plaintiffs and the Defendant, but rather between the Olaga Sioux Tribe and Plaintiffs. As the Defendant is not a party to the express lease, Count I must be dismissed.

B. Failure to State a Claim

The Defendant argues that Count II should be dismissed for failure to state a claim upon which relief may be granted, pursuant to RCFC 12(b)(6). For this kind of motion, the allegations of the complaint are construed favorably to the pleader, *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), but the “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Zulueta v. United States*, No. 09-681C, 2013 U.S. Claims LEXIS 24, at *12 (Fed. Cl. Jan. 29, 2013) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* Dismissal for failure to state a claim is warranted only when it is “beyond doubt that the plaintiff can prove no set of facts in support of his claim [that] would entitle him to relief.” *Ponder v. United States*, 117 F.3d 549, 552-53 (Fed. Cir. 1997).

1. Count II – Oral and Implied in Fact Contract

The Defendant argues that Count II should be dismissed because the written leases dealing with the same subject matter precluded the creation of an oral or implied in fact contract, the BIA lacks authority to *grant* leases, and the BIA regulations prohibit oral leases.

Plaintiffs contend that when BIA Superintendent Ecoffey on April 22, 2013 and BIA Superintendent Her Many Horses on or about June 3, 2013 told them to continue farming, four of the leases (1, 2, 4, and 5), which had been cancelled, were revived or ratified.⁴ Plaintiffs characterize the alleged revival or ratification as an oral or implied in fact contract. In addition to this contention, for the first time, Plaintiffs claim that they are entitled to be compensated on a *quantum meruit* basis.

First, the Defendant points out that the express leases were in effect on the dates when the Plaintiffs claim that the oral or implied in fact leases were made. Specifically, the Defendant notes that the BIA initiated cancellations of four leases on April 18, 2013, and the final lease on July 9, 2013. Since 25 C.F.R. § 162.254 provides that leases are officially cancelled 30 days after the tenant receives a cancellation letter (pending an appeal), new contracts over the same subject-matter could not have been created on April 22, 2013, the date of Plaintiffs meeting with Mr. Ecoffey, twenty eight days before the expiration of the leases. *See Trauma Serv. Grp. v. United States*, 104 F.3d 1321, 1326 (Fed. Cir. 1997) (“an implied-in-fact contract cannot exist if an express contract already covers the same subject matter.”). Simply stated, according to the Defendant, the leases stayed in effect until the regulatory cancellation date, on or about May 18, 2013, and an implied in fact contract cannot be formed before this date.

⁴ Plaintiffs do not argue revival and ratification for the remaining lease, 5.

Second, the Defendant argues, as it does in Count I, that the BIA lacked the authority in this situation to grant leases for Indian landowners without the tribe's express direction, since the exceptions carved out in AIARMA have not been alleged to apply. Def.'s Mot. to 17-18. See 25 U.S.C. § 415(a) ("Any restricted Indian lands, whether tribally, or individually owned, *may be leased by the Indian owners, with the approval of the Secretary . . .*") (emphasis added). Third, the Defendant maintains that, pursuant to the regulations, a lease is a written agreement, not an oral one. Def.'s Mot. at 18. Therefore, the Defendant concludes that Plaintiffs have failed to state a claim.

As noted above, Plaintiffs contend that Mr. Ecoffey and Mr. Her Many Horses orally created new leases under the terms of the previous written leases, the leases having been cancelled. Therefore, Plaintiffs reason that an oral and implied in fact contract is not precluded because the original lease was in writing. See Pls.' Opp. at 13 (claiming that the discussion between the Moodys and the BIA Superintendents "revive[d] and ratif[ied] the original lease which was in writing."). Plaintiffs also conclude that it is irrelevant that the regulations prohibit oral leases, because the original lease was in writing. Pls.' Opp. at 13.

The Defendant is persuasive in maintaining that the express contracts governing the same five parcels of land in dispute were in effect on April 22, 2013, the date the oral agreement is pled to have been formed between Mr. Ecoffey and Plaintiff. And as explained in *Trauma*, no implied in fact contract can be formed when an express contract exists governing the same subject matter.

Plaintiffs could have filed an appeal within 30 days of receiving the notice of cancellation. The Moodys did not appeal and the cancellations were to become effective on May 18, 2013, 30 days after the implied in fact contract is alleged to been formed.⁵ In other words, the cancellations needed to be final and expired before they could have been revived. See *Seven Resorts, Inc. v. United States*, 112 Fed. Cl. 745, 780 (2013) ("[i]f, after the *expiration* of a contract, the parties continue to perform under the contract's terms, the parties' relationship is generally governed by a new, implied in fact contract that incorporates the terms of the expired contract."); Revival, Black's Law Dictionary (10th ed. 2014) (defining revival as "the act of restoring the validity or legal force of an *expired* contract.") (emphasis added). Therefore, these alleged oral and implied in fact contracts regarding the same five parcels of land are precluded.

Nevertheless, even if the existing express contracts did not preclude the existence of implied in fact contracts, the BIA did not have the authority to "ratify the terminated leases anew." Pls.' Opp. at 14. The regulations provide that the BIA ~~cannot~~ enter into express contracts to lease these parcels unless it receives direct authorization from the Indian landowners, except in certain limited circumstances, none of which is alleged to apply in this case. See 25 C.F.R. § 162.209. Thus, AIARMA prevents the BIA from being a party to the oral and implied in fact contract since *only* the Olaga Sioux Tribe was authorized to grant leases on their lands.

⁵ The Moodys were informed of their right to appeal and of the effective date of the cancellation in the letters of cancellation that they received from the BIA. *Supra* at 3.

Finally, the Court turns to the *quantum meruit* claim. While this Court is sympathetic to Plaintiffs' situation, it cannot entertain Plaintiffs *quantum meruit* claim for it is not pleaded in their complaint. However, even if it was pleaded, because this Court has already established that there is no contract between the BIA and the Moodys, Plaintiffs cannot recover in a *quantum meruit* basis. See *N.H. Flight Procurement, LLC v. United States*, 118 Fed. Cl. 203, 236 (2014) ("to recover on a *quantum meruit* . . . basis, however, the circumstances must permit the court to conclude that all the basic elements of an implied-in-fact contract were present between plaintiff and the government.").

2. Count III – Fifth Amendment Taking Claim

Regarding Count III, the Defendant argues that the Fifth Amendment taking claim should be dismissed for failure to state a claim upon which relief can be granted.

In support of their Fifth Amendment takings claim, Plaintiffs argue that the Defendant forced them to "abandon the fruits of their farming" by forcing them off the parcels of land. Pls.' Opp. at 16. They continue to explain that, had Mr. Ecoffey and Mr. Her Many Horses not told them to continue farming, they would not have continued to invest in the farming operations. Pls.' Opp. at 16. Further, Plaintiffs contend that the regulations 25 C.F.R. §§ 162.247-162.256 "do not permit leases to be cancelled by instructing lessees to immediately remove" themselves from the property. Pls.' Opp. at 18.

The Defendant claims that the count should be dismissed because Plaintiffs' base their takings claim on an alleged violation of regulations by the BIA. Am. Compl. ¶ 32. The Defendant points out that in order for a taking by the U.S. government to be compensable, it must be a lawful one. In other words, because Plaintiffs allege that the Defendant violated a regulation, rather than a lawful one that "effectuated a takings of [their] property," the complaint fails to state a claim, and it must be dismissed. *Davis v. United States*, 123 Fed. Cl. 235, 243 (2015).

The Fifth Amendment to the United States Constitution provides that private property shall not be taken for public use without just compensation. U.S. Const. amend. V. Either real, personal, or intangible property may constitute the *res* of a takings claim. *Am. Pelagic Fishing Co., L.P. v. United States*, 379 F.3d 1363, 1371 (Fed. Cir. 2004). However, "an uncompensated taking and an unlawful government action constitute two separate wrongs that give rise to two separate causes of action." *Acadia Technology, Inc. v. United States*, 458 F.3d 1327, 1331 (Fed. Cir. 2006). "[T]o the extent that the plaintiff claims it is entitled to prevail *because* the agency acted in violation of statute or regulation,' plaintiff does not have the 'right to litigate that issue in a takings action rather than in the congressionally mandated administrative review proceeding.'" *Normandy Apartments, Ltd. v. United States*, 116 Fed. Cl. 431, 439 (2014) (quoting *Rith Energy v. United States*, 247 F.3d 1355, 1366 (Fed. Cir. 2001)). Thus, as the Defendant correctly identifies, in order to pursue a takings claim in the Court of Federal Claims without previously litigating the administrative issue, Plaintiffs must proceed on the "assumption that the administrative action was both authorized and lawful." *Id.* The Plaintiffs' amended complaint clearly alleges that the BIA committed an "unlawful termination and breach of lease agreements" contrary to 25 C.F.R. §§ 162.247-162.256. Am. Compl. ¶ 32. Because Plaintiffs

allege that the Defendant violated a regulation, rather than acted lawfully in accordance with one that effectuated the taking, this Court holds that the complaint fails to state a takings claim and, therefore, Count III must be dismissed.

A final note: This Court has ruled in the Defendant's favor on this Motion; however, it has a lingering doubt about the justness of this decision, despite the fact that it is confident that the decision is in accordance with the law. All of the actions pertaining to the lease, once executed, were performed by the BIA. The Oglala Sioux Tribe seems to have done nothing but appear in and sign the leases. Yet, the *Algoma* decision instructs courts to ignore the massive involvement of the BIA in the management of Indian affairs and focus instead on the narrow language of the leases. It appears that the only persons that the Moodys dealt with regarding the leases were BIA officials. The BIA officials—not the Tribe—sent notices of violations and letters of cancellation. The BIA officials told the Plaintiffs to continue to farm the land (if this allegation is true). Under these circumstances, it seems that a reasonable person would take the officials at their word and continue to farm the land. Something is wrong here, when the law requires the Court to focus entirely on the technicality that the tribe is the lessor and to ignore the BIA officials who are the real actors. One is reminded of the *Wizard of Oz* movie: "Pay no attention to the man behind the curtain!" Nevertheless, in the end, it is not this Court's role to make law or to ignore binding authority.

III. Conclusion

For the foregoing reasons, the Court hereby **GRANTS** the Defendant's partial motion to dismiss. Count I is **DISMISSED** for lack of jurisdiction. Counts II and III are **DISMISSED** for failure to state a claim upon which relief can be granted.

Defendant shall file its Answer regarding Count IV of Plaintiffs' Amended Complaint within fourteen (14) days from the filing of this opinion.

IT IS SO ORDERED.

s/ Edward J. Damich
EDWARD J. DAMICH
Senior Judge

Terry Pechota

From: uscf_cmecf@cfc.uscourts.gov
Sent: Tuesday, July 10, 2018 12:09 PM
To: uscf_cmecf@cfc.uscourts.gov
Subject: Activity in Case 1:16-cv-00107-EJD MOODY et al v. USA Terminated Case - Public

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US Court of Federal Claims

United States Court of Federal Claims

Notice of Electronic Filing

The following transaction was entered on 7/10/2018 at 2:08 PM EDT and filed on 7/10/2018

Case Name: MOODY et al v. USA

Case Number: 1:16-cv-00107-EJD

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WARNING: CASE CLOSED on 07/10/2018

Document Number: No document attached

Docket Text:

Complaint dismissed pursuant to Rule 41(a)(1)(A)(ii) this day. (ac7)

1:16-cv-00107-EJD Notice has been electronically mailed to:

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**US Court of Federal Claims
United States Court of Federal Claims (COFC)
CIVIL DOCKET FOR CASE #: 1:16-cv-00107-EJD**

MOODY et al v. USA
Assigned to: Senior Judge Edward J. Damich
Case in other court: 18-02227
Cause: 28:1491 Tucker Act

Date Filed: 01/21/2016
Date Terminated: 07/10/2018
Jury Demand: None
Nature of Suit: 512 Taking - Realty
Jurisdiction: U.S. Government
Defendant

Plaintiff

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AND

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ATTORNEY TO BE NOTICED

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Date Filed	#	Docket Text
01/21/2016	<u>1</u>	COMPLAINT against USA (DOI) (Filing fee \$400, Receipt number 9998-3159863) (Copy Served Electronically on Department of Justice), filed by All Plaintiffs. Answer due by 3/21/2016. (dw1) (Additional attachment(s) added on 2/1/2016: # <u>1</u> Exhibits 1-18) (jt1). (Entered: 01/21/2016)
01/21/2016	<u>2</u>	NOTICE of Assignment to Judge Nancy B. Firestone. (dw1) (Entered: 01/21/2016)
01/21/2016	<u>3</u>	NOTICE of Designation of Electronic Case. (dw1) (Entered: 01/21/2016)
02/17/2016	<u>4</u>	NOTICE of Appearance by Joshua D. Schnell for USA . (Schnell, Joshua) (Entered: 02/17/2016)
03/15/2016	<u>5</u>	Unopposed MOTION for Extension of Time until 5/20/2016 to File Answer re <u>1</u> Complaint, , filed by USA. Response due by 4/1/2016. (Schnell, Joshua) (Entered: 03/15/2016)
03/16/2016	<u>6</u>	ORDER granting <u>5</u> Motion for Extension of Time to Answer: Defendant's Answer due by 5/20/2016. Signed by Judge Nancy B. Firestone. (dpk) Copy to parties. (Entered: 03/16/2016)
05/16/2016	<u>7</u>	Unopposed MOTION for Extension of Time until June 3, 2016 to Respond to the Complaint , filed by USA. Response due by 6/3/2016. (Schnell, Joshua) (Entered: 05/16/2016)
05/17/2016	<u>8</u>	ORDER granting <u>7</u> Motion for Extension of Time Answer due by 6/3/2016. Signed by Senior Judge Nancy B. Firestone. (tc) Copy to parties. (Entered: 05/17/2016)
06/03/2016	<u>9</u>	MOTION to Dismiss pursuant to Rules 12(b)(1) and (6) , filed by USA. Response due by 7/5/2016. (Schnell, Joshua) Modified on 6/6/2017 (dls). (Entered: 06/03/2016)
07/07/2016	<u>10</u>	ORDER: Plaintiffs' Response to Defendant's Motion to Dismiss (ECF NO. 9) is due by 7/15/2016. Signed by Senior Judge Nancy B. Firestone. (dpk) Copy to parties. (Entered: 07/07/2016)
07/08/2016	<u>11</u>	MOTION for Extension of Time until 08/01/16 to File Response as to <u>9</u> MOTION to Dismiss pursuant to Rules 12(b)(1) and (6) , filed by All Plaintiffs. Response due by 7/25/2016. (Attachments: # <u>1</u> Exhibit OUTLOOK

		EMAIL INBOX, # <u>2</u> Exhibit OUTLOOK EMAIL DELETED BOX)(Pechota, Terry) (Entered: 07/08/2016)
07/15/2016	<u>12</u>	ORDER granting <u>11</u> Motion for Extension of Time to File Response re <u>11</u> MOTION for Extension of Time until 08/01/16 to File Response as to <u>9</u> MOTION to Dismiss pursuant to Rules 12(b)(1) and (6) Response due by 8/1/2016 . Signed by Senior Judge Nancy B. Firestone. (tc) Copy to parties. (Entered: 07/15/2016)
08/01/2016	<u>13</u>	RESPONSE to <u>9</u> Motion to Dismiss - Rules 12(b)(1) and (6) <i>PLAINTIFFS' OPPOSITION TO GOVERNMENT'S MOTION TO DISMISS</i> , filed by All Plaintiffs. (Pechota, Terry) (Entered: 08/01/2016)
08/15/2016	<u>14</u>	REPLY to Response to Motion re <u>9</u> MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) , filed by USA. (Schnell, Joshua) (Entered: 08/15/2016)
12/15/2016	<u>15</u>	ORDER Setting Hearing on Motion <u>9</u> MOTION to Dismiss pursuant to Rules 12(b)(1) and (6): Oral Argument set for 1/18/2017 02:00 PM in Chambers (Telephonic) before Senior Judge Nancy B. Firestone . Signed by Senior Judge Nancy B. Firestone. (ay) Copy to parties. (Entered: 12/15/2016)
01/17/2017	<u>16</u>	MOTION to Amend Pleadings - Rule 15 <u>1</u> Complaint, , filed by All Plaintiffs. Response due by 2/3/2017 .(Pechota, Terry) (Entered: 01/17/2017)
01/17/2017	<u>17</u>	AMENDED DOCUMENT, filed by All Plaintiffs. Amendment to <u>1</u> Complaint, <u>16</u> MOTION to Amend Pleadings - Rule 15 <u>1</u> Complaint, <i>FIRST AMENDED COMPLAINT</i> . (Pechota, Terry) (Entered: 01/17/2017)
01/18/2017		Minute Entry - Was the proceeding sealed to the public? N. Proceeding held in Washington, DC on 1/18/2017. before Senior Judge Nancy B. Firestone: Oral Argument. [Total number of days of proceeding: 1]. Official record of proceeding taken by court reporter. To order a certified transcript or an audio copy of the proceeding, click HERE (ay) (Entered: 01/18/2017)
01/23/2017	<u>18</u>	ORDER granting <u>16</u> Motion to Amend Pleadings - Rule 15(b): Briefing Schedule as follows: Defendant's response to plaintiffs' amended complaint due 2/10/2017; Plaintiffs' reply due 2/24/2017 . Signed by Senior Judge Nancy B. Firestone. (dpk) Copy to parties. (Entered: 01/23/2017)
01/31/2017	<u>19</u>	Notice Of Filing Of Certified Transcript for proceedings held on January 18, 2017 in Washington, D.C. (ew) (Entered: 02/01/2017)
01/31/2017	<u>20</u>	TRANSCRIPT of Proceedings held on January 18, 2017 before Judge Nancy B. Firestone. Total No. of Pages: 1-40. <u>Procedures Re: Electronic Transcripts and Redactions</u> . To order a copy of the proceeding (click HERE) Notice of Intent to Redact due 2/7/2017. Redacted Transcript Deadline set for 3/3/2017. Release of Transcript Restriction set for 5/1/2017. (ew) (Entered: 02/01/2017)
02/10/2017	<u>21</u>	SUPPLEMENTAL BRIEF re: <u>18</u> Order on Motion to Amend Pleadings - Rule 15(b), , filed by USA. (Schnell, Joshua) (Entered: 02/10/2017)
02/22/2017	<u>22</u>	MOTION for Extension of Time to File Response as to <u>18</u> Order on Motion to Amend Pleadings - Rule 15(b), , filed by All Plaintiffs. Response due by

		3/13/2017.(Pechota, Terry) (Entered: 02/22/2017)
02/23/2017	<u>23</u>	ORDER granting <u>22</u> Motion for Extension of Time to File Response. Plaintiffs' reply due by 2/27/2017. Signed by Senior Judge Nancy B. Firestone. (ay) Copy to parties. (Entered: 02/23/2017)
02/27/2017	<u>24</u>	RESPONSE to <u>9</u> Motion to Dismiss - Rules 12(b)(1) and (6) <i>GOVERNMENT'S BRIEF IN SUPPORT OF MOTION TO DISMISS AMENDED CLAIMS OF ORAL AND IMPLIED CONTRACTS</i> , filed by All Plaintiffs. (Attachments: # <u>1</u> Exhibit Procedural Handbook, # <u>2</u> Exhibit Procedural Handbook, # <u>3</u> Exhibit Procedural Handbook)(Pechota, Terry) (Entered: 02/27/2017)
04/28/2017	<u>25</u>	ORDER STAYING CASE: The above-captioned case is STAYED pending transfer to a Senior Judge in accordance with the new Chief Judges Senior Judge Policy. Once the case is transferred, the parties should contact the newly assigned judge to discuss scheduling. Signed by Senior Judge Nancy B. Firestone. (dpk) Copy to parties. (Entered: 04/28/2017)
05/01/2017	<u>26</u>	ORDER DIRECTING THE CLERK TO RANDOMLY REASSIGN CASE pursuant to Rule 40.1(c). Signed by Chief Judge Susan G. Braden. (lld) Copy to parties. (Entered: 05/02/2017)
05/01/2017	<u>27</u>	NOTICE of Reassignment. Case reassigned to Senior Judge Edward J. Damich for all further proceedings. Senior Judge Nancy B. Firestone no longer assigned to the case. (lld) (Entered: 05/02/2017)
05/08/2017	<u>28</u>	ORDER lifting stay. Joint Status report due 6/5/17. Signed by Senior Judge Edward J. Damich. (lp1) Copy to parties. (Entered: 05/08/2017)
05/09/2017	<u>29</u>	SPECIAL PROCEDURES ORDER. SEE ORDER FOR DETAILS. Signed by Senior Judge Edward J. Damich. (mc) Copy to parties. (Main Document 29 replaced on 6/12/2017 to add Judge's signature) (ar). (Entered: 05/09/2017)
06/05/2017	<u>30</u>	JOINT STATUS REPORT , filed by USA. (Schnell, Joshua) (Entered: 06/05/2017)
06/06/2017	<u>31</u>	ORDER: Pursuant to the status report filed by the parties on June 5, 2017, the Court adopts the following briefing schedule: June 28, 2017 - The Government shall file its motion to dismiss plaintiffs' complaint for lack of jurisdiction and failure to state a claim upon which relief can be granted; July 28, 2017 - Plaintiffs shall file their opposition to the Government's motion to dismiss; August 18, 2017 - The Government shall file its reply to plaintiffs' opposition to the motion to dismiss. Signed by Senior Judge Edward J. Damich. (lp1) Copy to parties. M (Entered: 06/06/2017)
06/28/2017	<u>32</u>	Second MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) , filed by USA. Response due by 7/31/2017. (Schnell, Joshua) (Entered: 06/28/2017)
07/31/2017	<u>33</u>	RESPONSE to <u>32</u> Second MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) , filed by All Plaintiffs. Reply due by 8/17/2017. (Attachments: # <u>1</u> Exhibit Procedural Handbook, # <u>2</u> Exhibit Procedural Handbook, # <u>3</u> Exhibit Procedural Handbook)(Pechota, Terry) (Entered: 07/31/2017)

