

**The original documents are located in Box 10, folder “Mescalero Apaches - Sierra Blanca Ski Resort (1)” of the Norman Ross Files, 1974-75
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6/16
creditor

Clinto / Blount Meeting

5/3

Originally \$5-00 m)
Now \$8+

Trudy (honored)
2
3

EDA: \$1.8 = already invested

would go up
to $\frac{2.6}{4.4}$

3

part good
part town

7.3

8.3

Additional debt service
of \$1- towards cash flow

BIA does
redirection of the
road &
a paved line



+ Dam or 50

~~Alton~~

Norton & Agnew
meeting

Does EDA have money?

Redesign something -
purchase a part of it

Walter Scott

Donna Ward

Rural Deal
Act



B 965-9352
189-5081



It is contemplated that the Secretary of the Interior will not exercise his authority under 25 U.S.C. 467 to proclaim the land part of the Mescalero Apache Reservation, and that the land will be off-reservation trust property.



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BRIEFING STATEMENT

Sierra Blanca Ski Area Expansion

INTRODUCTION:

The future of the Mescalero Apache Tribe's ability to survive as a viable and self-sufficient community depends upon the expansion and full development of the Sierra Blanca Ski Area. This ski resort is one of the most successful Indian business enterprises in the Nation, and provides one of the best examples of President Nixon's policy of Indian self-determination. The past ten years has seen the ski area grow at an average annual rate of 23% in the number of users and gross volume. The 120-day average annual ski season is supplemented by spring, summer and fall operation for sightseers. Presently, 134 persons are employed during the ski season and between 25 and 40 are employed during the off season. Skier man-days use have increased from 20,000 in 1963 to 85,000 in 1970. Growth projections indicate that by 1980, the Sierra Blanca Ski Area should experience at least 200,000 man-days of skiing use and could experience as high as 300,000 man-days of skiing use. Full expansion of the ski-resort could triple the number of jobs and training opportunities for the Mescalero people. The heavy debt service carried by the ski area has been paid in full on a timely basis every year. Every cent of retained earnings has been placed back into ski area improvements since the tribe has owned the ski area.

ISSUE:

At present, growth of the ski area is at a standstill, largely because of the failure to attract needed investment capital under existing land arrangements, and these expansion needs can no longer be met by reinvestment of retained earnings of the tribe, primarily because the expansion needs require large capital investment on non-Indian producing improvements such as water and sewer systems, road construction as well as other necessary utilities. The retained earnings are not sufficient to capitalize these necessary improvements. Solutions must be found not only to obtain needed capital but also to expand the existing land base to accommodate the area's full growth potential.



ECONOMIC

1. Necessity of Expansion of Sierra Blanca Ski Area

- A. Lack of expansion has a substantial negative effect on the general economy of Southwest New Mexico and the State of New Mexico. Skiers are presently spending well over two million dollars a year in the local economy of Southwest New Mexico. Using a conservative multiplier rate of 3, this provides over 6 million dollars of economic activity which is a very significant factor in the overall economic health of this part of New Mexico. Expanding the ski resort to its full capacity could triple this economic activity to the 18 million dollar level. In addition, this economic activity would generate (at a current tax rate of 4%) an additional \$650,000 in tax revenue for the State of New Mexico.
- B. Lack of expansion will seriously undermine the economic viability of a 14 million dollar resort hotel on the reservation. The Cienegita resort hotel complex will be opening in less than one year and its effective utilization during winter months which is critical to its overall success depends upon the expansion of the Sierra Blanca ski resort.
- C. Lack of expansion has led to a severe lack of advance ski runs, which is a detriment to sound management of the ski-resort. An increasing part of the market requires advance ski runs, which if not available either restrict the market or mix advanced and less skilled skiers in a dangerous manner on available slopes. A significant part of the expansion plans are for advance slopes, which not only increases skier satisfaction and enhances sound market development, but also substantially improves ski-slope safety and permits sound slope management.
- D. Lack of expansion has led to overcrowded conditions at the ski resort which causes unnecessary delay in lift lines, increases safety hazards on the lifts and the slopes, decreases skier satisfaction and has an overall adverse effect on the reputation of the ski-resort and sound business marketing development.



