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OPINION	:	No. 81-1217
of	:	APRIL 16, 1982
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THE HONORABLE DAVID E. PESONEN, DIRECTOR, DEPARTMENT OF FORESTRY, has requested an opinion on the following question:

Is the Department of Forestry authorized to implement the Chaparral Management Program on Indian reservation lands held in trust by the United States and on Indian allotment lands held under fee patents by individual Indians?

CONCLUSION

The Department of Forestry is not authorized to implement the Chaparral Management Program on Indian reservation lands held in trust by the United States but may implement the program on Indian allotment lands held under fee patents by individual Indians where such lands are located in state responsibility areas.

ANALYSIS

The Chaparral Management Program was enacted by the Legislature in 1980 (Stats. 1980, ch. 525; amended Stats. 1981, ch. 976) in order to help prevent "wildland" fires by reducing the amount of available fuel materials through "prescribed burning" operations.[1] Public Resources Code section 4462[2] provides:

"The Legislature hereby finds and declares as follows:

"(a) There has been an increase in the number of uncontrolled fires on the wildlands of this state, resulting in destruction of valuable timber and other vegetation, loss of recreational opportunities and wildlife habitat, erosion and damage to streamflow and watersheds, extremely adverse effects on water quality through sedimentation, destruction of soil and loss of nutrients, degradation of air quality, invasions into burned areas of less desirable plant species, and an unacceptable level of hazards to public safety. Further, the increased cost of fire suppression implies the need for alternative methods of fire prevention.

"(b) The prevention of high-intensity wildlife fires may be achieved partly through the reduction of the volume and continuity of flammable vegetation in wildlands by a program of fuel management.

"(c) Wildland resources management planning and the provision of prescribed burn crews pursuant to this article serves a public purpose and will benefit all the citizens of the state."

The key statute of the legislative scheme is section 4475, authorizing the Director of Forestry to enter into contracts for prescribed burning with certain persons. It states:

"The director, with the approval of the Director of General Services, may enter into a contract for prescribed burning with the owner or any other person who has legal control of any property which is included within any wildland for any of the following purposes, or any combination thereof:

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[1] "Prescribed burning" is "the planned application and confinement of fire to wildland fuels on wildland selected in advance of such application to achieve any specific objective and any necessary follow-up activities, such as revegetation and erosion control measures." (Pub. Resources Code, § 4464, subd. (d).)

[2] All section references hereafter are to the Public Resources Code unless otherwise indicated.

"(a) Prevention of high-intensity wildland fires through reduction of the volume and continuity of wildland fuels or removal of unwanted, unused, or deteriorated structures that are fire hazards by burning such fuels or structures.

"(b) Watershed management.

"(c) Range improvement.

"(d) Vegetation management.

"(e) Forest improvement.

"(f) Wildlife habitat improvement.

"No contract may be entered into pursuant to this section unless the director determines that the public benefits estimated to be derived from the prescribed burning pursuant to the contract will be equal to or greater than the foreseeable damage that could result from prescribed burning."

Section 4475.5 authorizes the state to contribute up to 90 percent of the total cost of each contract operation, depending upon the estimated amount of public benefit. As part of the contract, the Department of Forestry (hereafter "Department") obtains an insurance policy to cover any loss resulting from the operation. (§ 4476, subd. (h).)

The question presented for analysis is whether the program is available for Indian reservation lands held in trust by the United States and for Indian allotment lands held under fee patents by individual Indians. We conclude that the program is not available for the trust lands but may be available for the allotment lands.

The significant requirement of section 4475 that merits discussion is for the property to be "included within any wildland." Subdivision (a) of section 4464 defines "wildland" as "any land that is classified as a state responsibility area pursuant to Article 3 (commencing with Section 4125) of chapter 1 of this part and includes any such land having a plant cover consisting principally of grasses, forbs, or shrubs that are valuable for forage."

Pursuant to section 4125, the State Board of Forestry classifies certain lands as "state responsibility areas," which means with respect thereto that "the financial

responsibility of preventing and suppressing fires is primarily the responsibility of the state." Section 4126 states:

> "The board shall include within state responsibility areas all of the following lands:
>
> "(a) Lands covered wholly or in part by forests or by trees producing or capable of producing forest products.
>
> "(b) Lands covered wholly or in part by timber, brush, undergrowth, or grass, whether of commercial value or not, which protect the soil from excessive erosion, retard runoff of water or accelerate water percolation, if such lands are sources of water which is available for irrigation or for domestic or industrial use.
>
> "(c) Lands in areas which are principally used or useful for range or forage purposes, which are contiguous to the lands described in subdivisions (a) and (b)."