08/18/2017	<u>34</u>	REPLY to Response to Motion re <u>32</u> Second MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) , filed by USA. (Schnell, Joshua) (Entered: 08/18/2017)
09/11/2017	<u>35</u>	NOTICE of Appearance by Margaret Joy Jantzen for USA . (Jantzen, Margaret) (Entered: 09/11/2017)
10/13/2017	<u>36</u>	REPORTED ORDER granting <u>32</u> Motion to Dismiss - Rule 12(b)(1) and (6). Defendant shall file its Answer regarding Count IV of Plaintiffs' Amended Complaint within fourteen (14) days from the filing of this opinion. Signed by Senior Judge Edward J. Damich. (CF) Copy to parties. (Main Document 36 replaced on 10/16/2017 to add attorneys' name to PDF) (ac7). (Entered: 10/13/2017)
10/26/2017	<u>37</u>	Unopposed MOTION for Extension of Time until 12/11/2017 to File Answer re <u>1</u> Complaint, , filed by USA. Response due by 11/9/2017. (Jantzen, Margaret) (Entered: 10/26/2017)
10/26/2017	<u>38</u>	ORDER granting <u>37</u> Motion for Extension of Time to Answer. Defendant shall file its Answer on or before December 11, 2017. Answer due by 12/11/2017. Signed by Senior Judge Edward J. Damich. (CF) Copy to parties. (Entered: 10/26/2017)
12/11/2017	<u>39</u>	ANSWER to <u>1</u> Complaint, <i>as amended at Dkt. 17</i> , filed by USA. JPSR due by 2/1/2018. (Jantzen, Margaret) (Entered: 12/11/2017)
02/01/2018	<u>40</u>	JOINT PRELIMINARY STATUS REPORT . (Attachments: # <u>1</u> Appendix) (Jantzen, Margaret) (Entered: 02/01/2018)
02/02/2018	<u>41</u>	SCHEDULING ORDER: May 3, 2018: Government serves upon plaintiffs copies of the documents it intends to attach in support of its motion for summary judgment. May 17, 2018: Government files its motion for summary judgment. June 16, 2018: Plaintiffs file their response to the motion for summary judgment. July 16, 2018: Government files its reply in support its motion for summary judgment. Signed by Senior Judge Edward J. Damich. (lp1) Service on parties made. (Entered: 02/02/2018)
04/27/2018	<u>42</u>	Unopposed MOTION for Extension of Time until 06/07/2018 to file motion for summary judgment , filed by USA.(Jantzen, Margaret) Modified on 5/4/2018 - Motion is unopposed, response time removed (hw1). (Entered: 04/27/2018)
04/30/2018	<u>43</u>	ORDER granting <u>42</u> Motion for Extension of Time. The new dates are as follows: June 7, 2018: Defendant serves upon plaintiffs copies of the documents it intends to attach in support of its motion for summary judgment; June 21, 2018: Defendant files its motion for summary judgment; July 23, 2018: Plaintiffs file their response to the motion for summary judgment; August 22, 2018: Defendant files its reply in support its motion for summary judgment. Signed by Senior Judge Edward J. Damich. (CF) Service on parties made. (Entered: 04/30/2018)
06/15/2018	<u>44</u>	Unopposed MOTION for Extension of Time until 7/12/2018 to file motion for summary judgment , filed by USA. Response due by 6/29/2018. (Jantzen, Margaret) (Entered: 06/15/2018)

06/18/2018	<u>45</u>	ORDER granting <u>44</u> Motion for Extension of Time. Defendant shall file its motion for summary judgment on or before July 12, 2018. Plaintiffs shall file their response on or before August 13, 2018. Defendant shall file its reply no later than September 12, 2018. In the event the matter becomes settled, the parties shall file the appropriate motion to dismiss. Signed by Senior Judge Edward J. Damich. (lp1) Service on parties made. (Entered: 06/18/2018)
07/10/2018	<u>46</u>	STIPULATION of Dismissal with prejudice, filed by USA.. (Jantzen, Margaret) (Entered: 07/10/2018)
07/10/2018		Complaint dismissed pursuant to Rule 41(a)(1)(A)(ii) this day. (ac7) (Entered: 07/10/2018)
08/07/2018	<u>47</u>	NOTICE OF APPEAL filed by VERNON MOODY as to <u>46</u> Stipulation of Dismissal. Filing fee \$ 505, receipt number 9998-4836245. Copies to judge, opposing party and CAFC. (Pechota, Terry) (Entered: 08/07/2018)
08/07/2018		Transmission of Notice of Appeal, Info Sheet, Stipulation of Dismissal and Docket Sheet to US Court of Appeals for the Federal Circuit re <u>47</u> Notice of Appeal. (ac7) (Entered: 08/07/2018)
08/09/2018		CAFC Case Number 2018-2227 for <u>47</u> Notice of Appeal filed by VERNON MOODY. (ac7) (Entered: 08/10/2018)

PACER Service Center			
Transaction Receipt			
10/07/2018 14:05:01			
PACER Login:	lawpe0674:2841058:0	Client Code:	Moody
Description:	Docket Report	Search Criteria:	1:16-cv-00107-EJD
Billable Pages:	5	Cost:	0.50

LEASE NO. 1002181115
TRACT NO: 344 218
LAND AREA
CODE: 344

ADV NUMBER:
ADV ITEM: 0
ADV DATE:

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& RECORDS OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

PINE RIDGE AGENCY
PO BOX 1203
HIGHWAY 18, MAIN STREET, BLDG 159
PINE RIDGE, SD 57770
AGRICULTURE LEASE

Bond: \$3,132.00

THIS LEASE, made and entered into this 1st day of June, 2011 by and between the Indian or Indians named below (the Secretary of the Interior acting for and on behalf of Indians), hereinafter called the LESSOR, and VERNON MOODY 602 NORTH GREELEY SCOTIA NE 68875 hereinafter called the LESSEE, in accordance with the provisions of existing law and the regulations (25 CFR 162) which, by reference, are made a part hereof.

WITNESSETH: That for and in consideration of the rents, covenants, and agreements hereinafter provided, the lessor hereby lets and leases unto the lessee for farming and grazing purposes only, the land and premises described as follows, to wit:

344 218

The legal description for the lands committed to this lease in the tract(s) identified are described in the Schedule of Lands attached to this lease.

This lease is exclusive to the lands and interest(s) held in trust or restricted status by the United States for the benefit of an Indian Tribe or individual Indian beneficiary at the time of approval.

This lease, containing 152.420 acres, more or less, of which not to exceed 152.420 acres may be cultivated, for the term of 55.00 months beginning on the 1st day of June, 2011, to be completed and ended on the 31st day of December, 2015, subject to the conditions hereinafter set forth.

This lease is subject to the following provisions:

1. SECRETARY as used herein means the Secretary of the Interior or his authorized representative delegated.
2. RENTAL PAYMENTS-The rental payment may change over the term of this lease based on the trust or restricted ownership interest in the tract(s) at the time of invoicing. Rental payments will not be accepted more than one year in advance of the due date. Rental or one-fifth (1/5) share of all crops as hereinafter provided is to be paid in accordance with the following payment schedule unless otherwise specified on the invoice.

Payment Start Date	
11/01/2011	20% To The Oglala Sioux Tribe
11/01/2012	20% To The Oglala Sioux Tribe
11/01/2013	30% To The Oglala Sioux Tribe
11/01/2014	30% To The Oglala Sioux Tribe
11/01/2015	30% To The Oglala Sioux Tribe

A non refundable administrative fee will be charged in accordance with 25 CFR 162.241 or 25 USC 14b, unless waived by the Secretary.

The administrative fee for this lease is \$83.09.

Failure to pay the exact amount by the due date is a lease violation and the lease may be subject to cancellation after providing notice to the LESSEE. The rental payment will be considered late if it is not received by the due date specified in

COPY

Page

1

ORIGINAL

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Lease No. 1002181115

Lease Type: AGRICULTURE LEASE

Land Area: 344

the invoice. Although the decision to cancel this lease for rental disputes is subject to appeal pursuant to 25 CFR Part 2, the decision may be made effective immediately for the conservation and protection of the trust land. The LESSEE's bond may be used to pay any disputed rental amounts. Ten percent (10%) of the total annual rental due will be assessed, and added in addition to the amount the LESSEE has failed to pay, has underpaid, or failed to pay by the due date. An additional 10% assessment shall be made of the total outstanding balance due for any rentals that are paid and accepted 30 days beyond the due date. The assessed amount shall be construed as rental income and will be distributed to the trust landowners. The LESSEE may not be notified of any overpayment.

3. CARE OF PREMISES.--It is understood and agreed that the LESSEE is to keep the premises covered by this lease in good repair. He shall not commit or permit to be committed any waste whatever on said premises and shall not remove or tear down any building or other improvement thereon, but shall keep the same in good repair. He shall not destroy or permit to be destroyed any trees, except with the consent of the LESSOR and the approval of the Secretary, and shall not permit the premises to become unsightly. The LESSEE will be held financially responsible for all unrepaired damage to buildings, fences, improvements or appearance, except for the usual wear and decay.

4. CROP LEASES.--It is understood and agreed that the LESSEE will not purchase or be a party to the purchase by anyone, of the lessor's share of the crop, without prior approval of the Secretary.

5. SUBLEASES AND ASSIGNMENTS.--Any sublease, assignment or amendment of this lease may be made only with the approval of the Secretary and the written consent of the parties to the lease in the same manner the original lease was approved.

6. RESERVATIONS.--It is understood and agreed that the LESSOR reserves the right to make mineral, business, signboard, industrial, and sand and gravel leases and/or permits and to grant rights-of-way and other legal grants on the premises covered by this lease. The LESSEE is entitled to any and all damages that may occur to their leasehold interest in the land as a result of the LESSOR exercising any of their rights to encumber the land with other leases, permits, or granting a R.O.W. on the property. It is further understood that in the event a dispute between the LESSEE hereunder and the lessee, permittee and/or grantee of a mineral, business, signboard, industrial, or sand and gravel lease and/or permit, grant of right of way or other legal grant, or as to the amount of such damages, the matter will be referred to the Secretary who shall be the sole and final judge as to the amount of said damages occurred.

7. UNLAWFUL CONDUCT.--The LESSEE agrees that he will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

8. RELINQUISHMENT OF SUPERVISION BY THE SECRETARY.--Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the LESSEE shall be notified by the Secretary of any such change in the status of the land.

9. IMPROVEMENTS.--Unless otherwise specifically provided herein, it is understood and agreed that any buildings or other improvements placed upon the land by the LESSEE become the property of the LESSOR upon termination or expiration of the lease. All removable personal property belonging to the LESSEE shall be removed from the lease premises upon expiration or termination of the lease. Any personal property of any character not removed from the premises within the thirty (30) day period shall become the property of the LESSOR and shall be subject to disposition by the LESSOR free from any responsibility to the LESSEE or any third party in connection therewith.

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Lease No. 1002181115 Lease Type: AGRICULTURE LEASE Land Area: 344

10. VIOLATION OF LEASE.--It is understood and agreed that violations of this lease shall be acted upon in accordance with the regulations of the Secretary as stated in 25 CFR 162.

11. ASSENT NOT WAIVER OF FUTURE BREACH OF COVENANTS.--No assent, express or implied, to the breach of any of the lessee's covenants shall be deemed to be a waiver of any succeeding breach of covenants.

12. UPON WHOM BINDING.--It is understood and agreed that the covenants and agreements hereinafter mentioned shall extend to and be binding upon the heirs, assigns, executors and administrators of the parties to this lease. While the leased premises are in trust or restricted status, all the lessee's obligations under this lease, and the obligations of its sureties, are to the United States, as well as to the owner or owners of the land.

13. INTEREST OF A MEMBER OF CONGRESS.--No Member of Congress their staff, or any Secretarial Delegatee, shall be admitted to any share or part of this lease or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this lease if made with a corporation or company for its general benefit.

14. INDEMNIFICATION--Neither the LESSOR, nor the United States, nor their officers, agency and employees shall be liable for any loss, damage or injury of any kind whatsoever to the person or property of the LESSEE or SUBLESSEE or any other person whomever, caused by accident, fire, or other casualty on said premises or from any other cause whatsoever. LESSEE hereby waives all claims against LESSOR and the United States and hereby agrees to hold LESSOR and the United States, free and harmless from liability for any loss, damage or injury arising from the use of the premises by LESSEE, together with all costs and expenses connected therewith. In addition, the LESSEE agrees to indemnify the United States and the LESSOR against all liabilities or cost relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous materials from the leased premises that occurs during the lease term, regardless of fault.

15. ARCHEOLOGICAL DISCOVERY.--In the event that archeological or historical remains, burials, cultural artifacts, or other antiquities not previously reported are encountered during the course of construction, farming, grazing, or other activity associated with this lease, all activity in the immediate vicinity of the remains or artifacts will cease and the Bureau of Indian Affairs archeologist and the Tribe who has jurisdiction over the lands will be contacted to determine disposition.

16. INSPECTIONS--The Secretary or his authorized delegate shall have the right, at any reasonable time during the term of the lease, to enter upon the leased premises or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

17. COMPLIANCE WITH LEGAL REQUIREMENTS--The LESSEE must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements. The LESSEE must also comply with all Tribal laws and leasing policies, when applicable.

18. BONDING--Unless otherwise provided or waived, the LESSEE must provide a bond to secure the performance of all lease obligations, and such bond may be used to restore or reclaim the leased premises to their condition at the commencement of the lease. The bond amount must be for no less than one year's rental. If the leased premises are within an Indian irrigation project a bond may be required to ensure payment of operation and maintenance charges. If the lessee fails to make the rental payment, the authorizing official may use the bond for rental due the landowners.

19. CONSERVATION PRACTICES--It is agreed and understood that farming and/or grazing operations will be conducted in accordance with recognized principles of sustained

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Lease No. 1002181115

Lease Type: AGRICULTURE LEASE

Land Area: 344

yield management: sound conservation practice goals as expressed in tribal laws, leasing policies and conservations plans and stipulations attached hereto. Pasture leases shall have stocking rates and season of use stipulated in the conservation plan.

20. ADDITIONAL FEES-In addition to any rental payment assessments, the LESSEE will pay a \$50.00 administrative fee for dishonored checks, a \$15.00 administrative fee for BIA processing a notice and any demand letters, and 18% of the balance due which will be charged by Treasury if a referral is made for collection of delinquent debt. The administrative fee will be charged for each notice or demand letter.

21. RIGHT-OF-WAY-This lease is subject to any prior valid existing rights-of-way.

22. UNDIVIDED FEE INTEREST-This is a lease of the trust interests in the property described and is not a lease of any undivided fee interests. All rental paid by the LESSEE will be distributed to the trust landowners only. The LESSEE is responsible for accounting to the owners of any fee interests that may exist in the property being leased.

23. RENTAL PAYMENTS MADE DIRECTLY TO LESSORS-If authorized, any payments made by the LESSEE directly to the LESSORS (trust beneficiaries or landowners) must be made to only those individuals as specified in the lease. The lease includes a list of individuals who are to receive the income and the amounts each are to receive. This list is called a "Schedule of Payments" and is subject to change by an approved modification. The LESSEE will be advised of any approved changes to the "Schedule of Payments". The LESSEE must retain proof of payment which will be provided to the approving official upon request. The LESSEE shall return the invoice or payment coupon with certification of payment to the centralized commercial lockbox address of the Bureau of Indian Affairs office which has jurisdiction over the leased premises. Failure to do so may be treated as a violation of the lease pursuant to provision 10 of this lease. All direct payments may be suspended at any time during the term of the lease. In the event of death of any of the individuals to whom, under the terms of the lease rentals are to be paid directly, all remaining rentals due shall be paid to the centralized commercial lockbox address of the Bureau of Indian Affairs office which has jurisdiction over the leased premises. The authorizing official may require that 100% of the landowners or LESSOR consent and agree to accept their rental payments directly from the LESSEE, and if they do not consent or agree the authorizing official has the discretion to disallow all direct payments. Direct payments will be made to the individuals on the "Schedule of Payments" on the rental due dates in the full and correct amounts. The LESSEE shall not make any rental payments over 90 days before the rental due date(s).

24. IRRIGATION OPERATION AND MAINTENANCE-If applicable, it is understood and agreed that the LESSEE will pay all operation and maintenance assessments annually in advance of the due date proceeding each irrigation season, including any penalties accruing against the above described land under irrigation, and will pay all charges assessed in connection with any other improvements project or district with which the lands may be located, pursuant to the existing or future orders of the Secretary.

25. HOLDING OVER-Holding over by the Lessee after the termination of this lease shall not constitute a renewal or extension hereof or give the Lessee any rights hereunder to or in the leased premises and shall be treated as a trespass.

26. ADDITIONS-Prior to execution of this lease, provisions numbers _____ have been added hereto and by reference are made a part hereof.

APPROVAL.--It is understood and agreed that this lease shall be valid and binding only after approval by the Secretary.

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Lease No. 1002181115

Lease Type: AGRICULTURE LEASE

Land Area: 344

IN WITNESS THEREOF, the LESSEE and LESSOR have hereunto affixed their hand and seals, the day and year first above written (and the LESSOR hereunto has caused to be attached his legal acceptance on which he has affixed his hand and seal).

Two witnesses to each signature:

Alan D. Koelling
Janet K. Weishaar } Vernon Moody
VERNON MOODY (lessee)

Theresa Marshall
Approving Official Realty Officer

APPROVED: _____

GRANTED: ✓

As per 25 CFR 162.206

APPROVAL DATE: 7.25.11

Norman Reed
ACTING Superintendent – Pursuant to and authority delegated to the Assistant Secretary – Indian Affairs by 209 DM 8, 230 DM 1, to the Great Plains Regional director by 3 IAM 4 (Release No. 00-03), and to the Superintendent by Great Plains Regional Addendum 3 IAM 4 (Release No. 0502).

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SCHEDULE OF LANDS

LEASE NO: 1002161115

344 218 WHITE EYES

An undivided 272160 / 272160 trust interest 1.0000000000 in:

Section	Township	Range	County	State	Meridian	Acres
6	035.00N	043.00W	SHANNON	SD	Sixth Principal	152.420

Parcels: E NW, LOT 1, LOT 2

ADDITIONAL PROVISIONS 4-A THROUGH 4-D ARE A PART OF THIS LEASE UNDER ITEM NO. 4, PAGE 2:

4-A. INSURANCE: It is understood and agreed that the Lessee will insure with reliable commercial concern or concerns the Lessors crop shares against fire, lightning, windstorms, hail and tornadoes in the field for full insurance value thereof for the use and benefit of the Lessors by means of a policy endorsed to require all said losses to be payable to the BUREAU OF INDIAN AFFAIRS. Copies of the policy may be made available to the Officer in Charge of Pine Ridge Agency upon his request. In the event of crop failure due to natural disasters, Lessee will in lieu of 1/5 of the crop share payment shall submit payment of \$36.00 per acre for cultivated lands.

