

FEB 15 2017

**NOTICE OF TRESPASS TO THOSE PERSONS NOW UNLAWFULLY OCCUPYING OR IN POSSESSION OF THE LEAN WARRIOR ALLOTMENT WITHOUT A VALID LEASE OR PERMIT**

It has come to the attention of the Standing Rock Agency, Bureau of Indian Affairs (BIA), that one or more Indian landowners have been allowing individuals, none of whom own an interest in the property, to move onto trust property without proper authorization or without a valid lease pursuant to the regulations found at Title 25 of the Code of Federal Regulations (CFR) Part 162. This notice is being issued by BIA regarding a possible trespass violation for utilizing trust property without approved authorization or a valid lease contract.

The property where the trespass is occurring is identified as Standing Rock Allotment 2275 -B, also referred to as the Lean Warrior Allotment, and is described as follows:

The N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ , and SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 21, T. 134 N., R. 79 W., Fifth Principal Meridian, Sioux County, North Dakota, containing 317.50 acres, more or less.

According to Title 25 of the United States Code Section 2218(b)(1)(B), the consent requirement for granting a non-agricultural lease in a parcel containing six to ten owners is 80 percent. The Standing Rock Sioux Tribe's share in this tract is 2/3 or 66.67 percent. As a majority owner, the Standing Rock Sioux Tribe must consent to any permit or lease which authorizes possession or occupancy of this land. At present, the Standing Rock Agency has received no authorization from the Standing Rock Sioux Tribe that would allow individuals to take possession or occupy this property. In fact, the entire parcel is under an existing farm pasture lease minus existing homesites and easements that were previously approved by the BIA.

As a point of information, an Indian owning a beneficial interest in trust property may still be held liable for trespass on that property. "It is well-established that one who commands, instigates, encourages, advises, countenances, cooperates in, aids, or abets the commission of a trespass is liable as a co-trespasser with the person actually committing [sic] the trespass, and is liable as a principal to the same extent and in the same manner as if he had performed the wrongful act himself. See 75 Am. Jur. 2d *Trespass* § 66 (1991); 87 C.J.S. *Trespass* § 31b & c (1954); see also *Bloedel Timberlands Development, Inc. v. Timber Industries, Inc.*, 626 P.2d 30, 34 (Wash. App. 1981) ("one who authorizes or directs a trespass is jointly liable with the actual trespassers")." *Lummi Nation v. Northwest Regional Director*, 44 IBIA 47, 63 (2007). No Indian owner of Allotment 2275 -B may authorize a third party, who does not own an interest in the property, permission to take possession or occupy without consent from at least 80 percent ownership interest in the property and, if applicable, approval by BIA.

Because BIA can find no authority for continued possession by any party currently residing on Allotment 2275 -B, individuals currently in possession or occupying the subject property are being issued this notice of trespass. In accordance with 25 CFR § 166.800, "[u]nder this part, trespass is any unauthorized occupancy, use of, or action on Indian agricultural lands. These provisions also apply to Indian agricultural land managed under an agricultural lease or permit under part 162 of this title."

According to § 166.806, BIA can take one or more of the following actions, as appropriate:

- (a) Seize, impound, sell or dispose of unauthorized livestock or other property involved in the trespass. We may keep such property we seize for use as evidence.
- (b) Assess penalties, damages, and costs, under § 166.812 of this subpart.

Under § 162.812, parties may be responsible for the following penalties, damages, and costs:

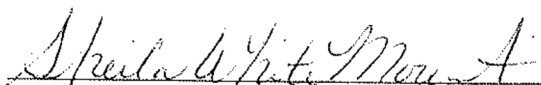
- (a) Collection of the value of the products illegally used or removed plus a penalty of double their values;
- ~~(b) Costs associated with any damage to Indian agricultural land and/or property;~~
- (c) The costs associated with enforcement of the regulations, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees;
- (d) Expenses incurred in gathering, impounding, caring for, and disposal of livestock in cases which necessitate impoundment under § 166.807 of this subpart; and
- (e) All other penalties authorized by law.

In accordance with BIA's regulations, individuals unlawfully occupying the subject property have 10 days to show cause why BIA should not find them in trespass. Any party may avoid a finding of trespass if he/she immediately vacates the property, removes all personal property, and returns the property to its pre-trespass condition. Individuals must notify BIA that the violation has been cured.

Alternatively, any individual may contact the BIA in writing to explain why this trespass notice is in error.

This trespass notice will remain in effect for the conduct identified herein for a period of one year from the date of publication of this notice. This trespass notice is not subject to appeal under 25 CFR Part 2. In the event the BIA subsequently issues a finding of a trespass following this notice, we will notify parties of their right to appeal. In the event BIA determines that the trespass notice was issued in error, it will withdraw this notice.

If you have any questions or require additional information, please contact the Realty Office at (701) 854-3430, or stop in at the office located in Fort Yates, North Dakota. Written correspondence may be addressed to the attention of the Superintendent at Post Office Box E, Fort Yates, North Dakota 58538.

  
BIA Superintendent