The Legislature has also directed, however, that certain lands be excluded from classification as state responsibility areas. Section 4127 provides:

> "The board shall not include within state responsibility areas any of the following lands:
>
> "(a) *Lands owned or controlled by the federal government or any agency of the federal government*.
>
> "(b) Lands within the exterior boundaries of any city.
>
> "(c) Any other lands within the state which do not come within any of the classes which are described in Section 4126." (Emphasis added.)

Lands that are not classified as state responsibility areas are "primarily the responsibility of local or federal agencies, as the case may be" with regard to "[t]he prevention and suppression of fires." (§ 4125.)

Returning to the provisions of section 4464, subdivision (a), we observe that the definition of "wildland" may arguably be broader than the definition of "state responsibility area" contained in sections 4125-4127. We reject the argument, however, because of the Legislature's use of the word "such" in the former statute. Giving this word

meaning and significance (see *Pacific Legal Foundation* v. *Unemployment Ins. Appeals Bd.* (1981) 29 Cal.3d 101, 114), we believe that the reference to forage lands in section 4464, subdivision (a), merely reflects the fact that state responsibility areas may include certain forage lands. (§ 4126, subd. (c).) This construction of the two statutes harmonizes their various provisions. (See *California Mfgrs. Assn.* v. *Public Utilities Com.* (1979) 24 Cal.3d 836, 844.)

Moreover, with regard to the Chaparral Management Program, it is understandable why the Legislature would restrict the program to state responsibility areas. Since the state may contribute up to 90 percent of the program's costs, it would be unreasonable to expect the program to be applicable to areas where the prevention and suppression of fires is "primarily the responsibility of local or federal agencies." (§ 4125.) We must construe sections 4125, 4464, and 4475 in a reasonable and practical manner. (See *City of Santa Clara* v. *Von Raesfeld* (1970) 3 Cal.3d 239, 248.)

Accordingly, the issue may be reduced to whether Indian trust and allotment lands are excluded from being classified as state responsibility areas due to being "owned or controlled by the federal government" within the meaning of section 4127.

Unquestionably, Indian tribes have significant equitable interests in and control over reservation lands held in trust by the United States. (See 25 U.S.C. §§ 415-416, 450, 476-477; *Poafpybitty* v. *Skelly Oil Co.* (1968) 390 U.S. 365, 368-369, 372; *U.S.* v. *Algoma Lumber Co.* (1939) 305 U.S. 415, 420-421; *U.S.* v. *Shoshone Tribe* (1938) 304 U.S. 111, 116-117.)

We need not examine, however, the extent of the Indian ownership and control over such lands. Rather, our focus is upon section 4127: whether these lands are "[l]ands owned or controlled by the federal government or any agency of the federal government."

With respect to Indian trust lands, it must be concluded that the federal government has significant ownership interests in or control over such properties. Fee title is in the name of the United States, and the Bureau of Indian Affairs of the Department of Interior actively administers the trust lands. (See 25 U.S.C. § 1-2, 13, 391-416; *United States* v. *Wheeler* (1978) 435 U.S. 313, 319-327; *Oliphant* v. *Suguamish Indian Tribe* (1978) 435 U.S. 191, 208-209; *Oneida Indian Nation* v. *County of Oneida* (1974) 414 U.S. 661, 667; *Tee-Hit-Ton Indians* v. *United States* (1955) 348 U.S. 272, 279, 288-289; *U.S.* v. *Santa Fy Pacific R. Co.* (1941) 314 U.S. 339, 347; *Spaulding* v. *Chandler* (1896) 160 U.S. 394, 402-403; *Johnson* v. *McIntosh* (1823) 21 U.S. (8 Wheat.) 543, 572-591; *United States* v. *Southern Pacific Transp. Co.* (9th Cir. 1976) 543 F.2d 676, 687; *Santa Rosa Bank Of Indians* v. *Kings County* (9th Cir. 1975) 532 F.2d 655, 666; *In re Wilson* (1981) 30

Cal.3d 21, 25; *Estate of Johnson* (1981) 125 Cal.App.3d 1044, 1046, fn. 1; *People* v. *Rhoades* (1970) 12 Cal.App.3d 720, 722; Cohen, Handbook of Federal Indian Law (1942) pp. 287-302; see also 18 U.S.C. §§ 1151-1152.)[3]

These cases persuasively indicate that the federal government has sufficient ownership interest in or control over Indian trust lands so as to invoke the prohibition of subdivision (a) of section 4127. We do not believe that the Legislature intended for the state, rather than the federal government, to have the primary responsibility of preventing and suppressing fires on Indian trust lands administered by the Bureau of Indian Affairs. Hence, these lands do not meet the definition of "wildland" contained in section 4464 and are outside the scope of the Chaparral Management Program.