4-B. CROPPING PLAN: The Lessee shall provide to the Branch of Realty, T&M, Agency Conservationist, a Cropping Plan for the term of the lease, defining the crop(s) to be seeded for each year of said lease. It is agreed that adjustments in the Cropping Plan may be necessary to comply with the Government Soil Conservation Programs that may be subsequently enacted. Adjustments between the Lessee and Lessors will be worked out in cooperation with the Agency Conservationist. All Cropping Plans will be subject to approval of the Officer in Charge, Pine Ridge Agency.

4-C. U.S.D.A./S.C.S.: The Lessee agrees that he will qualify for participation in the United States Department of Agriculture, Agriculture Stabilization and Conservation, and Conservation Programs, if such a program is operating and mandatory. He/She can exercise the option to join the program without the consent of the Lessors when such program participation is optional.

4-D. U.S.D.A. PAYMENTS: The Lessee shall be responsible for the proper division and distribution of diversion, compensatory or other payments that the United States Department of Agriculture may make in connection with crop production control programs. The division and distribution of payments shall be in accordance with the provisions of this lease contract and the applicable U.S.D.A. regulations. The Lessee shall furnish the BUREAU OF INDIAN AFFAIRS A REPORT ON THE DIVISION AND DISTRIBUTION.

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PLAN OF CONSERVATION OPERATIONS
PINE RIDGE AGENCY
PINE RIDGE, SOUTH DAKOTA 57770

The lessee agrees to carry out the Plan of Conservation Operations as stipulated below. It is further understood and agreed this Plan of Conservation Operations covering Allt. No. 218 is to be attached and made a part of Lease No. _____ described as: L1.2, E½NW¼, Sec 6-35-43, 145 acres farmland, and 7 acres road. for the period of: January 1, 2011, through December 31, 2015.

1. Each person leasing Indian trust land will be responsible for constructing and/or maintaining fences to contain livestock in area under their control and to protect their crops from damage by livestock. Fences will consist of at least 3 barbed wires and be constructed to meet N.R.C.S. specifications. When fences are required, they will be completed by the end of the first year of the lease. Penalty for failure to abide by this contract clause - \$500 per mile.
2. On all terraced crop land and all crop land on which contour guidelines are established, all tillage and planting operations will follow the contour. All terraces once constructed and all contour guidelines once laid out will be maintained by the lessee during the term of the lease. Tillage and planting operations will not cross over terrace ridges. Penalty for failure to abide by this contract clause - \$15 per acre for all farmland under this lease.
3. Cultivated soils will be terraced, contour strip-cropped or wind-stripped if required by the available soil data. Strips and terraces will be constructed and maintained to meet N.R.C.S. specifications. Terraces and strips must be completed not later than the second year of the lease period. Soils held in a permanent grass-legume mixture will be accepted in lieu of the construction of the terraces or strips. Penalty for failure to abide by this contract clause - \$500 per mile for terraces, \$15 per acre for strips.
4. Contour strips and windstrips will be maintained in such a fashion that adjacent strips are not planted to the same crop nor in fallow at the same time. Penalty for failure to abide by this contract clause - \$25 per acre.
5. Natural or shaped waterways will remain in sod. Waterways will be maintained in a condition that will prevent erosion and gullyng. Lessee will reshape and seed waterways when it has been determined by SMC personnel they are not functioning as designed. Waterways must be seeded to an acceptable grass cover. Penalty for failure to abide by this contract clause - \$300 per acre for failure to maintain and/or establish required waterways.
6. Tillage and planting operations will be performed with suitable equipment operated in such a manner it will leave a minimum of 25 percent ground cover on the surface after planting. Penalty for failure to abide by this contract clause - \$20 per acre.
7. If lessee wishes to incorporate no-till or minimum-till farming practices into his operation in lieu of constructing terraces, contour strips or windstrips, prior written authorization must be obtained from the Superintendent.
8. Mold board plows will not be used unless prior written authorization is obtained from the Superintendent. Penalty for failure to abide by this contract clause - \$20 per acre.
9. No cropland will be grazed without prior written authorization from the Superintendent. Penalty for failure to abide by this contract clause is same as stated in Item 16 of this plan.
10. No native grassland, go-back or tame grass fields will be broken without prior written approval from the Superintendent. Penalty for failure to abide by this contract clause - \$100 per acre plus expense of reseeding the entire area to an acceptable grass.
11. Cutting hay on land leased for grazing will not be allowed unless prior written permission is obtained from the Superintendent. Native upland grass leased as hayland can be cut only on alternate years. Sub-irrigated or meadow hayland and tame grass hayland can be cut every year. No grazing will be allowed on native grass leased as hayland. Penalty for failure to abide by this contract clause - \$15 per acre.
12. Shelter belts will be constructed and/or maintained to meet N.R.C.S. specifications and will be protected against damage from livestock, fire or chemical sprays. Penalty for failure to abide by this contract clause - \$200 per acre.
13. Lessee shall control and keep the leased land and adjoining right-of-way free from noxious weeds. Penalty for failure to abide by this contract clause - \$100 per acre.
14. The placing or dumping of junk, trash, carrion, rocks or other rubbish on this tract or adjoining right-of-way is prohibited. Penalty for failure to abide by this contract clause - \$100 per 100 square feet of affected area.

BRUCELLOSIS STIPULATIONS

Lessee or Permittee are required to participate in the State-Wide Federal Brucellosis Eradication Program. All female calves to be kept for breeding purposes, shall be vaccinated between four (4) and eight (8) months of age unless exempted in writing by the Superintendent. All herds must participate in the area certification and recertification program and, when found infected, must complete scheduled retests unless released from quarantine.

Breeding cattle being transferred into the Indian lands covered by the Lease or Permit must originate: (1) from herds not under quarantine for brucellosis in certified areas; (2) from herds which are negative to the blood test within the past twelve (12) months and the animals moving into the area covered are negative to the block test within the past thirty (30) months of age officially vaccinated against brucellosis. Failure to comply with the requirements shall be cause for immediate cancellation of the lease or permit.

LESSEE: Verna Moss

DATE: 6-1-11

WITNESS: Alan D. Koelling

DATE: 6-1-11

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15. Lessee shall handle pesticides and all other hazardous materials in accordance with the National Environmental Protection Act and any existing Tribal environmental codes. Penalty for failure to abide by this contract clause will be commensurate to NEPA guidelines.

16. Grassland will be stocked as determine by soil and range survey data. Lessee agrees the stocking rates set for Indian Trust land will also be used for all tracts of land grazed and/or fenced in common with land under this lease. No livestock will be permitted to graze to the point of grass stand deterioration. Livestock will be promptly removed if proper range utilization is reached prior to the end of the grazing season.

A. Animal Units Yearlong

B. Animal Units less than yearlong: Dates –

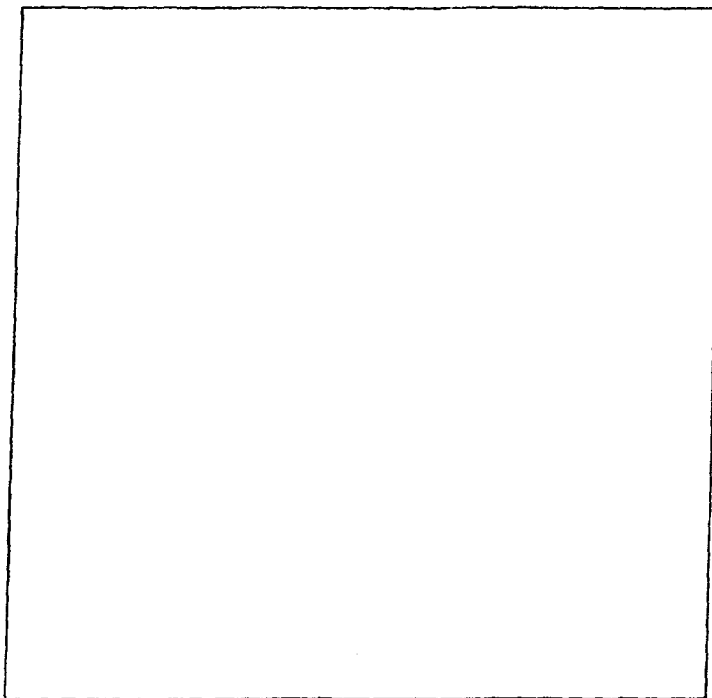
C. X Pasturing by written permission of the Superintendent only.

Penalty for overstocking or unauthorized grazing shall be a sum equal to the annual lease rental on all land covered under this lease plus livestock shall be promptly removed from the land.

17. SPECIAL PRACTICES: LESSEE WILL CONTROL ALL NOXIOUS WEEDS. LESSEE WILL CONSTRUCT FENCE TO KEEP LIVESTOCK OFF FARMLAND.

LEGAL DESCRIPTION: L1,2, E $\frac{1}{2}$ NW $\frac{1}{4}$,

SECTION 6 TOWNSHIP 35, RANGE 43.



Be it further understood and agreed that failure to comply with any of the required conservation practices as stipulated in this plan will be sufficient cause for immediate cancellation of this lease.

Vernon Moody
Lessee/

6-1-11

Date

Alan D. Krelling
Witness

PROVISIONS 17 & 18

17.) THE LESSEE AGREES THAT THIS LEASE MAY BE CANCELLED AT THE END OF A LEASE YEAR (DECEMBER 31)

(A) At the request of the sole owner in which the land was exchanged by the Oglala Sioux Tribe or the United States in his/her behalf.

18.) It is understood and agreed by the Lessee(s) that all Tribal Members will have free ingress & egress on solely-Owned Tribal Leased land, so long as it does not interfere with operations of the Lessee(s) or incur damages to within lands.

NOTICE: Any person(s) authorized to use Indian land under Federally approved Lease Contracts, Permits, Easements, or other documents with the Oglala Sioux Tribe, may become subject to Tribal Jurisdiction for purposes relating to that contract.

LESSEE: Vernon Moody **DATE:** 6-1-11

WITNESS: Alan D. Koelling **DATE:** 6-1-11

~~ORIGINAL~~

STIPULATION "J"

In accordance with Ordinance No. 91-05, approved by the Oglala Sioux Tribal Council, April 15, 1991, the following stipulations is by reference made a part of this lease (Resolution No. 85-174 amended to read) :

Non-member, Non-Indian users, Permittees, Lessees, will pay the following rates for both tribal and allotted lands.

GRASSLAND \$.30 per acre per annum

MEADOW HAY \$.40 per acre per annum

FARMLAND \$.60 per acre per annum

The assessment is due and payable in advance on the effective date of the lease and anniversary dates thereafter for the term of the lease. Failure to pay the assessment will be sufficient cause for cancellation of this lease contract for non- compliance.

LESSEE: Vernon Moody

DATE: 6-1-11


WITNESS: Alan D. Hoelling

DATE: 6-1-11

SPECIAL PROVISIONS- PROVISIONS FOR CROPPING / PASTURE / HAY LEASES ONLY TO BE MADE A PART OF THIS LEASE AS PER:

1. TITLE 25 CODE OF FEDERAL REGULATIONS 162.214 (a) Which states, "Before we approve a lease, we must determine in writing that the lease is in the best interest of the Indian landowners. In making that determination:
 - (1) Review the lease and supporting documents: This lease has been reviewed by Realty Specialist for T&M. It has been determined the rental amount offered is the acceptable amount as per Advertisement which was appraised by Appraisal and / or the rental offered is acceptable.
 - (2) Compliance checks conducted reveal no impact on the environment.
 - (3) The Plan of Conservation Operations stipulating the provisions to protect and preserve the land.
 - (4) It has been determined by Soil Moisture Conservation that the land is and has been farmed.
2. All necessary signatures are in compliance with § 162.206 & 162.209 and with Public Law 106-462- November 7, 2000, Section 219 (b) (1) -PERCENTAGE INTEREST.
3. This lease is in compliance with § 162.214 (a)(1)(2)(3)(i)(ii)(iii)(iv)(v)(4)(b).

IT HAS BEEN DETERMINED THAT THE APPROVAL OF THE LEASE IS IN THE BEST INTEREST OF THE LANDOWNER(S) AND RECOMMENDED FOR APPROVAL.



7-26-11

 SUPERINTENDENT- PINE RIDGE AGENCY 

DATE

~~ORIGINAL~~

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THESE STIPULATIONS ARE A PART OF PAGE 1 OF LEASE NO: 1002181115

CROP SHARE RENTAL FOR AGENCY PAY LESSORS: In lieu of cash rental for the cultivated land, Lessee agree to deliver after harvest to the nearest licensed warehouse, free of all charges to the Lessors, 20% GROSS OF ALL CROPS FOR THE FIRST 2 YEARS (November 1, 2011 and November 1, 2012). Thereafter, 30% GROSS OF ALL CROPS (November 1, 2013, November 1, 2014 and November 1, 2015. The Officer in Charge in lieu of requiring a Negotiable Warehouse receipt may authorize the sale of the Lessors crop share by the Lessee at the price prevailing at market point. The proceeds of that sale supported by the licensed warehouse purchase report will be delivered to the Agency Officer in Charge for credit to the Lessors IIM accounts not later than November one of each crop year.

0-0442

ADDENDUM NO. T-001

Document No: 1-T0561-11-15

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
PINE RIDGE AGENCY

****MODIFICATION***

It is hereby agreed by and between The Oglala Sioux Tribe (Lessors) ,and Vern Moody, 602 N Greeley St., Scotia, NE 68875,(Lessee), that Lease No. 1-T0561/11-15, described as: All of section 12-37-42, is hereby MODIFIED as follows:

DUE TO: SEE ATTACHED MODIFICATION BY THE OGLALA SIOUX TRIBAL LAND COMMITTEE.

Rental payments may change over the term of this Lease based on the trust or restricted ownership interest in the tract(s) at the time of invoicing. In lieu of Rental payments the Oglala Sioux Tribe wishes to enter into a crop share lease agreement.

Lessor

Jan Paul Bear / dp
President - Oglala Sioux Tribe

Lessor

Dennis M. Westrich
OST Land Office - Director

Vern Moody

(Lessee) Vern Moody

The within * **MODIFICATION** is hereby approved and declared to be made in accordance with the rules and regulations prescribed by the Secretary of the Interior there under, and now in force.

R. L. Sully
Superintendent

7-11-12
Date

This modification is approved pursuant to authority delegated to the Assistant Secretary - Indian Affairs by 209 DM 8, 230 DM 1, and to the Great Plains Regional Director by 3 IAM 4 (Release No. 00-03), and to the Superintendents by Great Plains Regional Addendum 3 IAM 4 (Release No. 0502).

- * INSERT MODIFICATION OR CANCELLATION
- ** INSERT MODIFIED OR CANCELLED

COPY

Modification to Ag. Lease number 1-T05611115

The following will be modified to settle the T 561 2011 Ag. Lease.

Under the number of acres to be cultivated the paragraph should be modified to read:

This lease, containing 640.000 acres, more or less, of which not to exceed **390** acres may be cultivated, for the term of 55 months beginning on the 1st day of June 2011, to be completed and ended on the 31st. day of December 2015 subject to the conditions hereinafter set forth.

Also to be modified:

Provisions addressing the Farm Lands payments schedule and the Pasture land payment schedule:

2. Rental Payment the rental payments may change over the term of this lease based on the trust or restricted ownership interest in the tract(s) at the time of invoicing. In lieu of Rental payments the Oglala Sioux Tribe wishes to enter into a crop share lease agreement, with stipulation including the following:

Rental equal to three twentieths or (3/20) or 15% of all crops for the first two years and 1/3 or 30% the remaining three (3) years, as hereinafter provided is to be paid in accordance with the following payment schedule unless otherwise specified on the invoice.

In addition to Provision 4-A through 4-D are a part of the lease under item no. 4 page 2:

4-A Modification to address the insurance at the same rate as the crop share agreed to and to set appropriate amounts of fraction and percentage to reflect the negotiated rates.

Equal to 15% or 3/20 for the first two years and 20% or 1/5 for the remainder three years.

Payment Schedule:

Payment Start Date	Up land Hay Land Negotiated @ cash rental	Crop Share \$, associated with the harvest dates	% of Crop Share for each year
4/1/2011	\$10.74 per ac. No action	6/1/2011	Equal to 15% of crop harvest to the Oglala Sioux Tribe
1/1/2012	13.00	11/1/2012	Equal to 15% of crop harvest to the Oglala Sioux Tribe
1/1/2013	13.00	11/1/2013	Equal to 20% of crop harvest to the Oglala Sioux Tribe
1/1/2014	13.00	11/1/2014	Equal to 20% of crop harvest to the Oglala Sioux Tribe
1/1/2015	13.00	11/1/2015	Equal to 20% of crop harvest to the Oglala Sioux Tribe

Address the Hayland lands: (Negotiated a cash rental rate for T561 – hays land only) Failure to notify the Bureau of hay production for compliance of the 70:30 crop shares, for the 242.00 acres on T 561, may be subject to cancellation after providing notice to lessee. A rental payment will be assessed for non-compliance at the rate of \$25.00 per acre on the hay land. Although the decision to cancel this lease for disputes is subject to appeal

Changed to cash Rental for Hayland only.

Case: 18-2227
Moody, Vernon

Document: 15

Page: 78

Filed: 10/17/2018

Allotment No.	Legal Description	Farmland	Hayland	Other
T-561	All of sec 12-37-42	390	242	8 Road
TOTALS		390	242	8

LEASE NO 1TB3671216
TRACT NO: 344 T 367 -B

Bond: \$1,741.10

LAND AREA
CODE: 344ADV NUMBER:
ADV ITEM: 0
ADV DATE:**RECEIVED
BRANCH OF**

AUG 10 2012

**LAND TITLES
& RECORDS OFFICE****UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**PINE RIDGE AGENCY
PO BOX 1203HIGHWAY 18, MAIN STREET, BLDG 159
PINE RIDGE, SD 57770**AGRICULTURE LEASE**

THIS LEASE, made and entered into this 8th day of June, 2011 by and between the Indian or Indians named below (the Secretary of the Interior acting for and on behalf of Indians), hereinafter called the LESSOR, and VERNON MOODY 502 NORTH GREELEY ST SCOTIA NE 68875 hereinafter called the LESSEE, in accordance with the provisions of existing law and the regulations (25 CFR 162) which, by reference, are made a part hereof.

WITNESSETH: That for and in consideration of the rents, covenants, and agreements hereinafter provided, the lessor hereby lets and leases unto the lessee for farming and grazing purposes only, the land and premises described as follows, to wit:

344 T 367 -B

The legal description for the lands committed to this lease in the tract(s) identified are described in the Schedule of Lands attached to this lease;

This lease is exclusive to the lands and interest(s) held in trust or restricted status by the United States for the benefit of an Indian Tribe or individual Indian beneficiary at the time of approval.

This lease, containing 80.000 acres, more or less, of which not to exceed 72.000 acres may be cultivated, for the term of 5.00 years beginning on the 1st day of January, 2012, to be completed and ended on the 31st day of December, 2016, subject to the conditions hereinafter set forth.

This lease is subject to the following provisions:

1. SECRETARY as used herein means the Secretary of the Interior or his authorized representative delegated.
2. RENTAL PAYMENTS-The rental payment may change over the term of this lease based on the trust or restricted ownership interest in the tract(s) at the time of invoicing. Rental payments will not be accepted more than one year in advance of the due date. Rental or one-fifth (1/5) share of all crops as hereinafter provided is to be paid in accordance with the following payment schedule unless otherwise specified on the invoice.

Payment	
Start Date	CROP SHARE RENTAL FOR AGENCY PAY LESSORS: In lieu of cash rental for the cultivated land, Lessee agree to deliver after harvest to the nearest licensed warehouse, free of all charges to the Lessors, 1/5 GROSS OF ALL CROPS. The Officer in Charge in lieu of requiring a Negotiable Warehouse receipt may authorize the sale of the Lessors crop share by the Lessee at the price prevailing at market point. The proceeds of that sale supported by the licensed warehouse purchase report will be delivered to the Agency Officer in Charge for credit to the Lessors IIM accounts not later than November one of each crop year.
11/01/2012	✓
11/01/2013	
11/01/2014	
01/01/2015	
01/01/2016	

A non refundable administrative fee will be charged in accordance with 25 CFR 162.241 or 25 USC 14b, unless waived by the Secretary.

The administrative fee for this lease is waived.

Failure to pay the exact amount by the due date is a lease violation and the lease may be subject to cancellation after providing notice to the LESSEE. The rental

COPY

Page

1

ORIGINAL

Lease No. 1TB3671216

Lease Type: AGRICULTURE LEASE

Land Area: 344

failed to pay, has underpaid, or failed to pay by the due date. An additional 10% assessment shall be made of the total outstanding balance due for any rentals that are paid and accepted 30 days beyond the due date. The assessed amount shall be construed as rental income and will be distributed to the trust landowners. The LESSEE may not be notified of any overpayment.

3. CARE OF PREMISES.--It is understood and agreed that the LESSEE is to keep the premises covered by this lease in good repair. He shall not commit or permit to be committed any waste whatever on said premises and shall not remove or tear down any building or other improvement thereon, but shall keep the same in good repair. He shall not destroy or permit to be destroyed any trees, except with the consent of the LESSOR and the approval of the Secretary, and shall not permit the premises to become unsightly. The LESSEE will be held financially responsible for all unrepaired damage to buildings, fences, improvements or appearance, except for the usual wear and decay.

4. CROP LEASES.--It is understood and agreed that the LESSEE will not purchase or be a party to the purchase by anyone, of the lessor's share of the crop, without prior approval of the Secretary.

5. SUBLEASES AND ASSIGNMENTS.--Any sublease, assignment or amendment of this lease may be made only with the approval of the Secretary and the written consent of the parties to the lease in the same manner the original lease was approved.

6. RESERVATIONS--It is understood and agreed that the LESSOR reserves the right to make mineral, business, signboard, industrial, and sand and gravel leases and/or permits and to grant rights-of-way and other legal grants on the premises covered by this lease. The LESSEE is entitled to any and all damages that may occur to their leasehold interest in the land as a result of the LESSOR exercising any of their rights to encumber the land with other leases, permits, or granting a R.O.W. on the property. It is further understood that in the event a dispute between the LESSEE hereunder and the lessee, permittee and/or grantee of a mineral, business, signboard, industrial, or sand and gravel lease and/or permit, grant of right of way or other legal grant, or as to the amount of such damages, the matter will be referred to the Secretary who shall be the sole and final judge as to the amount of said damages occurred.

7. UNLAWFUL CONDUCT.--The LESSEE agrees that he will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

8. RELINQUISHMENT OF SUPERVISION BY THE SECRETARY.--Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the LESSEE shall be notified by the Secretary of any such change in the status of the land.

9. IMPROVEMENTS.--Unless otherwise specifically provided herein, it is understood and agreed that any buildings or other improvements placed upon the land by the LESSEE become the property of the LESSOR upon termination or expiration of the lease. All removable personal property belonging to the LESSEE shall be removed from the lease premises upon expiration or termination of the lease. Any personal property of any character not removed from the premises within the thirty (30) day period shall become the property of the LESSOR and shall be subject to disposition by the LESSOR free from any responsibility to the LESSEE or any third party in connection therewith.

10. VIOLATION OF LEASE.--It is understood and agreed that violations of this lease shall be acted upon in accordance with the regulations of the Secretary as stated in 25 CFR 162.

11. ASSENT NOT WAIVER OF FUTURE BREACH OF COVENANTS.--No assent, express or implied,

Lease No. 1TB3671216

Lease Type: AGRICULTURE LEASE

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to the breach of any of the lessee's covenants shall be deemed to be a waiver of any succeeding breach of covenants.

12. UPON WHOM BINDING.--It is understood and agreed that the covenants and agreements hereinafter mentioned shall extend to and be binding upon the heirs, assigns, executors and administrators of the parties to this lease. While the leased premises are in trust or restricted status, all the lessee's obligations under this lease, and the obligations of its sureties, are to the United States, as well as to the owner or owners of the land.

13. INTEREST OF A MEMBER OF CONGRESS.--No Member of Congress their staff, or any Secretarial Delegate, shall be admitted to any share or part of this lease or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this lease if made with a corporation or company for its general benefit.

14. INDEMNIFICATION--Neither the LESSOR, nor the United States, nor their officers, agency and employees shall be liable for any loss, damage or injury of any kind whatsoever to the person or property of the LESSEE or SUBLESSEE or any other person whomever, caused by accident, fire, or other casualty on said premises or from any other cause whatsoever. LESSEE hereby waives all claims against LESSOR and the United States and hereby agrees to hold LESSOR and the United States, free and harmless from liability for any loss, damage or injury arising from the use of the premises by LESSEE, together with all costs and expenses connected therewith. In addition, the LESSEE agrees to indemnify the United States and the LESSOR against all liabilities or cost relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous materials from the leased premises that occurs during the lease term, regardless of fault.

15. ARCHEOLOGICAL DISCOVERY.--In the event that archeological or historical remains, burials, cultural artifacts, or other antiquities not previously reported are encountered during the course of construction, farming, grazing, or other activity associated with this lease, all activity in the immediate vicinity of the remains or artifacts will cease and the Bureau of Indian Affairs archeologist and the Tribe who has jurisdiction over the lands will be contacted to determine disposition.

16. INSPECTIONS--The Secretary or his authorized delegate shall have the right, at any reasonable time during the term of the lease, to enter upon the leased premises or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

17. COMPLIANCE WITH LEGAL REQUIREMENTS--The LESSEE must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements. The LESSEE must also comply with all Tribal laws and leasing policies, when applicable.

18. BONDING--Unless otherwise provided or waived, the LESSEE must provide a bond to secure the performance of all lease obligations, and such bond may be used to restore or reclaim the leased premises to their condition at the commencement of the lease. The bond amount must be for no less than one year's rental. If the leased premises are within an Indian irrigation project a bond may be required to ensure payment of operation and maintenance charges. If the lessee fails to make the rental payment, the authorizing official may use the bond for rental due the landowners.

19. CONSERVATION PRACTICES--It is agreed and understood that farming and/or grazing operations will be conducted in accordance with recognized principles of sustained yield management; sound conservation practice goals as expressed in tribal laws, leasing policies and conservations plans and stipulations attached hereto. Pasture leases shall have stocking rates and season of use stipulated in the conservation plan.

Lease No. 1TB3671216

Lease Type: AGRICULTURE LEASE

Land Area: 344

20. **ADDITIONAL FEES**-In addition to any rental payment assessments, the LESSEE will pay a \$50.00 administrative fee for dishonored checks, a \$15.00 administrative fee for BIA processing a notice and any demand letters, and 18% of the balance due which will be charged by Treasury if a referral is made for collection of delinquent debt. The administrative fee will be charged for each notice or demand letter.

21. **RIGHT-OF-WAY**-This lease is subject to any prior valid existing rights-of-way.

22. **UNDIVIDED FEE INTEREST**-This is a lease of the trust interests in the property described and is not a lease of any undivided fee interests. All rental paid by the LESSEE will be distributed to the trust landowners only. The LESSEE is responsible for accounting to the owners of any fee interests that may exist in the property being leased.

23. **RENTAL PAYMENTS MADE DIRECTLY TO LESSORS**-If authorized, any payments made by the LESSEE directly to the LESSORS (trust beneficiaries or landowners) must be made to only those individuals as specified in the lease. The lease includes a list of individuals who are to receive the income and the amounts each are to receive. This list is called a "Schedule of Payments" and is subject to change by an approved modification. The LESSEE will be advised of any approved changes to the "Schedule of Payments". The LESSEE must retain proof of payment which will be provided to the approving official upon request. The LESSEE shall return the invoice or payment coupon with certification of payment to the centralized commercial lockbox address of the Bureau of Indian Affairs office which has jurisdiction over the leased premises. Failure to do so may be treated as a violation of the lease pursuant to provision 10 of this lease. All direct payments may be suspended at any time during the term of the lease. In the event of death of any of the individuals to whom, under the terms of the lease rentals are to be paid directly, all remaining rentals due shall be paid to the centralized commercial lockbox address of the Bureau of Indian Affairs office which has jurisdiction over the leased premises. The authorizing official may require that 100% of the landowners or LESSOR consent and agree to accept their rental payments directly from the LESSEE, and if they do not consent or agree the authorizing official has the discretion to disallow all direct payments. Direct payments will be made to the individuals on the "Schedule of Payments" on the rental due dates in the full and correct amounts. The LESSEE shall not make any rental payments over 90 days before the rental due date(s).

24. **IRRIGATION OPERATION AND MAINTENANCE**-If applicable, it is understood and agreed that the LESSEE will pay all operation and maintenance assessments annually in advance of the due date proceeding each irrigation season, including any penalties accruing against the above described land under irrigation, and will pay all charges assessed in connection with any other improvements project or district with which the lands may be located, pursuant to the existing or future orders of the Secretary.

25. **HOLDING OVER**-Holding over by the Lessee after the termination of this lease shall not constitute a renewal or extension hereof or give the Lessee any rights hereunder to or in the leased premises and shall be treated as a trespass.

26. **ADDITIONS**-Prior to execution of this lease, provisions numbers _____ have been added hereto and by reference are made a part hereof.

APPROVAL--It is understood and agreed that this lease shall be valid and binding only after approval by the Secretary.

Lease No. 1TB3671216

Lease Type: AGRICULTURE LEASE

Land Area: 344

IN WITNESS THEREOF, the LESSEE and LESSOR have hereunto affixed their hand and seals, the day and year first above written (and the LESSOR hereunto has caused to be attached his legal acceptance on which he has affixed his hand and seal).

Two witnesses to each signature:

Alan D. Koelling

Janis K. Weishaar Vernon Moody
VERNON MOODY (lessee)

Theresa Marshall
Approving Official Realty Officer JB

Don Poor Bear / sp
President - Oglala Sioux Tribe - Pursuant to the
Constitution & By-Laws of the Oglala Sioux Tribe
approved December 3, 1985

Bud Watson Acting Dir.
Director, Oglala Sioux Tribe
Land Office

APPROVED: X

GRANTED: _____

7-11-12
APPROVAL DATE:

[Signature]
Superintendent - Pursuant to and
authority delegated to the Assistant
Secretary - Indian Affairs by 209 DM 8,
230 DM 1, to the Great Plains Regional
director by 3 IAM 4 (Release No. 00-03),
and to the Superintendent by Great
Plains Regional Addendum 3 IAM 4
(Release No. 0502).

SCHEDULE OF LANDS

LEASE NO. 1TB3671216

344 T 367 -B Name Not Listed

An undivided 1 / 1 trust interest 1.0000000000 in:

Section	Township	Range	County	State	Meridian	Acres
10	036.00N	041.00W	SHANNON	SD	Sixth Principal	80.000

Parcels: S SW

ADDITIONAL PROVISIONS 4-A THROUGH 4-D ARE A PART OF THIS LEASE UNDER ITEM NO. 4, PAGE 2:

4-A. INSURANCE: It is understood and agreed that the Lessee will insure with reliable commercial concern or concerns the Lessors crop shares against fire, lightning, windstorms, hail and tornadoes in the field for full insurance value thereof for the use and benefit of the Lessors by means of a policy endorsed to require all said losses to be payable to the BUREAU OF INDIAN AFFAIRS. Copies of the policy may be made available to the Officer in Charge of Pine Ridge Agency upon his request. In the event of crop failure due to natural disasters, Lessee will in lieu of 1/5 of the crop share payment shall submit payment of \$36.00 per acre for cultivated lands.

4-B. CROPPING PLAN: The Lessee shall provide to the Branch of Realty, T&M, Agency Conservationist, a Cropping Plan for the term of the lease, defining the crop(s) to be seeded for each year of said lease. It is agreed that adjustments in the Cropping Plan may be necessary to comply with the Government Soil Conservation Programs that may be subsequently enacted. Adjustments between the Lessee and Lessors will be worked out in cooperation with the Agency Conservationist. All Cropping Plans will be subject to approval of the Officer in Charge, Pine Ridge Agency.

4-C. U.S.D.A./S.C.S.: The Lessee agrees that he will qualify for participation in the United States Department of Agriculture, Agriculture Stabilization and Conservation, and Conservation Programs, if such a program is operating and mandatory. He/She can exercise the option to join the program without the consent of the Lessors when such program participation is optional.

4-D. U.S.D.A. PAYMENTS: The Lessee shall be responsible for the proper division and distribution of diversion, compensatory or other payments that the United States Department of Agriculture may make in connection with crop production control programs. The division and distribution of payments shall be in accordance with the provisions of this lease contract and the applicable U.S.D.A. regulations. The Lessee shall furnish the BUREAU OF INDIAN AFFAIRS A REPORT ON THE DIVISION AND DISTRIBUTION.

PLAN OF CONSERVATION OPERATIONS
PINE RIDGE AGENCY
PINE RIDGE, SOUTH DAKOTA 57770

The lessee agrees to carry out the Plan of Conservation Operations as stipulated below. It is further understood and agreed this Plan of Conservation Operations covering Allt. No. T367-B is to be attached and made a part of Lease No. _____, described as: S $\frac{1}{4}$ SW $\frac{1}{4}$, Sec 10-36-41, 72 acres farmland, 5 acres grassland, and 3 acres roads,

for the period of: January 1, 2011 through December 31, 2015.

1. Each person leasing Indian trust land will be responsible for constructing and/or maintaining fences to contain livestock in area under their control and to protect their crops from damage by livestock. Fences will consist of at least 3 barbed wires and be constructed to meet N.R.C.S. specifications. When fences are required, they will be completed by the end of the first year of the lease. Penalty for failure to abide by this contract clause - \$500 per mile.
2. On all terraced crop land and all crop land on which contour guidelines are established, all tillage and planting operations will follow the contour. All terraces once constructed and all contour guidelines once laid out will be maintained by the lessee during the term of the lease. Tillage and planting operations will not cross over terrace ridges. Penalty for failure to abide by this contract clause - \$15 per acre for all farmland under this lease.
3. Cultivated soils will be terraced, contour strip-cropped or wind-stripped if required by the available soil data. Strips and terraces will be constructed and maintained to meet N.R.C.S. specifications. Terraces and strips must be completed not later than the second year of the lease period. Soils held in a permanent grass-legume mixture will be accepted in lieu of the construction of the terraces or strips. Penalty for failure to abide by this contract clause - \$500 per mile for terraces, \$15 per acre for strips.
4. Contour strips and windstrips will be maintained in such a fashion that adjacent strips are not planted to the same crop nor in fallow at the same time. Penalty for failure to abide by this contract clause - \$25 per acre.
5. Natural or shaped waterways will remain in sod. Waterways will be maintained in a condition that will prevent erosion and gullying. Lessee will reshape and seed waterways when it has been determined by SMC personnel they are not functioning as designed. Waterways must be seeded to an acceptable grass cover. Penalty for failure to abide by this contract clause - \$300 per acre for failure to maintain and/or establish required waterways.
6. Tillage and planting operations will be performed with suitable equipment operated in such a manner it will leave a minimum of 25 percent ground cover on the surface after planting. Penalty for failure to abide by this contract clause - \$20 per acre.
7. If lessee wishes to incorporate no-till or minimum-till farming practices into his operation in lieu of constructing terraces, contour strips or windstrips, prior written authorization must be obtained from the Superintendent.
8. Mold board plows will not be used unless prior written authorization is obtained from the Superintendent. Penalty for failure to abide by this contract clause - \$20 per acre.
9. No cropland will be grazed without prior written authorization from the Superintendent. Penalty for failure to abide by this contract clause is same as stated in Item 16 of this plan.
10. No native grassland, go-back or tame grass fields will be broken without prior written approval from the Superintendent. Penalty for failure to abide by this contract clause - \$100 per acre plus expense of reseeding the entire area to an acceptable grass.
11. Cutting hay on land leased for grazing will not be allowed unless prior written permission is obtained from the Superintendent. Native upland grass leased as hayland can be cut only on alternate years. Sub-irrigated or meadow hayland and tame grass hayland can be cut every year. No grazing will be allowed on native grass leased as hayland. Penalty for failure to abide by this contract clause - \$15 per acre.
12. Shelter belts will be constructed and/or maintained to meet N.R.C.S. specifications and will be protected against damage from livestock, fire or chemical sprays. Penalty for failure to abide by this contract clause - \$200 per acre.
13. Lessee shall control and keep the leased land and adjoining right-of-way free from noxious weeds. Penalty for failure to abide by this contract clause - \$100 per acre.
14. The placing or dumping of junk, trash, carcass, rocks or other rubbish on this tract or adjoining right-of-way is prohibited. Penalty for failure to abide by this contract clause - \$100 per 100 square feet of affected area.

~~ORIGINAL~~

BRUCELLOSIS STIPULATIONS

Lessee or Permittee are required to participate in the State-Wide Federal Brucellosis Eradication Program. All female calves to be kept for breeding purposes, shall be vaccinated between four (4) and eight (8) months of age unless exempted in writing by the Superintendent. All herds must participate in the area certification and recertification program and, when found infected, must complete scheduled retests unless released from quarantine.

Breeding cattle being transferred into the Indian lands covered by the Lease or Permit must originate: (1) from herds not under quarantine for brucellosis in certified areas; (2) from herds which are negative to the blood test within the past twelve (12) months and the animals moving into the area covered are negative to the block test within the past thirty (30) months of age officially vaccinated against brucellosis. Failure to comply with the requirements shall be cause for immediate cancellation of the lease or permit.

LESSEE: Vernon Moody

DATE: 6-1-11

WITNESS: Alan D. Koelling

DATE: 6-1-11

15. Lessee shall handle pesticides and all other hazardous materials in accordance with the National Environmental Protection Act and any existing Tribal environmental codes. Penalty for failure to abide by this contract clause will be commensurate to NEPA guidelines.

16. Grassland will be stocked as determine by soil and range survey data. Lessee agrees the stocking rates set for Indian Trust land will also be used for all tracts of land grazed and/or fenced in common with land under this lease. No livestock will be permitted to graze to the point of grass stand deterioration. Livestock will be promptly removed if proper range utilization is reached prior to the end of the grazing season.

A. Animal Units Yearlong

B. Animal Units less than yearlong: Dates -

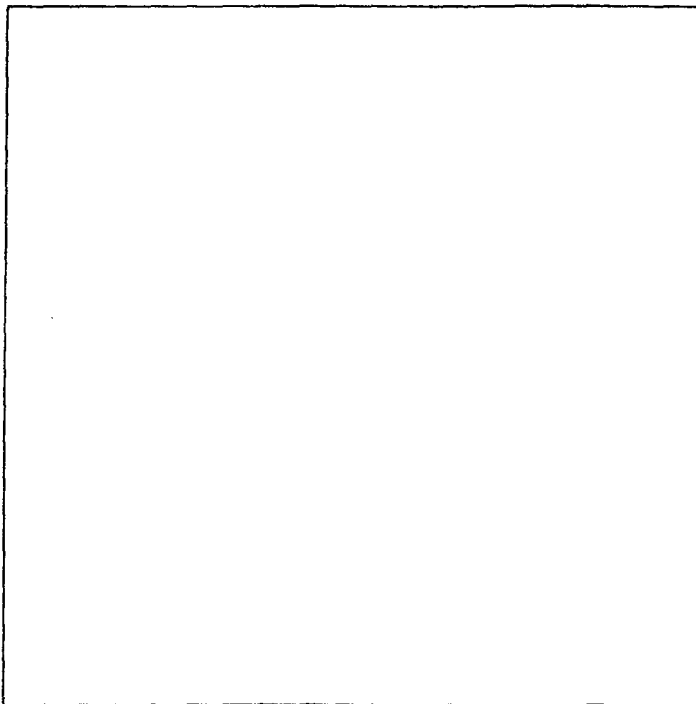
C. X Pasturing by written permission of the Superintendent only.

Penalty for overstocking or unauthorized grazing shall be a sum equal to the annual lease rental on all land covered under this lease plus livestock shall be promptly removed from the land.

17. SPECIAL PRACTICES: LESSEE WILL CONTROL ALL NOXIOUS WEEDS.

LEGAL DESCRIPTION: S $\frac{1}{4}$ SW $\frac{1}{4}$

SECTION 10 TOWNSHIP 36, RANGE 41.



Be it further understood and agreed that failure to comply with any of the required conservation practices as stipulated in this plan will be sufficient cause for immediate cancellation of this lease.

Vernon M. Mott
Lessee

6-1-11
Date

Alan D. Koelling
Witness

PROVISIONS 17 & 18

17.) THE LESSEE AGREES THAT THIS LEASE MAY BE CANCELLED AT THE END OF A LEASE YEAR (DECEMBER 31)

(A) At the request of the sole owner in which the land was exchanged by the Oglala Sioux Tribe or the United States in his/her behalf.