Indian allotment lands, however, are distinctly different. Under the General Allotment Act of 1887 (25 U.S.C. §§ 331-358) Congress has authorized the allotment of specific parcels of land to Indians living on reservations and the sale (with tribal consent) of surplus lands to non-Indians. The program authorizes an individual Indian to receive a "fee patent" after a period of 25 years which terminates the trust relationship and transfers fee simple ownership from the government to the Indian. (See *Mattz* v. *Arnett* (1973) 412 U.S. 481, 496-497; *Saulque* v. *United States* (9th Cir. 1981) 663 F.2d 968, 975; *United States* v. *Southern Pacific Transp. Co.*, *supra*, 543 F.2d 676, 683; *Estate of Johnson*, *supra*, 125 Cal.App.3d 1044, 1049; see also *In re Wilson*, *supra*, 30 Cal.3d 21, 34, fn. 14.)

Consequently, we believe that where the federal government has issued fee patents for previously held trust lands, the prohibition of subdivision (a) of section 4127 is inapplicable. Such allotment lands do not have the requisite ownership interest or control retained by the United States to be excluded from state responsibility areas under the statute. If these parcels are classified as state responsibility areas, they come within the definition of "wildland" contained in section 4464 and would be eligible for the Chaparral Management Program under section 4475.

In so concluding, we point out that we are not concerned with the "enforcement" of civil or criminal jurisdiction over Indian trust or allotment lands. (See 28 U.S.C. § 1360; *Bryan* v. *Itasca County* (1976) 426 U.S. 373, 390-393; *Estate of Johnson*, *supra*, 125 Cal.App.3d 1044, 1050-1053.) Whether the Department and "the owner or any other person who has legal control" of certain property may contract (if both parties so

[3] For purposes of the question presented, we need not distinguish between the various types of trust lands. (See *United States* v. *Southern Pacific Transp. Co.*, *supra*, 543 F.2d 676, 686-688; *In re Wilson*, *supra*, 30 Cal.3d 21, 27, fn. 6; see also *Cheyenne-Arapaho Tribes* v. *State of Okl.* (10 Cir. 1980) 618 F.2d 665, 666-667.)

choose to contract) for a prescribed burning operation under section 4475 is not a question of "enforcement."[4]

Finally, we note that the Department and the Bureau of Indian Affairs have administratively acted for several years in a manner consistent with the analysis contained herein. Both agencies have entered into cooperative agreements under section 4141 whereby the Department has been paid by the federal government for preventing and suppressing fires on Indian reservation trust lands. Administratively, these lands have not been considered state responsibility areas. The agreements also further demonstrate the control exerted by the United States over Indian trust lands.

25 Code of Federal Regulations section 141.21 grants to the Secretary of the Interior broad authority to protect Indian reservation land from forest and range fires:

> "The Secretary is authorized to hire temporary labor, rent fire fighting equipment, purchase tools and supplies, and pay for their transportation to extinguish forest or range fires. No expense for fighting a fire outside a reservation may be incurred unless the fire threatens the reservation, or unless such expense is incurred pursuant to an approved cooperative agreement with another forest protection agency. The rates of pay for fire fighters and for equipment rental shall be the rates for such fire fighting services that are currently in use by public and private forest fire protection agencies adjacent to Indian reservations on which a fire occurs, unless there are in effect at the time different rates that have been approved by the Secretary. The Secretary may enter into reciprocal agreements with any fire organizations, maintaining fire protection facilities in the vicinity of Indian reservations, for mutual aid in fire protection." (See 15 U.S.C. § 2210.)

In answer to the question presented, therefore, we conclude that the Department is not authorized to implement the Chaparral Management Program on Indian reservation lands held in trust by the United States but may implement the program on Indian allotment lands held under fee patents by Indians where such lands are located within state responsibility areas.

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[4] The application of various other state or federal laws to the burning operation itself is beyond the scope of this opinion.