18.) It is understood and agreed by the Lessee(s) that all Tribal Members will have free ingress & egress on solely-Owned Tribal Leased land, so long as it does not interfere with operations of the Lessee(s) or incur damages to within lands.

NOTICE: Any person(s) authorized to use Indian land under Federally approved Lease Contracts, Permits, Easements, or other documents with the Oglala Sioux Tribe, may become subject to Tribal Jurisdiction for purposes relating to that contract.

LESSEE: Vernon Woods **DATE:** 6-1-11

WITNESS: Alan D. Koelling **DATE:** 6-1-11

STIPULATION "J"

In accordance with Ordinance No. 91-05, approved by the Oglala Sioux Tribal Council, April 15, 1991, the following stipulations is by reference made a part of this lease (Resolution No. 85-174 amended to read) :

Non-member, Non-Indian users, Permittees, Lessees, will pay the following rates for both tribal and allotted lands.

GRASSLAND \$.30 per acre per annum

MEADOW HAY \$.40 per acre per annum

FARMLAND \$.60 per acre per annum

The assessment is due and payable in advance on the effective date of the lease and anniversary dates thereafter for the term of the lease. Failure to pay the assessment will be sufficient cause for cancellation of this lease contract for non- compliance.

LESSEE: Vernon Moody

DATE: 6-1-11

WITNESS: Alan D. Hoelling

DATE: 6-1-11

LEASE NO. LUNT191115
TRACT NO: MULTIPLELAND AREA:
CODE: 344

ADV NUMBER

ADV ITEM: 0

ADV DATE:

**RECEIVED
BRANCH OF****AUG - 2 2011****LAND TITLES
& RECORDS OFFICE****UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS****PINE RIDGE AGENCY****PO BOX 1203****HIGHWAY 18, MAIN STREET, BLDG 159****PINE RIDGE, SD 57770****AGRICULTURE LEASE**

Bond: \$8,409.30

THIS LEASE, made and entered into this 1st day of June, 2011 by and between the Indian or Indians named below (the Secretary of the Interior acting for and on behalf of Indians), hereinafter called the LESSOR, and ANITA MOODY 602 NORTH GREELEY SCOTIA NE 68875 hereinafter called the LESSEE, in accordance with the provisions of existing law and the regulations (25 CFR 162) which, by reference, are made a part hereof.

WITNESSETH: That for and in consideration of the rents, covenants, and agreements hereinafter provided, the lessor hereby lets and leases unto the lessee for farming and grazing purposes only, the land and premises described as follows, to wit:

344 T 10289, 344 T 6159, 344 T 6159 -A, 344 T 7613 -A, 344 T 7613 -B, 344 T 7616 -A

The legal description for the lands committed to this lease in the tract(s) identified are described in the Schedule of Lands attached to this lease.

This lease is exclusive to the lands and interest(s) held in trust or restricted status by the United States for the benefit of an Indian Tribe or individual Indian beneficiary at the time of approval.

This lease, containing 541.240 acres, more or less, of which not to exceed 541.240 acres may be cultivated, for the term of 55.00 months beginning on the 1st day of June, 2011, to be completed and ended on the 31st day of December, 2015, subject to the conditions hereinafter set forth.

This lease is subject to the following provisions:

1. SECRETARY as used herein means the Secretary of the Interior or his authorized representative delegated.
2. RENTAL PAYMENTS-The rental payment may change over the term of this lease based on the trust or restricted ownership interest in the tract(s) at the time of invoicing. Rental payments will not be accepted more than one year in advance of the due date. Rental or one- 1/5 share of all crops) as hereinafter provided is to be paid in accordance with the following payment schedule unless otherwise specified on the invoice.

Payment Start Date	
11/01/2011	20% To The Oglala Sioux Tribe
11/01/2012	20% To The Oglala Sioux Tribe
11/01/2013	30% To The Oglala Sioux Tribe
11/01/2014	30% To The Oglala Sioux Tribe
11/01/2015	30% To The Oglala Sioux Tribe

A non refundable administrative fee will be charged in accordance with 25 CFR 162.241 or 25 USC 14b, unless waived by the Secretary.

The administrative fee for this lease is \$225.93.

ORIGINAL

Failure to pay the exact amount by the due date is a lease violation and the lease may be subject to cancellation after providing notice to the LESSEE. The rental

Page 1

14. The placing or dumping of junk, trash, carrion, rocks or other rubbish on this tract or adjoining right-of-way is prohibited. Penalty for failure to abide by this contract clause - \$100 per 100 square feet of affected area.

ORIGINAL

Lease No. 10NT191115

Lease Type: AGRICULTURE LEASE

Land Area: 344

payment will be considered late if it is not received by the due date specified in the invoice. Although the decision to cancel this lease for rental disputes is subject to appeal pursuant to 25 CFR Part 2, the decision may be made effective immediately for the conservation and protection of the trust land. The LESSEE's bond may be used to pay any disputed rental amounts. Ten percent (10%) of the total annual rental due will be assessed, and added in addition to the amount the LESSEE has failed to pay, has underpaid, or failed to pay by the due date. An additional 10% assessment shall be made of the total outstanding balance due for any rentals that are paid and accepted 30 days beyond the due date. The assessed amount shall be construed as rental income and will be distributed to the trust landowners. The LESSEE may not be notified of any overpayment.

3. CARE OF PREMISES.--It is understood and agreed that the LESSEE is to keep the premises covered by this lease in good repair. He shall not commit or permit to be committed any waste whatever on said premises and shall not remove or tear down any building or other improvement thereon, but shall keep the same in good repair. He shall not destroy or permit to be destroyed any trees, except with the consent of the LESSOR and the approval of the Secretary, and shall not permit the premises to become unsightly. The LESSEE will be held financially responsible for all unrepaired damage to buildings, fences, improvements or appearance, except for the usual wear and decay.

4. CROP LEASES.--It is understood and agreed that the LESSEE will not purchase or be a party to the purchase by anyone, of the lessor's share of the crop, without prior approval of the Secretary.

5. SUBLEASES AND ASSIGNMENTS.--Any sublease, assignment or amendment of this lease may be made only with the approval of the Secretary and the written consent of the parties to the lease in the same manner the original lease was approved.

6. RESERVATIONS.--It is understood and agreed that the LESSOR reserves the right to make mineral, business, signboard, industrial, and sand and gravel leases and/or permits and to grant rights-of-way and other legal grants on the premises covered by this lease. The LESSEE is entitled to any and all damages that may occur to their leasehold interest in the land as a result of the LESSOR exercising any of their rights to encumber the land with other leases, permits, or granting a R.O.W. on the property. It is further understood that in the event a dispute between the LESSEE hereunder and the lessee, permittee and/or grantee of a mineral, business, signboard, industrial, or sand and gravel lease and/or permit, grant of right of way or other legal grant, or as to the amount of such damages, the matter will be referred to the Secretary who shall be the sole and final judge as to the amount of said damages occurred.

7. UNLAWFUL CONDUCT.--The LESSEE agrees that he will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

8. RELINQUISHMENT OF SUPERVISION BY THE SECRETARY.--Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the LESSEE shall be notified by the Secretary of any such change in the status of the land.

9. IMPROVEMENTS.--Unless otherwise specifically provided herein, it is understood and agreed that any buildings or other improvements placed upon the land by the LESSEE become the property of the LESSOR upon termination or expiration of the lease. All removable personal property belonging to the LESSEE shall be removed from the lease premises upon expiration or termination of the lease. Any personal property of any character not removed from the premises within the thirty (30) day period shall become the property of the LESSOR and shall be subject to disposition by the LESSOR free from any responsibility to the LESSEE or any third party in connection therewith.

Lease No. LUNT191115

Lease Type: AGRICULTURE LEASE

Land Area: 344

10. VIOLATION OF LEASE.--It is understood and agreed that violations of this lease shall be acted upon in accordance with the regulations of the Secretary as stated in 25 CFR 162.

11. ASSENT NOT WAIVER OF FUTURE BREACH OF COVENANTS.--No assent, express or implied, to the breach of any of the lessee's covenants shall be deemed to be a waiver of any succeeding breach of covenants.

12. UPON WHOM BINDING.--It is understood and agreed that the covenants and agreements hereinafter mentioned shall extend to and be binding upon the heirs, assigns, executors and administrators of the parties to this lease. While the leased premises are in trust or restricted status, all the lessee's obligations under this lease, and the obligations of its sureties, are to the United States, as well as to the owner or owners of the land.

13. INTEREST OF A MEMBER OF CONGRESS.--No Member of Congress their staff, or any Secretarial Delegate, shall be admitted to any share or part of this lease or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this lease if made with a corporation or company for its general benefit.

14. INDEMNIFICATION--Neither the LESSOR, nor the United States, nor their officers, agency and employees shall be liable for any loss, damage or injury of any kind whatsoever to the person or property of the LESSEE or SUBLESSEE or any other person whomever, caused by accident, fire, or other casualty on said premises or from any other cause whatsoever. LESSEE hereby waives all claims against LESSOR and the United States and hereby agrees to hold LESSOR and the United States, free and harmless from liability for any loss, damage or injury arising from the use of the premises by LESSEE, together with all costs and expenses connected therewith. In addition, the LESSEE agrees to indemnify the United States and the LESSOR against all liabilities or cost relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous materials from the leased premises that occurs during the lease term, regardless of fault.

15. ARCHEOLOGICAL DISCOVERY.--In the event that archeological or historical remains, burials, cultural artifacts, or other antiquities not previously reported are encountered during the course of construction, farming, grazing, or other activity associated with this lease, all activity in the immediate vicinity of the remains or artifacts will cease and the Bureau of Indian Affairs archeologist and the Tribe who has jurisdiction over the lands will be contacted to determine disposition.

16. INSPECTIONS--The Secretary or his authorized delegate shall have the right, at any reasonable time during the term of the lease, to enter upon the leased premises or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

17. COMPLIANCE WITH LEGAL REQUIREMENTS--The LESSEE must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements. The LESSEE must also comply with all Tribal laws and leasing policies, when applicable.

18. BONDING--Unless otherwise provided or waived, the LESSEE must provide a bond to secure the performance of all lease obligations, and such bond may be used to restore or reclaim the leased premises to their condition at the commencement of the lease. The bond amount must be for no less than one year's rental. If the leased premises are within an Indian irrigation project a bond may be required to ensure payment of operation and maintenance charges. If the lessee fails to make the rental payment, the authorizing official may use the bond for rental due the landowners.

19. CONSERVATION PRACTICES--It is agreed and understood that farming and/or grazing operations will be conducted in accordance with recognized principles of sustained

Lease No. 1UNT191115

Lease Type: AGRICULTURE LEASE

Land Area: 344

yield management; sound conservation practice goals as expressed in tribal laws, leasing policies and conservations plans and stipulations attached hereto. Pasture leases shall have stocking rates and season of use stipulated in the conservation plan.

20. ADDITIONAL FEES In addition to any rental payment assessments, the LESSEE will pay a \$50.00 administrative fee for dishonored checks, a \$15.00 administrative fee for BIA processing a notice and any demand letters, and 18% of the balance due which will be charged by Treasury if a referral is made for collection of delinquent debt. The administrative fee will be charged for each notice or demand letter.

21. RIGHT-OF-WAY-This lease is subject to any prior valid existing rights-of-way.

22. UNDIVIDED FEE INTEREST-This is a lease of the trust interests in the property described and is not a lease of any undivided fee interests. All rental paid by the LESSEE will be distributed to the trust landowners only. The LESSEE is responsible for accounting to the owners of any fee interests that may exist in the property being leased.

23. RENTAL PAYMENTS MADE DIRECTLY TO LESSORS-If authorized, any payments made by the LESSEE directly to the LESSORS (trust beneficiaries or landowners) must be made to only those individuals as specified in the lease. The lease includes a list of individuals who are to receive the income and the amounts each are to receive. This list is called a "Schedule of Payments" and is subject to change by an approved modification. The LESSEE will be advised of any approved changes to the "Schedule of Payments". The LESSEE must retain proof of payment which will be provided to the approving official upon request. The LESSEE shall return the invoice or payment coupon with certification of payment to the centralized commercial lockbox address of the Bureau of Indian Affairs office which has jurisdiction over the leased premises. Failure to do so may be treated as a violation of the lease pursuant to provision 10 of this lease. All direct payments may be suspended at any time during the term of the lease. In the event of death of any of the individuals to whom, under the terms of the lease rentals are to be paid directly, all remaining rentals due shall be paid to the centralized commercial lockbox address of the Bureau of Indian Affairs office which has jurisdiction over the leased premises. The authorizing official may require that 100% of the landowners or LESSOR consent and agree to accept their rental payments directly from the LESSEE, and if they do not consent or agree the authorizing official has the discretion to disallow all direct payments. Direct payments will be made to the individuals on the "Schedule of Payments" on the rental due dates in the full and correct amounts. The LESSEE shall not make any rental payments over 90 days before the rental due date(s).

24. IRRIGATION OPERATION AND MAINTENANCE-If applicable, it is understood and agreed that the LESSEE will pay all operation and maintenance assessments annually in advance of the due date proceeding each irrigation season, including any penalties accruing against the above described land under irrigation, and will pay all charges assessed in connection with any other improvements project or district with which the lands may be located, pursuant to the existing or future orders of the Secretary.

25. HOLDING OVER-Holding over by the Lessee after the termination of this lease shall not constitute a renewal or extension hereof or give the Lessee any rights hereunder to or in the leased premises and shall be treated as a trespass.

26. ADDITIONS-Prior to execution of this lease, provisions numbers _____ have been added hereto and by reference are made a part hereof.

APPROVAL.--It is understood and agreed that this lease shall be valid and binding only after approval by the Secretary.

Lease No. 1UNT191115

Lease Type: AGRICULTURE LEASE

Land Area: 344

IN WITNESS THEREOF, the LESSEE and LESSOR have hereunto affixed their hand and seals, the day and year first above written (and the LESSOR hereunto has caused to be attached his legal acceptance on which he has affixed his hand and seal).

Two witnesses to each signature:

Alan D. Krelling
Janis K. Weishaar

Anita C. Moody
ANITA MOODY

(lessee)

John Marshall
Approving Official

JB

John W. Steele
President - Oglala Sioux Tribe - Pursuant to the
Constitution & By-Laws of the Oglala Sioux Tribe
approved December 3, 1985

Denise M. Mesteth
Director, Oglala Sioux Tribe
Land Office

APPROVED: X

GRANTED: _____

7-26-11
APPROVAL DATE:

David Compton
Superintendent - Pursuant to and
authority delegated to the Assistant
Secretary - Indian Affairs by 209 DM 8,
230 DM 1, to the Great Plains Regional
director by 3 IAM 4 (Release No. 00-03),
and to the Superintendent by Great
Plains Regional Addendum 3 IAM 4
(Release No. 0502).

~~ORIGINAL~~

ADDITIONAL PROVISIONS 4-A THROUGH 4-D ARE A PART OF THIS LEASE UNDER ITEM NO. 4, PAGE 2:

4-A. INSURANCE: It is understood and agreed that the Lessee will insure with reliable commercial concern or concerns the Lessors crop shares against fire, lightning, windstorms, hail and tornadoes in the field for full insurance value thereof for the use and benefit of the Lessors by means of a policy endorsed to require all said losses to be payable to the BUREAU OF INDIAN AFFAIRS. Copies of the policy may be made available to the Officer in Charge of Pine Ridge Agency upon his request. In the event of crop failure due to natural disasters, Lessee will in lieu of 1/5 of the crop share payment shall submit payment of \$36.00 per acre for cultivated lands.

4-B. CROPPING PLAN: The Lessee shall provide to the Branch of Realty, T&M, Agency Conservationist, a Cropping Plan for the term of the lease, defining the crop(s) to be seeded for each year of said lease. It is agreed that adjustments in the Cropping Plan may be necessary to comply with the Government Soil Conservation Programs that may be subsequently enacted. Adjustments between the Lessee and Lessors will be worked out in cooperation with the Agency Conservationist. All Cropping Plans will be subject to approval of the Officer in Charge, Pine Ridge Agency.

4-C. U.S.D.A./S.C.S.: The Lessee agrees that he will qualify for participation in the United States Department of Agriculture, Agriculture Stabilization and Conservation, and Conservation Programs, if such a program is operating and mandatory. He/She can exercise the option to join the program without the consent of the Lessors when such program participation is optional.

4-D. U.S.D.A. PAYMENTS: The Lessee shall be responsible for the proper division and distribution of diversion, compensatory or other payments that the United States Department of Agriculture may make in connection with crop production control programs. The division and distribution of payments shall be in accordance with the provisions of this lease contract and the applicable U.S.D.A. regulations. The Lessee shall furnish the BUREAU OF INDIAN AFFAIRS A REPORT ON THE DIVISION AND DISTRIBUTION.

15. Lessee shall handle pesticides and all other hazardous materials in accordance with the National Environmental Protection Act and any existing Tribal environmental codes. Penalty for failure to abide by this contract clause will be commensurate to NEPA guidelines.

16. Grassland will be stocked as determined by soil and range survey data. Lessee agrees the stocking rates set for Indian Trust land will also be used for all tracts of land grazed and/or fenced in common with land under this lease. No livestock will be permitted to graze to the point of grass stand deterioration. Livestock will be promptly removed if proper range utilization is reached prior to the end of the grazing season.

A. Annual Units Yearlong

B. Annual Units less than yearlong Dates

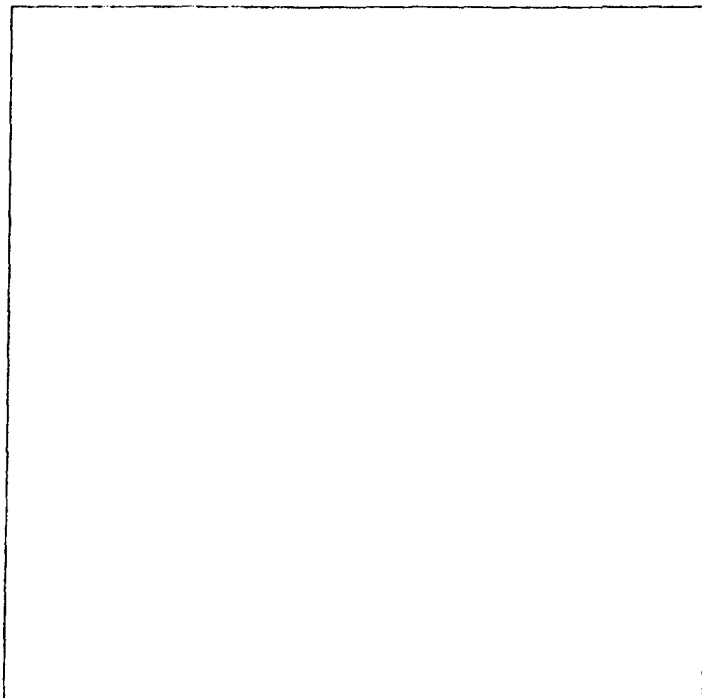
C. Pasturing by written permission of the Superintendent only.

Penalty for overstocking or unauthorized grazing shall be a sum equal to the annual lease rental on all land covered under this lease plus livestock shall be promptly removed from the land.

17. SPECIAL PRACTICES: LESSEE WILL CONTROL ALL NOXIOUS WEEDS. LESSEE WILL CONSTRUCT FENCE TO KEEP LIVESTOCK OFF FARMLAND.

LEGAL DESCRIPTION: See Attached

SECTION 6.7 TOWNSHIP 37, RANGE 46.



Be it further understood and agreed that failure to comply with any of the required conservation practices as stipulated in this plan will be sufficient cause for immediate cancellation of this lease.

Lessee: Antelope Valley Date: 1-1-11 Witness: Kevin D. Kelley

PROVISIONS 17 & 18

17.) THE LESSEE AGREES THAT THIS LEASE MAY BE CANCELLED AT THE END OF A LEASE YEAR (DECEMBER 31)

(A) At the request of the sole owner in which the land was exchanged by the Oglala Sioux Tribe or the United States in his/her behalf.

18.) It is understood and agreed by the Lessee(s) that all Tribal Members will have free ingress & egress on solely-Owned Tribal Leased land, so long as it does not interfere with operations of the Lessee(s) or incur damages to within lands.

NOTICE: Any person(s) authorized to use Indian land under Federally approved Lease Contracts, Permits, Easements, or other documents with the Oglala Sioux Tribe, may become subject to Tribal Jurisdiction for purposes relating to that contract.

LESSEE: Anita P. Mady DATE: 6-1-11

WITNESS: Alan D. Koelling DATE: 6-1-11

BRUCELLOSIS STIPULATIONS

Lessee or Permittee are required to participate in the State-Wide Federal Brucellosis Eradication Program. All female calves to be kept for breeding purposes, shall be vaccinated between four (4) and eight (8) months of age unless exempted in writing by the Superintendent. All herds must participate in the area certification and recertification program and, when found infected, must complete scheduled retests unless released from quarantine.

Breeding cattle being transferred into the Indian lands covered by the Lease or Permit must originate: (1) from herds not under quarantine for brucellosis in certified areas; (2) from herds which are negative to the blood test within the past twelve (12) months and the animals moving into the area covered are negative to the block test within the past thirty (30) months of age officially vaccinated against brucellosis. Failure to comply with the requirements shall be cause for immediate cancellation of the lease or permit.

LESSEE: Amitel Moody

DATE: 6-1-11

WITNESS: Alan D. Hoelling

DATE: 6-1-11

STIPULATION "J"

In accordance with Ordinance No. 91-05, approved by the Oglala Sioux Tribal Council, April 15, 1991, the following stipulations is by reference made a part of this lease (Resolution No. 85-174 amended to read) :

Non-member, Non-Indian users, Permittees, Lessees, will pay the following rates for both tribal and allotted lands.

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MEADOW HAY \$.40 per acre per annum

FARMLAND \$.60 per acre per annum

The assessment is due and payable in advance on the effective date of the lease and anniversary dates thereafter for the term of the lease. Failure to pay the assessment will be sufficient cause for cancellation of this lease contract for non- compliance.

LESSEE: Anita P. Moody DATE: 6-1-11

WITNESS: Alan D. Koelling DATE: 6-1-11

UNIT 19

Allotment No.	Legal Description	Farmland	Grassland	Other
T-7613 A	S½SE¼, Sec 6-37-46	43.32	34.68	2 Road
T-7613 B	N½SE¼, Sec 6-37-46	10.8	67.2	2 Road
T-7616 A	L-7, SE¼SW¼, Sec 6-37-46	27.1	45.27	2.5 Homesite
T-10289	L-1,2, E½NW¼, Sec 7-37-46	74.77	75.6	
T-6159 / T-6159 A	NE¼, Sec 7-37-46	142	14	4
TOTALS		297.99	236.75	10.5

THESE STIPULATIONS ARE A PART OF PAGE 1 OF LEASE NO: 1UNT191115

CROP SHARE RENTAL FOR AGENCY PAY LESSORS: In lieu of cash rental for the cultivated land, Lessee agree to deliver after harvest to the nearest licensed warehouse, free of all charges to the Lessors, 20% GROSS OF ALL CROPS FOR THE FIRST 2 YEARS (November 1, 2011 and November 1, 2012). Thereafter, 30% GROSS OF ALL CROPS (November 1, 2013, November 1, 2014 and November 1, 2015. The Officer in Charge in lieu of requiring a Negotiable Warehouse receipt may authorize the sale of the Lessors crop share by the Lessee at the price prevailing at market point. The proceeds of that sale supported by the licensed warehouse purchase report will be delivered to the Agency Officer in Charge for credit to the Lessors IIM accounts not later than November one of each crop year.

SCHEDULE OF LANDS

LEASE NO. 10NT151115

344 T 10289 Name Not Listed**An undivided 1 / 1 trust interest 1.0000000000 in:**

Section	Township	Range	County	State Meridian	Acres
7	037.00N	046.00W	SHANNON	SD Sixth Principal	150.370

Parcels: LOT 1, E NW, LOT 2

344 T 6159 Name Not Listed**An undivided 1 / 1 trust interest 1.0000000000 in:**

Section	Township	Range	County	State Meridian	Acres
7	037.00N	046.00W	SHANNON	SD Sixth Principal	155.000

Parcels: S NE, W NE NE NE, W NE NE, SE NE NE, NW NE

344 T 6159 -A Name Not Listed**An undivided 1 / 1 trust interest 1.0000000000 in:**

Section	Township	Range	County	State Meridian	Acres
7	037.00N	046.00W	SHANNON	SD Sixth Principal	5.000

Parcels: E NE NE NE

344 T 7613 -A Name Not Listed**An undivided 1 / 1 trust interest 1.0000000000 in:**

Section	Township	Range	County	State Meridian	Acres
6	037.00N	046.00W	SHANNON	SD Sixth Principal	78.000

Parcels: LOT 99 = S SE

344 T 7613 -B Name Not Listed**An undivided 1 / 1 trust interest 1.0000000000 in:**

Section	Township	Range	County	State Meridian	Acres
6	037.00N	046.00W	SHANNON	SD Sixth Principal	78.000

Parcels: LOT 99 = N SE

344 T 7616 -A Name Not Listed**An undivided 1 / 1 trust interest 1.0000000000 in:**

Section	Township	Range	County	State Meridian	Acres
6	037.00N	046.00W	SHANNON	SD Sixth Principal	74.870

Parcels: LOT 7, SE SW

5-5442

Allotment No: 1-UNIT19-11-15

Document No: T-6159, T-6159A
T-7613A, 7613B
T-7616A, T-10289

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
PINE RIDGE AGENCY

****MODIFICATION***

It is hereby agreed by and between The Oglala Sioux Tribe (Lessors) ,and Anita Moody, 602 N Greeley St., Scotia, NE 68875,(Lessee), that Lease No. 1-UNIT19-11-15, described as: SEE ATTACHED LEGAL DESCRIPTION.

DUE TO: SEE ATTACHED MODIFICATION BY THE OGLALA SIOUX TRIBAL LAND COMMITTEE.

Rental payments may change over the term of this Lease based on the trust or restricted ownership interest in the tract(s) at the time of invoicing. In lieu of Rental payments the Oglala Sioux Tribe wishes to enter into a crop share lease agreement.

Lessor

Lessor

Anita Moody

(Lessee) Anita Moody

Jan Poor Bear/dj

President - Oglala Sioux Tribe

Dennis M. Moteh

OST Land Office - Director

The within *** MODIFICATION** is hereby approved and declared to be made in accordance with the rules and regulations prescribed by the Secretary of the Interior there under, and now in force.

[Signature]
Superintendent

7-11-12
Date

This modification is approved pursuant to authority delegated to the Assistant Secretary - Indian Affairs by 209 DM 8, 230 DM 1, and to the Great Plains Regional Director by 3 IAM 4 (Release No. 00-03), and to the Superintendents by Great Plains Regional Addendum 3 IAM 4 (Release No. 0502).

IN WITNESS WHEREOF I hereunto set my hand and official seal.

[Signature]
Notary Public

* INSERT MODIFICATION OR CANCELLATION
** INSERT MODIFIED OR CANCELLED

My commission expires 7-5-2014

COPY



LEASE NO. 1 UNITS-11-15

Bond: \$8,929.35

TRACT NO: MULTIPLE

UNITED STATES

LAND AREA

DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

CODE: 134

**RECEIVED
BRANCH OF**

ADV NUMBER:

PINE RIDGE AGENCY

ADV ITEM: 0

PO BOX 1203

ADV DATE:

AUG - 2 2011

HIGHWAY 10, MAIN STREET, BLDG 159

PINE RIDGE, SD 5777C

**LAND TITLES
& RECORDS OFFICE**

AGRICULTURE LEASE

THIS LEASE, made and entered into this 1st day of June, 2011 by and between the Indian or Indians named below (the Secretary of the Interior acting for and on behalf of Indians), hereinafter called the LESSOR, and ANITA MOODY 602 NORTH GREELY SCOUTS NE 68875 hereinafter called the LESSEE, in accordance with the provisions of existing law and the regulations (25 CFR 162) which, by reference, are made a part hereof.

WITNESSETH: That for and in consideration of the rents, covenants, and agreements hereinafter provided, the lessor hereby lets and leases unto the lessee for farming and grazing purposes only, the land and premises described as follows, to wit:

344 T 3120, 344 T 3268 -A, 344 T 3280 -A, 344 T 3280 -B, 344 T 3281, 344 T 3282

The legal description for the lands committed to this lease in the tract(s) identified are described in the Schedule of Lands attached to this lease.

This lease is exclusive to the lands and interest(s) held in trust or restricted status by the United States for the benefit of an Indian Tribe or individual Indian beneficiary at the time of approval.

This lease, containing 437.500 acres, more or less, of which not to exceed 437.500 acres may be cultivated, for the term of 55.00 months beginning on the 1st day of June, 2011, to be completed and ended on the 31st day of December, 2015, subject to the conditions hereinafter set forth.

This lease is subject to the following provisions:

1. SECRETARY as used herein means the Secretary of the Interior or his authorized representative delegated.

2. RENTAL PAYMENTS-The rental payment may change over the term of this lease based on the trust or restricted ownership interest in the tract(s) at the time of invoicing. Rental payments will not be accepted more than one year in advance of the due date. Rental or one- $\frac{1}{5}$ share of all crops) as hereinafter provided is to be paid in accordance with the following payment schedule unless otherwise specified on the invoice.

Payment Start Date	
11/01/2011	20% To The Oglala Sioux Tribe
11/01/2012	20% To The Oglala Sioux Tribe
11/01/2013	30% To The Oglala Sioux Tribe
11/01/2014	30% To The Oglala Sioux Tribe
11/01/2015	30% To The Oglala Sioux Tribe

A non refundable administrative fee will be charged in accordance with 25 CFR 162.14 or 25 USC 14b, unless waived by the Secretary.

The administrative fee for this lease is \$240.20.

Failure to pay the exact amount by the due date is a lease violation and the lease may be subject to cancellation after providing notice to the LESSEE. The amount

COPY

Page

1

ORIGINAL

5-5442

Allotment No: 1-UNIT5-11-15

Document No: T-3120, T-3268A
T-3280A, T-3280B
T-3281, T-3282

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
PINE RIDGE AGENCY

****MODIFICATION***

It is hereby agreed by and between The Oglala Sioux Tribe (Lessors) ,and Anita Moody, 602 N Greeley St., Scotia, NE 68875,(Lessee), that Lease No. 1-UNIT5-11-15, described as: SEE ATTACHED LEGAL DESCRIPTION.

DUE TO: SEE ATTACHED MODIFICATION BY THE OGLALA SIOUX TRIBAL LAND COMMITTEE.

Rental payments may change over the term of this Lease based on the trust or restricted ownership interest in the tract(s) at the time of invoicing. In lieu of Rental payments the Oglala Sioux Tribe wishes to enter into a crop share lease agreement.

Lessor

Lessor

Anita Moody
(Lessee) Anita Moody

Tom Fox Bear / sh
President - Oglala Sioux Tribe

Dennis M. Meech
OST Land Office - Director

The within *** MODIFICATION** is hereby approved and declared to be made in accordance with the rules and regulations prescribed by the Secretary of the Interior there under, and now in force.

Heidi
Superintendent

7-11-12
Date

This modification is approved pursuant to authority delegated to the Assistant Secretary - Indian Affairs by 209 DM 8, 230 DM 1, and to the Great Plains Regional Director by 3 IAM 4 (Release No. 00-03), and to the Superintendents by Great Plains Regional Addendum 3 IAM 4 (Release No. 0502).

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Sandra McCoy
Notary Public

* INSERT MODIFICATION OR CANCELLATION
** INSERT MODIFIED OR CANCELLED

My commission expires 7-5-2014

COPY



BRUCELLOSIS STIPULATIONS

Lessee or Permittee are required to participate in the State-Wide Federal Brucellosis Eradication Program. All female calves to be kept for breeding purposes, shall be vaccinated between four (4) and eight (8) months of age unless exempted in writing by the Superintendent. All herds must participate in the area certification and recertification program and, when found infected, must complete scheduled retests unless released from quarantine.

Breeding cattle being transferred into the Indian lands covered by the Lease or Permit must originate: (1) from herds not under quarantine for brucellosis in certified areas; (2) from herds which are negative to the blood test within the past twelve (12) months and the animals moving into the area covered are negative to the block test within the past thirty (30) months of age officially vaccinated against brucellosis. Failure to comply with the requirements shall be cause for immediate cancellation of the lease or permit.

LESSEE: Vernon Moody

DATE: 6-1-11

WITNESS: Alan D. Koelling

DATE: 6-1-11

15. Lessee shall handle pesticides and all other hazardous materials in accordance with the National Environmental Protection Act and any existing Tribal environmental codes. Penalty for failure to abide by this contract clause will be commensurate to NEPA guidelines.

16. Grassland will be stocked as determine by soil and range survey data. Lessee agrees the stocking rates set for Indian Trust land will also be used for all tracts of land grazed and/or fenced in common with land under this lease. No livestock will be permitted to graze to the point of grass stand deterioration. Livestock will be promptly removed if proper range utilization is reached prior to the end of the grazing season.

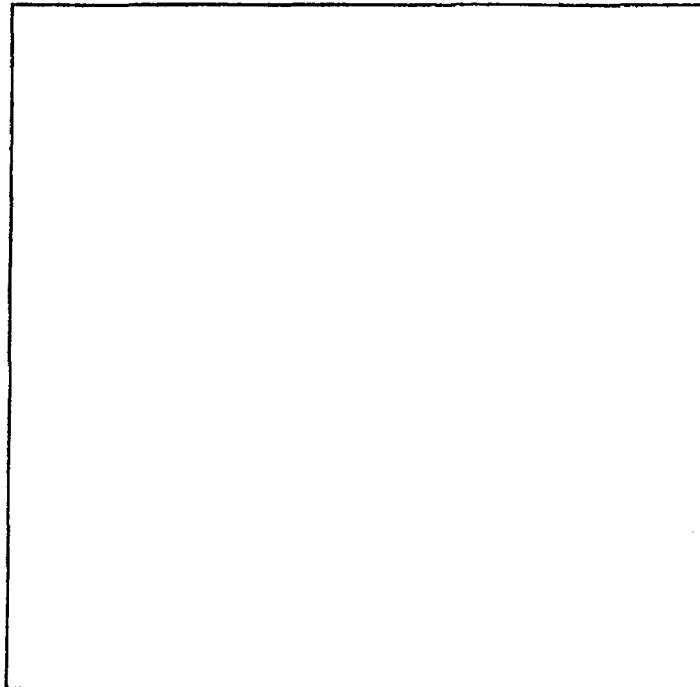
- A. Animal Units Yearlong
B. Animal Units less than yearlong: Dates –
C. X Pasturing by written permission of the Superintendent only.

Penalty for overstocking or unauthorized grazing shall be a sum equal to the annual lease rental on all land covered under this lease plus livestock shall be promptly removed from the land.

17. SPECIAL PRACTICES: LESSEE WILL CONTROL ALL NOXIOUS WEEDS.

LEGAL DESCRIPTION: S½SW¼

SECTION 10 TOWNSHIP 36, RANGE 41.



Be it further understood and agreed that failure to comply with any of the required conservation practices as stipulated in this plan will be sufficient cause for immediate cancellation of this lease.

Vernon M. Mott
Lessee/

6-1-11
Date

Alan D. Koelling
Witness



**Programmatic Environmental Assessment : Agricultural Leasing, Great Plains Region.
September 2008**

Site-Specific Environmental Assessment and FONSI:

The following form will be used to consider and approve agricultural leases. Any number of leases can be addressed with a single form, as long as the certification and finding are the same. A copy of the completed form should be filed with each lease file.

Environmental Assessment and Finding Agricultural Lease Approval:

Pine Ridge Agency

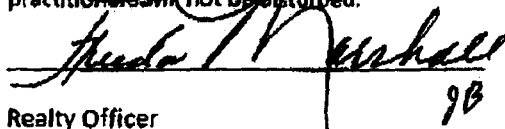
Allotment # UNT 5

Lease No. 1-UNIT5-11-15

Certification by Agency Realty Officer:

Proposed approvals are all for renewal of agricultural leases. Typical activities include plowing, cultivating, harvesting, haying or grazing. No new ground-disturbing activities are proposed or authorized, nor any change of land use from the current lease.

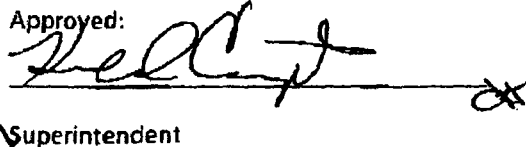
Approvals are not expected to have significant adverse effects on public health or safety, impose on the known habitat of any threatened and or endangered / special species, nor contribute to the introduction or spread of noxious weeds or invasive species. The physical integrity of Indian sacred sites will not be adversely affected. Access to such sites will not be impeded, and ceremonial activities of Indian religious practitioners will not be disturbed.


Realty Officer

7-26-11
Date

Finding of No Significant Impact:

I have reviewed proposals and pertinent documentation for the agricultural leases listed above. I find that all listed proposals are for lease renewals. Proposed activities all fall within the scope of the Programmatic Environmental Assessment for Agricultural Leasing (September 2008) and pose no unconsidered or unacceptable risk of impact to human health or the environment. I find no significant impact will result from approval of the proposed lease(s).

Approved:

Superintendent

7-26-11
Date

ORIGINAL

PROVISIONS 17 & 18

17.) THE LESSEE AGREES THAT THIS LEASE MAY BE CANCELLED AT THE END OF A LEASE YEAR (DECEMBER 31)

(A) At the request of the sole owner in which the land was exchanged by the Oglala Sioux Tribe or the United States in his/her behalf.

18.) It is understood and agreed by the Lessee(s) that all Tribal Members will have free ingress & egress on solely-Owned Tribal Leased land, so long as it does not interfere with operations of the Lessee(s) or incur damages to within lands.

NOTICE: Any person(s) authorized to use Indian land under Federally approved Lease Contracts, Permits, Easements, or other documents with the Oglala Sioux Tribe, may become subject to Tribal Jurisdiction for purposes relating to that contract.

LESSEE: *Amie L. Moody*

DATE: *6-1-11*

WITNESS: *Alan D. Koelling*

DATE: *6-1-11*

~~ORIGINAL~~

STIPULATION "J"

In accordance with Ordinance No. 91-05, approved by the Oglala Sioux Tribal Council, April 15, 1991, the following stipulations is by reference made a part of this lease (Resolution No. 85-174 amended to read) :

Non-member, Non-Indian users, Permittees, Lessees, will pay the following rates for both tribal and allotted lands.

GRASSLAND \$.30 per acre per annum

MEADOW HAY \$.40 per acre per annum

FARMLAND \$.60 per acre per annum

The assessment is due and payable in advance on the effective date of the lease and anniversary dates thereafter for the term of the lease. Failure to pay the assessment will be sufficient cause for cancellation of this lease contract for non-compliance.

LESSEE: Vernon Moody

DATE: 6-1-11

WITNESS: Alan D. Hoelling

DATE: 6-1-11

~~ORIGINAL~~

Ed: 5-4-12

Modification to Ag. Lease number 1-UNIT5-11-15

The following will be modified to settle the Unit 5 2011 Ag. Lease.

Under the number of acres to be cultivated the paragraph should be modified to read:

This lease, containing 437.50 acres, more or less, of which not to exceed 357 acres may be cultivated, for the term of 55 months beginning on the 1st day of June 2011, to be completed and ended on the 31st. day of December 2015 subject to the conditions hereinafter set forth.

Also to be modified:

Provisions addressing the Farm Lands payments and the payment schedule:

2. Rental Payment the rental payments may change over the term of this lease based on the trust or restricted ownership interest in the tract(s) at the time of invoicing. In lieu of Rental payments the Oglala Sioux Tribe wishes to enter into a crop share lease agreement, with stipulation including the following:

Rental equal to one fifth (1/5) or 20% of all crops for the first two years and 1/3 or 30% the remaining three (3) years, as hereinafter provided is to be paid in accordance with the following payment schedule unless otherwise specified on the invoice.

Payment schedule:

Pasture Payment Start Date	Pasture Land Negotiated Rates	Crop Share \$, associated with the harvest dates	% of Crop Share for each year
4/1/2012	\$8.00 per ac.	6/1/2011	Equal to 20% of crop harvest to the Oglala Sioux Tribe
01/1/2012	\$8.00 per ac	11/1/2012	Equal to 20% of crop harvest to the Oglala Sioux Tribe
01/1/2013	\$8.00 per ac	11/1/2013	Equal to 30% of crop harvest to the Oglala Sioux Tribe
01/1/2014	\$8.00 per ac	11/1/2014	Equal to 30% of crop harvest to the Oglala Sioux Tribe
01/1/2015	\$8.00 per ac	11/1/2015	Equal to 30% of crop harvest to the Oglala Sioux Tribe

Address the pasture lands: Failure to pay the exact amount for Pasture lands (80.50 acres) on the due date is a lease violation and the lease may be subject to cancellation after providing notice to lessee. Rental payment on the Pasture Land will be considered late if it is not received by the due date specified in the invoice. Although the decision to cancel this lease for rental disputes is subject to appeal pursuant to 25 CFR Part 2, the decision may be made effective immediately for the conservation and protection of the trust land.

18. Bonding – in lieu of providing a bond, the LESSEE will ensure that Insurance purchased on the crop, and if a loss is determined, the payment from the insurance, must equal \$36.00 per acre by paying the difference between the insurance per acre, and the \$36.00 per acre.

All other provisions to remain the same:

ORIGINAL

Unit 5

ALLOTMENT NO.	LEGAL DESCRIPTION	FARMLAND (acre)	GRASSLAND (acre)	OTHER (acre)
T3282	W $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$, Sec 9-37-46	50	65	5 (homesites)
T3268A	20 acres w/i S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec 9-37-46	20		
T3281	SW $\frac{1}{4}$, Sec 9-37-46	143	2.5	2.5 (homesite) 12
T3280A/B	SE $\frac{1}{4}$, Sec 9-37-46	138	13	9
T3120	6 acres w/i SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec 10-37-46	6		
		357	80.5	28.5

ORIGINAL

CUSTOMER COPY

CASHIER'S CHECK

21184

76-1394/1041
203000

REMITTER Eagle Ridge Livestock, Inc.
Rent

11/1/2012

PAYABLE TO

Bureau of Indian Affairs

\$ 25,000.00

NOT NEGOTIABLE

THE SUM OF TWENTY FIVE THOUSAND DOLLARS

MEMORANDUM

DOLLARS

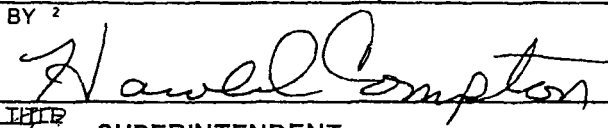


ERICSON
State Bank

P.O. Box 98 • Erickson, Nebraska 68537



20 per acre for GAS A- Unit 19, 5, T561

Standard Form 1034 Revised October 1987 Department of the Treasury 1 TFM 4-2000		PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL				VOUCHER NO.	
U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION Bureau of Indian Affairs Pine Ridge Agency PO Box 1203 Pine Ridge, SD 57770			DATE VOUCHER PREPARED		SCHEDULE NO.		
			CONTRACT NUMBER AND DATE		PAID BY		
			REQUISITION NUMBER AND DATE				
PAYEE'S NAME Eagle Ridge Livestock AND Mr. & Mrs. Vern Moody ADDRESS P.O. Box 185 Scotia, Ne 68875			DATE INVOICE RECEIVED		PAYEE'S ACCOUNT NUMBER		
			DISCOUNT TERMS				
			GOVERNMENT B/L NUMBER				
			SHIPPED FROM		TO		WEIGHT
NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES <small>(Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)</small>	QUAN- TITY	UNIT PRICE COST PER		AMOUNT <small>(1)</small>	
		Return to Eagle Nest Livestock due to incorrect amounts and documents required to determine type of pmts if crop share/insurance pmts.				\$ 25,000.00	
(Use continuation sheet(s) if necessary)						TOTAL \$ 25,000.00	
PAYMENT:		APPROVED FOR		EXCHANGE RATE		DIFFERENCES	
<input type="checkbox"/> PROVISIONAL <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL <input type="checkbox"/> PROGRESS <input type="checkbox"/> ADVANCE		BY ²  TITLE SUPERINTENDENT		= \$ = \$1.00		Amount verified; correct for (Signature or initials)	
Pursuant to authority vested in me, I certify that this voucher is correct and proper for payment							
(Date)		(Authorized Certifying Officer) ²		(Title)			
ACCOUNTING CLASSIFICATION							
PAID BY	CHECK NUMBER		ON ACCOUNT OF U.S. TREASURY		CHECK NUMBER		
	CASH		DATE		PAYEE ³		
\$						PER	
						TITLE	

1 When stated in foreign currency, insert name of currency.

2 If the ability to certify and authority to approve are combined in one person, one signature only is necessary; otherwise the approving officer will sign in the space provided, over his official title

3 When a voucher is receipted in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. For example: John Doe Company, per John

Previous edition usable.

NSN 754-00-900-2234

PRIVACY ACT STATEMENT

The information requested on this form is required under the provisions of 31 U.S.C. 82b and 82c, for the purpose of disbursing Federal money. The information requested is to identify the particular creditor and the amounts to be paid. Failure to furnish this information will hinder discharge of the payment obligation.

Appx71



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS

Pine Ridge Agency
PO Box 1203
Pine Ridge, South Dakota 57770



In Reply Refer To:
Real Estate Services
T&M

APR 04 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
7010-3090-0001-3959-1448

Mr. Vernon Moody
602 North Greely Street
Scotia, NE 68875

Dear Mr. Moody:

This is in reference to Allotment Nos. T561, described as All, Section 12, Township 37 North, Range 42 West and OS-218, described as Lots 1, 2, E $\frac{1}{2}$ NW $\frac{1}{4}$, Section 6, Township 35 North, Range 43 West, both of 6th PM, SD. These tracts are leased to you under Lease No. 1T05611115 and 1002181115 until December 31, 2015. The method of payments stipulated on the face of the contracts states 15% for T561 and 20% for OS-218 Crop Share Payments.

Title 25 Code of Federal Regulations (CFR) 162.234, states in part, "Unless otherwise provided by the Secretary a satisfactory surety bond will be required in an amount that will reasonably assure performance of the contractual obligation under the lease. § 162.213(b) states, "Where a bond is required under § 162.234 of this subpart, the bond must be furnished before we grant or approve the lease"

§ 162.251 What will BIA do in the event of a violation under an agricultural lease? "(a) if we determine that an agricultural lease has been violated, we will send the tenant and it's sureties a notice of violation within five business days of that determination. The notice of violation must be provided by certified mail, return receipt requested. (b) Within ten business days of the receipt of a notice of violation, the tenant must: (1) Cure the violation and notify us in writing that the violation has been cured; (2) Dispute our determination that a violation has occurred and/or explain why we should not cancel the lease; or (3) Request additional time to cure the violation".

RECEIVED
MAY 30 2013
OST LAND OFFICE

COPY

§ 162.247 states Will BIA notify a tenant when a rent payment is due under an agricultural lease? "We may issue bills or invoices to a tenant in advance of the dates on which rent payments are due under an agricultural lease, but the tenant's obligation to make such payments in a timely manner will not be excused if such bills or invoices are not delivered or received".

On April 3, 2013, an audit was conducted. The audit revealed that you have not submitted any crop reports nor any "Negotiable Warehouse Receipts" which are due at this Agency by November 1, 2012 as stipulated on your lease contracts. You are in Violation of Lease Nos. 1T05611115 and 1002181115.

You will have ten days from the receipt of this notice to submit all crops reports, and Negotiable warehouse receipts. Failure to comply with this request will leave us no other alternative but to initiate cancellation procedures and assess you at the negotiated rate of \$36.00 per acre as Item No. 4-A of ADDITIONAL PROVISIONS stipulates and/or show cause why you should not be assessed and we should not initiate cancellation procedures. However, cancellation of leases may be avoided if agreement is reached within ten days on a course of corrective measures applied within a reasonable time and the breach is corrected.

You are to submit a bond for these leases for the term of the contracts.

A copy of this letter is being mailed to Ericson State Bank, L & D Insurance Agency in the event they are required to make restitution on your behalf.

If you should have further questions concerning this matter, you may contact the Branch of Realty, T&M Section at, 605-867-1001, extension 242.

Sincerely,

(SGD) ROBERT D. ECOFFEY

Superintendent

TM: DTobacco: 4-3-2013: JBoardeaux: 4-3-2013: PRA Chrono, Lease File T-561, OS 218.

CC: Ericson State Bank
427 Central Ave.
P.O Box 98
Ericson, NE 68637

OST Land Office. ✓

USDA-FSA
Shannon/ Bennett Co.
706 U.S Hwy 18, Suite 1
Martin, SD 57551

RECEIVED
MAY 30 2013
OST LAND OFFICE



United States Department of the Interior
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS
 Albuquerque, NM 87109



March 7, 2013

MEMORANDUM

TO: Palm Springs Agency
 Bureau of Indian Affairs

FROM: Brenda Othole-Quam
 Supervisory Accountant, Br. of Receipting

SUBJECT: Irregular Check

The following check could not be processed at the Lockbox due to Magnetic Ink Character Recognition (MICR) error and is being returned to you for further handling as necessary.

Check No.	Check Date	Name	Amount
1290	2/28/2012	Pine Ridge	\$43,465.64

Please contact the remitter of this check and request that new funds be submitted in the form of a money order or a cashier's check.

If you have any questions, please call me at (505) 816-1301 or Loren Jim at (505) 816-1433. Ms. Dianne Moran can also be contacted at (505) 816-1060, in the event Loren and I are not available to assist you.

Thank you for your cooperation in this matter.

I've Enclosed mailing Labels
 where payments should be mailed to.

Attachment(s)

to my mail certified to
 Moody-

RECEIVED
 B.I.A. PALM SPRINGS AGENCY
 2013 MAR 11 AM 9:21

where - you need a cashier's / or

R.C. ENTERPRISES / BEAR GRAPHICS, INC.

CUSTOMER COPY

CASHTER'S CHECK

21417

REMITTER: Vernon S. Anita Moody

PAYABLE TO: Bulfinch of Indian Affairs

NOT NEGOTIABLE

April 22, 2013

\$ 43,465.64

DOLLARS

MEMORANDUM

ERICSON
State Bank
P.O. Box 98 • Edison, Nebraska 68637

EDIC

76-1364/1041
203000



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS

Pine Ridge Agency
PO Box 1203
Pine Ridge, South Dakota 57770



In Reply Refer To:
Real Estate Services
T&M

APR 18 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
7010-3090-0001-3958-9902

Mr. Vern Moody
602 North Greely Street
Scotia, NE 68875

Dear Mr. Moody:

On April 4, 2013, you were mailed a certified letter which cited you Code of Federal Regulations 162.234, 162.251 and 162.247 for failure to submit bonding, and payment for Lease No. 1-0218-11-15. This was receipted by you on April 8, 2013. To date, we have not received any documents or payments. You have not responded either verbally or in writing as to your intentions.

This letter will serve as your official notification that effective April 18, 2013, Lease Nos. 1-0218-11-15 is hereby cancelled for non-compliance as per § 162.251 and 162.252.

This decision may be appealed to the Regional Director, Great Plains Region, Federal Building, 115 4th Avenue SE, Aberdeen, SD 57401, in accordance with the regulations in 25 CFR Part 2 (copy enclosed). Your notice of appeal must be filed in this office within 30 days of the date you receive this decision. The date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to this office. Your notice of appeal must include your name, address and telephone numbers. It should clearly identify the decisions being appealed. If possible attach a copy of the decision. The notice and the envelope in which it is mailed should be clearly labeled **"NOTICE OF APPEAL"**. Your notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them copies of the notice. You must also send a copy of your notice of appeal to the Regional Director at the address listed above.

ORIGINAL

If no appeal is timely filed, this decision will become final for the Department of Interior at the expiration of the appeal. No extension of time may be granted for filing a notice of appeal.

If you should require further assistance in this matter, you may contact the Branch of Realty, T&M, at 867-1001, extension 242.

Sincerely,

Harold Compton

ACTING

Superintendent

We met Mr. Compton
At Big Butte, A convenience
store in Lake Ridge, S.D.
I can't recall the specific
date but Mr. Moody, my
companion, my brother,
Cedric Young Bear and my
self asked Mr. Compton
if that was indeed his
signature and Mr. Compton
replied I have never
used blue ink all the
years I worked.



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Pine Ridge Agency
PO Box 1203
Pine Ridge, South Dakota 57770



In Reply Refer To:
Real Estate Services
T&M

CERTIFIED RETURN- RECEIPT REQUESTED

APR 1 2 2013

Mr. Vern Moody
602 North Greely Street
Scotia, NE 68875

Dear Mr. Moody:

On April 4, 2013, you were mailed a certified letter which cited you Code of Federal Regulations 162.234, 162.251 and 162.247 for failure to submit bonding, and payment for Lease No. 1-0218-11-15, and 1-T0561-11-15 This was receipted by you on April 8, 2013. To date, we have not received any documents or payments. You have not responded either verbally or in writing as to your intentions.

This letter will serve as your official notification that effective April 18, 2013, Lease Nos. 1-0218-11-15, and 1-T0561-11-15 is hereby cancelled for non-compliance as per § 162.251 and 162.252.

This decision may be appealed to the Regional Director, Great Plains Region, Federal Building, 115 4th Avenue SE, Aberdeen, SD 57401, in accordance with the regulations in 25 CFR Part 2 (copy enclosed). Your notice of appeal must be filed in this office within 30 days of the date you receive this decision. The date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to this office. Your notice of appeal must include your name, address and telephone numbers. It should clearly identify the decisions being appealed. If possible attach a copy of the decision. The notice and the envelope in which it is mailed should be clearly labeled "NOTICE OF APPEAL". Your notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them copies of the notice. You must also send a copy of your notice of appeal to the Regional Director at the address listed above.

If no appeal is timely filed, this decision will become final for the Department of Interior at the expiration of the appeal. No extension of time may be granted for filing a notice of appeal.

If you should require further assistance in this matter, you may contact the Branch of Realty, T&M, at 867-1001, extension 242.

Sincerely,

HAROLD COMPTON

ACTING Superintendent

TM: DTobacco: 4-18-2013: JBoardeaux: 4-18-2013: PRA Chrono, Lease Files OS 218, T-561.



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS

Pine Ridge Agency
PO Box 1203
Pine Ridge, South Dakota 57770



APR 18 2013

In Reply Refer To:
Real Estate Services
T&M

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
7010-3090-0001-3958-9896

Mrs. Anita Moody
602 North Greely Street
Scotia, NE 68875

Dear Mrs. Moody:

On April 4, 2013, you were mailed a certified letter which cited you Code of Federal Regulations 162.234, 162.251 and 162.247 for failure to submit bonding, Crop Insurance for 2012. You were allowed ten days from the receipt to come into compliance with your leases. This was receipted by you on April 8, 2013. To date, you failed to respond either verbally or in writing.

This letter will serve as your official notification that effective April 18, 2013, Lease Nos. 1-UNIT5-11-15 and 1-UNT19-11-15 are hereby cancelled for non-compliance as per § 162.251 and 162.252.

This decision may be appealed to the Regional Director, Great Plains Region, Federal Building, 115 4th Avenue SE, Aberdeen, SD 57401, in accordance with the regulations in 25 CFR Part 2 (copy enclosed). Your notice of appeal must be filed in this office within 30 days of the date you receive this decision. The date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to this office. Your notice of appeal must include your name, address and telephone numbers. It should clearly identify the decisions being appealed. If possible attach a copy of the decision. The notice and the envelope in which it is mailed should be clearly labeled "NOTICE OF APPEAL". Your notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them copies of the notice. You must also send a copy of your notice of appeal to the Regional Director at the address listed above.

§ 162.247 states Will BIA notify a tenant when a rent payment is due under an agricultural lease? "We may issue bills or invoices to a tenant in advance of the dates on which rent payments are due under an agricultural lease, but the tenant's obligation to make such payments in a timely manner will not be excused if such bills or invoices are not delivered or received".

On April 3, 2013, an audit was conducted. The audit revealed that you have not submitted any crop reports nor any "Negotiable Warehouse Receipts" which are due at this Agency by November 1, 2012 as stipulated on your lease contracts. You are in Violation of Lease Nos. 1UNIT51115 and 1UNT191115.

You will have ten days from the receipt of this notice to submit all crops reports, and Negotiable warehouse receipts. Failure to comply with this request will leave us no other alternative but to initiate cancellation procedures and assess you at the negotiated rate of \$36.00 per acre as Item No. 4-A of ADDITIONAL PROVISIONS stipulates and/or show cause why you should not be assessed and we should not initiate cancellation procedures. However, cancellation of leases may be avoided if agreement is reached within ten days on a course of corrective measures applied within a reasonable time and the breach is corrected.

You are to submit a bond for these leases for the term of the leases.

A copy of this letter is being mailed to Ericson State Bank, L & D Insurance Agency in the event they are required to make restitution on your behalf.

If you should have further questions concerning this matter, you may contact the Branch of Realty, T&M Section at, 605-867-1001, extension 242.

Sincerely,

(SGD) ROBERT D. ECOFFEY

Superintendent

TM: DTobacco: 4-3-2013: JBordeaux: 4-3-2013: PRA Chrono, Lease File Unit 5, Unit 19.

CC: Ericson State Bank
427 Central Ave.
P.O Box 98
Ericson, NE 68637

OST Land Office ✓
USDA-FSA
Shannon/Bennett Co.
706 U.S Hwy 18, Suite 1
Martin, SD 57551

Eagle Ridge Livestock, Inc.
Vernon and Anita Moody
602 North Greeley
Scotia, Ne. 68875

2013 Incurred Expenses

FUEL	\$12,133.94
Repair	14,198.02
Utilities	5,331.62
Supplies	5,799.37
Misc.	1,858.83
Insurance	2,416.96
Tax	3,032.40
License	892.96
Chemical	16,057.50
Seed	12,640.00
Dep.	25,862.00
Equipment	21,200.00
Labor PineRidge	6,280.00
Attorney Fee	45,800.00
A. Moody W	7,287.20
V. Moody W	72,800.00
 TOTAL	 243,590.80
Interest	18,016.28
 TOTAL	 271,607.08

Sept 2, 2014
copy



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS

Pine Ridge Agency
PO Box 1203
Pine Ridge, South Dakota 57770



In Reply Refer To:
Real Estate Services
T&M

CERTIFIED MAIL- RETURN- RECEIPT REQUESTED
7012-0470-0000-3744-9208

JUL 09 2013

Mr. Vern Moody
602 North Greely Street
Scotia, NE 68875

Dear Mr. Moody:

On April 4, 2013, you were mailed a certified letter which cited you Code of Federal Regulations 162.234, 162.251 and 162.247 for failure to submit bonding, all crop reports and "negotiable Warehouse Receipts due November 1, 2012. This was receipted by you on June 24, 2013.

On June 26, 2013, your attorney was in the agency and stated you would be submitting all documents and took a copy of the Notice Letter. To date, we have not received documents from you nor a response as to your intentions, verbally or in writing. The time allowed has long elapsed.

This letter will serve as your official notification that effective July 9, 2013, Lease No. 1-T367B-12-16 is hereby cancelled for non-compliance as per § 162.251 and 162.252.

This decision may be appealed to the Regional Director, Great Plains Region, Federal Building, 115 4th Avenue SE, Aberdeen, SD 57401, in accordance with the regulations in 25 CFR Part 2 (copy enclosed). Your notice of appeal must be filed in this office within 30 days of the date you receive this decision. The date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to this office. Your notice of appeal must include your name, address and telephone numbers. It should clearly identify the decisions being appealed. If possible attach a copy of the decision. The notice and the envelope in which it is mailed should be clearly labeled "NOTICE OF APPEAL". Your notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them copies of the notice. You must also send a copy of your notice of appeal to the Regional Director at the address listed above.

COPY

Eagle Ridge Livestock, Inc.
Vernon & Anita Moody
Projected Farm Income
Year Ended December 31, 2013

Units 5 & 19 655 acres x 138 bu. x 5.62 price per bu. x 70% share = 355,594.26

Unit T561 390 acres x 138 bu. x 5.62 price per bu. x 80% share = 241,974.72

Unit OS218 152 acres x 138 bu. x 5.62 price per bu. x 100% sh = 117,885.12

Unit T367B 75 acres x 138 bu. x 5.62 price per bu. x 75% sh = 43,625.25

Total Corn = 759,079.35

Hay Unit T567 x 230 acres x 2.3 Ton x \$180 per T. x 100% = 95,220.00

USDA payment = 8,200.00

Total = 862,499.35

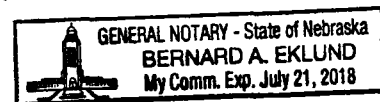
Farm ground rent-unit OS218 152 acres x 36.00 = 5,472.00

Prairie Hay Rent 250 acres x 13.00 = 3,250.00

Non occurred farm and harvest expense = 125,056.00

Total loss of income 2013 = 728,721.35

Vernon Moody PRESIDENT
→ signature notarized on September 3, 2014
Bernard A. Eklund



Aug 30 Notarized by C. Wright
2014 Vernon & Anita Moody State Bank of Scotia
Appx84

Eagle Ridge Livestock, Inc.
Vernon and Anita Moody
Projected Farm Income
Year 2014

Units 5 & 19 655 acres x 138 bu. x 4.37 x 70% share = 276,503.01

Unit T561 390 acres x 138 bu. x 4.37 x 80% share = 188,154.72 ✓

Unit OS218 152 acres x 138 bu. x 4.37 x 100%share = 91,665.12 ✓

Unit T567 75 acres x 138 bu. x 4.37 x 75%share = 33,922.12

Total corn = 590,244.97

Hay Unit T567 x 230 acres x 2 Ton x \$65 per T. x 100% = 29,900.00

Total = 620,144.97

Farm ground rent-unit OS218 152 acres x 36.00 = 5,472.00 ✓

Prairie Hay Rent 250 acres x 13.00 = 3,250.00

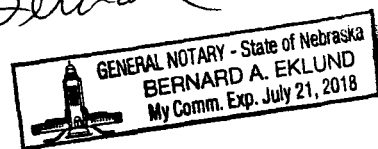
Non occurred farm and harvest expense = 195,888.00

Total Loss of income 2014 = 415,534.97

Vernon Moody PRESIDENT.

→ signature notarized on September 3, 2014

Bernard A. Eklund



Aug 30 - Notarized by (C. Wright) State Bank of Scotia
2014. 122... Anita... Appx85

Eagle Ridge Livestock, Inc
Vernon and Anita Moody
Projected Farm Income
Year 2015

Units 5 & 19 655 acres x 146 bu. x 3.62 x 70% share = 242,326

Unit T561 390 acres x 146 bu. x 3.62 x 80% share = 164,898

Unit OS218 152 acres x 146 bu. x 3.62 x 100% share = 80,335

Unit B367 75 acres x 146 bu. x 3.62 x 75% share = 29,729

Total Corn 517,288

Hay Unit T567 230 acres x 2 Ton x \$75 per Ton x 100% = 34,500

Total corn and hay 551,788

Farm ground rent-unit OS218 152 acres x 36.00 = 5,472

Prairie Hay rent 250 acres x 13.00 = 3,250

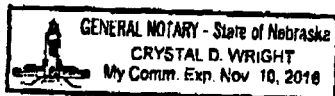
Non occurred farm and harvest expense 150,834

Total loss of income for 2015 392,232

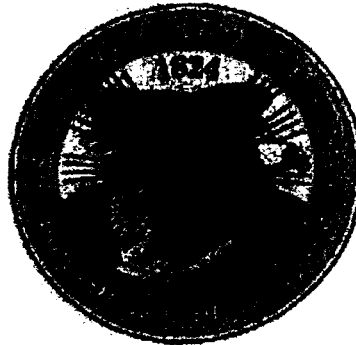
Vernon Moody
VERNON MOODY

STATE OF NEBRASKA)
) ss.
County of Greeley)

SUBSCRIBED & sworn to before me this 24th day of December, 2015, by
Vernon Moody.



Crystal D. Wright
Notary Public



PROCEDURAL HANDBOOK

Leasing and Permitting Chapter 2 – Agricultural Leasing

Issue Date
March 6, 2006

Issued By:

Department of the Interior
Bureau of Indian Affairs
Division of Real Estate Services
1849 C Street, N.W.
Washington, DC 20240

Leasing and Permitting Chapter 2 – Agricultural Leasing

23

LEASE AMENDMENT, ASSIGNMENT, AND SUBLEASE

Purpose

This procedure includes processing of any subsequent amendments, assignments, subleases, or other leasehold documents to an agricultural lease. In most instances, the transaction is requested by the landowner(s) or lessee. BIA review of the transaction ensures the best interests of the landowner are protected, the trust asset is conserved and the transaction is in compliance with the existing lease stipulations and all applicable tribal and federal statutes and regulations. In most instances, approval by the delegated official of the transaction is required.

Scope

Generally, the Realty office administers the lease. All actions must be approved by the appropriate delegated official and recorded in the LTRO.

Process

Step 1: Review the requested transaction for an existing lease.

- Each lease action needs to be performed within regulatory requirements and policy guidelines.
- Transactions may not need additional NEPA documentation if environmental documentation is in place for the original lease and no new environmental impact will occur as a result of transaction approval.
- The various transactions listed below may or may not occur during the term of the lease and are not contingent on one another.

Step 1a: Review a proposed lease amendment/modification. (See Attachment 17A - Sample Agricultural Lease Modification.)

- Ensure the required consent(s) has been obtained from the parties to the lease and any other sureties.
- Verify the amendment is in the best interest of the landowner(s) using the same standards as required for approval of the lease.

Step 1b: Review a proposed lease assignment. (See Attachment 18A - Sample Agricultural Lease Assignment.)

- Ensure the proper consent(s) has been obtained.

Issued: March 6, 2006

Leasing and Permitting Chapter 2 – Agricultural Leasing

27

LEASE COMPLIANCE

Purpose

This procedure includes the activities required to monitor leases for financial and land use compliance. An agricultural lease may be terminated or canceled if any of the provisions of the lease have been violated. Lease violations may be initiated as a result of site visits by realty staff to determine compliance with the terms of the lease; a complaint from the landowner(s) or a neighboring landowner; or non-payment of lease rental. A notice to correct the violation is normally provided to the lessee, and the Superintendent has the discretion to not terminate the lease depending on the response from the lessee. The decision to terminate a lease is appealable pursuant to 25 CFR Part 2.

Note: Not all the following steps may be required nor are the steps sequential.

Scope

The Agency Superintendent is responsible for ensuring all lessees comply with the terms of their leases. Often, the Realty Office, Land Operations Office, and the Trust Officer may assist in carrying out this responsibility.

Process

Step 1a: Monitor for timely payment of lease rentals.

- Review agency records, bills for collection, and accounts receivable reports to determine if rental payments have been made on time and in the correct amounts.
- If required, determine appropriate penalties pursuant to the contract terms for late rental payments.
 - Late payment penalties are determined by regulation or policy.
- See the the Interagency Procedures Handbook for more information.

Step 1b: Monitor for violation of lease terms, including conservation provisions.

- Periodically inspect lease activity on-site. This may be performed by realty or land operations staff.
- The inspection may include the following specific compliance determinations:
 - Are there activities that are not specifically authorized by the terms of the lease?
 - Has the lessee maintained the leased property in accordance with lease terms?

Issued: March 6, 2006

~~Case 1:16-cv-00107-EJD Document 24-3 Filed 02/27/17 Page 3 of 3~~
Notwithstanding any other provision of law, any trust or restricted Indian lands, whether tribally or individually owned, may be leased by the Indian owners, subject to the approval of the affected Indian tribe and the Secretary of the Interior, for housing development and residential purposes (this includes residential leases granted to non-tribal, privately-financed developers). Each lease shall be for a term not exceeding 50 years.

2.2 Indian Affairs Manuals (IAMs) and Bureau Of Indian Affairs Manuals (BIAMs)

Reserved

This handbook includes and replaces the procedures detailed in 54 BIAM.

2.3 Federal Regulations

Leases are processed under the regulations found at 25 CFR 162, Subpart A - General Provisions; Subpart B - Agricultural Leases; Subpart E - Special Requirements for Certain Reservations 162.500 Crow Reservation and Subpart F - Non-Agricultural Leases. (See Exhibit 4 - 25 CFR Part 162.) Subpart C - Residential Leases and Subpart D - Business Leases were reserved when this regulation was published January 22, 2001. Pending future publication of the subparts that have been reserved, Subpart F will govern the processing of residential and business leases. 25 CFR Part 162 does not address mineral leases, prospecting permits, mineral development agreements, grazing permits, timber contracts, management contracts, joint venture agreements, or encumbrances of tribal lands that are covered under 25 U.S.C. § 81. Additionally, the regulation does not apply to leases of water rights associated with Indian lands, except the use of water rights that are incorporated in the lease of the land itself; the payment of fees and drainage and irrigation charges pursuant to 25 CFR 162.611; easements or rights-of-way; trader's licenses; or land assignments and similar authorizations of temporary use by tribal members, in accordance with tribal laws or custom.

In accordance with 25 CFR 162.208 and 162.605, leases of individually owned land or tribal land may be granted by the following:

- Adults, other than those *non compos mentis*;
- Adults, other than those *non compos mentis*, on behalf of their minor children, and on behalf of minor children to whom they stand *in loco parentis* when such children do not have a legal representative;
- Guardians, conservators or other fiduciaries appointed by a state or a tribal court [court of competent jurisdiction] operating under an approved constitution or law and order code, of a minor or persons who are *non compos mentis* or are otherwise under legal disability ;
or
- Delegated tribal officials. (Note: Section 17 tribal corporation leases do not require Secretarial approval, but can only be leased up to 25 years.)

2.4 Delegation Of Authority

The authority of the Secretary of the Interior has been delegated to the Director, Bureau of Indian Affairs, by the Assistant Secretary - Indian Affairs in 230 DM 1 and redelegated to the Regional Directors. This delegation can be reviewed in the Indian Affairs Manual Release #00-03, Part 3, Chapter 4. Unless otherwise limited, the Regional Directors may redelegate this authority at their

Issued: March 6, 2006

IN UNITED STATES COURT OF FEDERAL CLAIMS

VERNON MOODY AND ANITA)
MOODY,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Defendant.)
_____)

No.16-107L

FIRST AMENDED COMPLAINT

The above named plaintiffs, for their complaint against the defendant, United States, hereby states and alleges as follows:

I. PRELIMINARY STATEMENT

1. This is an action by plaintiffs against defendant for unlawful termination and breach of lease agreements that they had with defendant for the use of land on the Pine Ridge Indian Reservation in South Dakota.

II. JURISDICTIONAL STATEMENT

2. This Court has jurisdiction over this matter pursuant to 28 USC § 1491 (a) (1) & (2). This action is one involving an express or implied contract with the United States. Venue is property in this Court under 28 USC § 1491 (a) (1). This Court has authority under 28 USC § 1491 (a) (1) to issue such equitable relief as it within its jurisdiction.

III. PARTIES

3. Plaintiffs, Vernon Moody and Anita Moody, husband and wife, entered into a number of leases with the Department of the Interior, Bureau of Indian Affairs, Pine Ridge Agency, Pine Ridge, South Dakota.

4. Defendant, United States of America, through its Department of the Interior, Bureau of Indian Affairs (BIA), Pine Ridge Agency, Pine Ridge, South Dakota, for consideration granted plaintiffs a number of leases of land on the Pine Ridge Indian Reservation, Oglala Lakota County. Employees and agents of the United States committed the breaches and violations set forth in this Complaint.

IV. FACTUAL ALLEGATIONS

5. In 2011, plaintiffs entered into four (five) leases with the Bureau of Indian Affairs for

a period of five years each.

6. The leases are identified as follows:

1-00218-11-15, 152.42 acres, Pine Ridge Allotment, E 1/2NW1/4 and Lots 1 and 2, Section 6, T. 35 N., R. 43 W., 6th P.M., Shannon County, S.D., entered into on June 1, 2011, farm land, Vernon Moody, referred herein as Exhibit 1

1-T0561-11-15, 640 acres, Pine Ridge Allotment T561, Section 12, T. 37 N., R. 42 W., 6th P.M., Shannon County, S.D., entered into on June 1, 2011, farm land, Vernon Moody, referred herein as Exhibit 2 (modification)

1-TB367-12-16, 80 acres, 344 T 367 B, Section 20, T. 36 N., R. 41 W., 6th P.M., Shannon County, S.D., entered into on June 8, 2011, farm land, Vernon Moody, referred herein as Exhibit 3

1-UNT19 11-15, 541.2 acres, 344 T 613A, 613B, 7616A, 10289, 6159, 6159A, Shannon County, S.D., entered into on June 1, 2011, farm land, Anita Moody, referred herein as Exhibit 4

1-UNIT5 11-15, 437.5 acres, 344 T 3120, 3268A, 2280A, 3280B, 3281, 3282, Shannon County, S.D., entered into on June 1, 2011, farm land, Anita Moody, referred herein as Exhibit 5

7. The leases were share leases with a certain amount of cash guaranteed for each lease.

8. All payments for the leases were made for the year 2011.

9. On November 1, 2012, plaintiffs, as instructed by the BIA, sent \$25,000 to Farmington, Missouri, the BIA collection repository, for the cash payment for the year 2012. See Exhibit 6 attached hereto and incorporated herein as if specifically set out.

10. Plaintiffs knew that the \$25,000 was sufficient to pay for Anita Moody's leases at Lease 4 and 5, but believed that further amounts would be due on the leases in Vernon Moody's name. Plaintiffs had sufficient funds to pay all leases due because they had received a \$94,000 insurance check.

11. The BIA was informed by plaintiffs of the payment and requested the BIA to advise them of further amounts due to complete lease payments for the year 2012.

12. Plaintiffs were not advised that any further amounts were due.

13. In December, 2012, the \$25,000 check was returned to plaintiffs and BIA through

their employee, Dorothy Tobacco, told plaintiffs that payment in full was required. See Exhibit 7 attached hereto and incorporated hereby by reference.

14. Plaintiffs, several times over a period of about 6 weeks, asked for the specific amounts that BIA was requesting of them, but no answer was given.

15. On February 27, 2013, Vernon Moody went to the BIA Pine Ridge Agency Office to settle up for the 2012 lease years. He was told that he should send \$43,465.64 to Farmington, Missouri, and that amount would be full payment for the 2012 lease year.

16. On February 28, 2013, plaintiffs sent a personal check in the amount of \$43,465.74 to Farmington, Missouri.

17. On or about April 10, 2013, plaintiff Vernon Moody received notice from the BIA, not properly signed, dated April 4, 2013, threatening to cancel Lease 1 and 2 above. See Exhibit 8 attached hereto and incorporated herein by reference. At this time, the BIA still had plaintiffs personal check in the amount of \$43,465.64.

18. Between April 10 and 15, 2013, Vernon Moody was in the BIA Pine Ridge Agency Office. Dorothy Tobacco, BIA employee, handed the personal check sent on February 28 to Vernon Moody and indicated that check was required to be a cashier's check. See Exhibit 9 attached hereto and incorporated herein by reference.

19. On April 22, 2013, Vernon Moody handed Robert Ecoffey, BIA Pine Ridge Agency Superintendent, a cashier's check in the amount of \$43,465.64. See Exhibit 10. Moody was advised by his wife, Anita Moody, that they had received a notice of cancellation of Leases 1, 2, 3, and 4 and right to appeal. See Exhibits 11 (Lease 1), 12 (1 and 2), and 13 (Lease 4 and 5) attached hereto and incorporated herein by reference.

20. Vernon Moody asked Superintendent Ecoffey if they needed to appeal since the \$43,465.64 had been paid by cashier's check. Superintendent Ecoffey advised that the leases were paid and that plaintiffs could proceed to farm the leases. Moody asked that Ecoffey put this representation in writing and Ecoffey indicated that nothing in writing was needed.

21. Plaintiffs proceeded to farm the leases upon representation of the Superintendent. The plan was to plant dry land corn. Plaintiffs invested substantial money in chemicals and seed corn, fuel, and other necessities to plant. See Exhibit 21 attached hereto and incorporated herein by reference.

22. Plaintiffs received trespass notices on June 3, 2013. Shawn Woster and Travis Goings, BIA employees, came to where plaintiffs were planting and informed plaintiffs of their trespass.

23. Vernon Moody, upon receiving the trespass notices and visits from Woster and Goings, went to the BIA Pine Ridge Agency Office to visit with Cleve Her Many Horses about the trespass notices. Her Many Horses, who had succeeded Robert Ecoffey as BIA Supeintendent at Pine Ridge, informed Moody that he was going to follow the previous decision of Robert Ecoffey that plaintiffs should continue to farm and that their leases were current and paid.

24. Vernon Moody talked to Diane at the Great Plains Regional Office in Aberdeen for instructions. She indicated that they did not have any cancellation notices so plaintiffs should continue to farm the leases.

25. A short time after June 3, 2013, plaintiffs were informed by the Superintendent that they should remove their belongings from the leases and cease any farming, which they did.

26. On July 9, 2013, plaintiff Vernon Moody received notice that his Lease 3 above had been canceled. See Exhibit 15 (first page) attached hereto and incorporated herein by reference.

27. Because of their inability to farm the leases that they had paid for in 2013, plaintiffs lost income in the amount of \$728,721.35. See Exhibit 16 attached hereto and incorporated herein by reference.

28. Plaintiffs in 2014 lost income in the amount of \$415,534.97 for the leases that they had been awarded and would have paid for but were kept from utilizing. See Exhibit 17 attached hereto and incorporated by reference.

29. Plaintiffs in 2015 lost income in the amount of \$392,323 for the leases that they had been awarded and would have paid for but were kept from utilizing. See Exhibit 18 attached hereto and incorporated hereby by reference.

CLAIM FOR RELIEF

FIRST CLAIM FOR RELIEF-WRITTEN CONTRACT

30. Plaintiffs had contracts for the lease of lands held in trust by the United States on the Pine Ridge Indian Reservation in South Dakota. United States was the legal owner of the land covered by the leases. The leases were for a period of five years. The United States signed and, even more significantly, administered the lease of the land encompassed within the leases in this matter. The United States breached the contracts entered into with plaintiffs by canceling the leases even though the leases were fully paid. The breach caused damage to plaintiffs in the amount of monies expended to plant and sow the crops and the profits that would have accrued had they been allowed to utilize the leases.

SECOND CLAIM FOR RELIEF—ORAL AND IMPLIED IN FACT CONTRACT

31. Defendant and its agents, namely Superintendent Ecoffey, Superintendent Her Many Horses, and officials at the Great Plains Regional Office, made an oral and implied in fact contract with plaintiffs to continue with the farming of the trust lands at issue under the same terms as the original leases. See Complaint at ¶¶ 20, 23, and 24. Defendant breached this oral and implied in fact contract by ordering plaintiffs to remove themselves and their equipment from the leases, which they did. See Complaint at ¶¶ 25 and 26. The breach caused damage to plaintiffs in the amount of monies expended to plant and sow the crops and the profits that would have accrued had they been allowed to utilize the leases.

THIRD CLAIM FOR RELIEF—FIFTH AMENDMENT TAKING

32. Plaintiffs had 5 leases each for a term of 5 years. See First and Second Claims above. The United States, through its Bureau of Indian Affairs and its officials, including Superintendent Ecoffey, Superintendent Her Many Horses, and employees at the Great Plains Regional Office, after informing plaintiffs that their leases would be canceled, instructed plaintiffs to continue to farm the leases as they had in the past. Complaint, ¶¶ 20, 23, and 24. Acting upon that instruction, plaintiffs invested thousands of dollars in seed, spray, equipment, and labor to farm for the year 2013. Complaint, ¶ 21. After the investment had been made and farming began, plaintiffs and their property were removed, contrary to applicable regulations, from the leases and plaintiffs were deprived of monies expended to plant and sow the crops and the profits from any harvest. Plaintiffs had a Fifth Amendment property interest in the monies expended to sow the crops and the value of the sown crops had they been allowed to harvest them which were taken by the United States. Complaint, ¶¶ 27, 28, and 29.

FOURTH CLAIM FOR RELIEF—ILLEGAL EXACTION

33. Plaintiffs paid to defendant the amount of \$43,465.64 to lease the land at issue in this case. This amount was never returned and plaintiffs were never allowed to use the leases for which they had paid \$43,465.64. The \$43,465.64 constitutes an illegal exaction that is required to be returned to plaintiffs.

WHEREFORE, plaintiffs respectfully pray for judgment from this Court as follows in this action:

1. Judgment that defendant United States breached the contracts that it signed with plaintiffs and took plaintiff's property without just compensation in violation of the Fifth Amendment to the United States Constitution.

2. Judgment for damages to be paid by the United States to plaintiffs in the amount of \$1,536,488.32 or such other amount supported by the facts of this case.

3. For all litigation costs, expenses, expert witnesses, and reasonable attorneys fees allowed by law.

4. For prejudgment and/or postjudgment interest.

5. For such other and further relief as the Court deems proper and just.

Dated January 17, 2017.

/s/ Terry L. Pechota

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