2. U.S. Forest Service Permit: Financing problems.

The Mescalero Apache Tribe has been unsuccessful in obtaining financing for the expansion of the Sierra Blanca Ski Area. Many private and government agencies have been involved in our efforts. The following are among the basic problem areas:

A. The Forest Service Use Permit poses security problems for loans and bonds.

- The land on which facilities are located are unspecified. The Forest Service can not permit use of more than 80 acres for recreation use by Congressional mandate. The ski area covers much more area. Thus by necessity, the land occupied is undefined. The additional land occupied is permitted on an annual basis.
- The permit can be cancelled by the Secretary of Agriculture or any official of the Forest Service acting on his authority if determination is made that the public interest requires termination. This unilateral action is taken through the giving of thirty days notice in writing.

If the land in question was held in trust for the Tribe by the U.S. Government, it would serve as adequate security for a long term loan to expand the ski area to the point that it could adequately satisfy the recreational needs of the population residing within weekend commuting distance of the southern Rocky Mountains.

B. The United States of America, through the BIA Revolving Loan Fund, holds the first mortgage on all existing improvements.

The Revolving Loan Fund of the BIA has not been reappropriated during the past decade. No loan funds are available.

C. Although the Indian Financing Act was passed in 1974 by Congress, funds have not been appropriated. The Act authorized \$50mm for the Revolving Loan Fund. The tribe has an outstanding commitment for \$2.05mm made in 1963 for the Inn of the Mountain Gods Development which will be honored if the funds are appropriated. Other Indian tribes throughout the nation desperately need these funds also. It would be most presumptuous to think of the BIA granting a total loan of \$6mm to Mescalero considering the needs of other tribes.

The Act authorizes loan guaranty and insurance up to \$100,000; and business grants up to \$50,000.

Congress has been most reluctant to appropriate such funds. Even if appropriated, its applicability to the present \$4mm requirement for Sierra Blanca is questionable.



- D. The Small Business Administration is authorized to make loans up to \$350,000 to service businesses whose gross revenues to not exceed \$1mm annually. \$350,000 is not adequate to meet the need and Sierra Blanca's gross revenues exceed \$1mm annually. The Federal government security requirements for loans are just as stringent, if not more so, than the private sector.
- E. The Economic Development Administration is prohibited from making loans or grants to Indian Tribes for business enterprises which are not located on "restricted Indian lands", which is interpreted by commerce as being lands held in trust by the Federal government for the benefit of an Indian tribe.
- F. Proposed legislation authorizing long term leases of Forest Service has not been authorized by the Congress.
- G. Grant funds are available to share the cost of erosion and environmental control improvements but the grantee must have political jurisdiction over the lands involved.
- H. Road and related parking construction funds, fire fighting equipment and facility funds, erosion control funds, etc. are available for the Bureau of Indian Affairs to protect and assist Indian tribes and their lands but such funds must be expended on lands owned by or held in trust for an Indian tribe by the Bureau of Indian Affairs.
- I. Projects located on Mescalero Apache Tribal trust lands can receive assistance from the Four Corners Regional Administration. Forest Service lands located in Lincoln County are not eligible for such funds.
- J. The Mescalero Apache Tribe has a great need for the financial leverage their income and limited capital can provide. The tribe has prohibited itself from utilizing this scarce asset on projects over which they have tenuous hold or control.
- K. Ski areas are notoriously risky businesses. The NSSA reported that 38% of the Rocky Mountain areas and 41% of the weekend areas lost money during the 1972-1973 season. This factor coupled with the debt to equity ratio at Sierra Blanca and the lack of security in the Forest Service Use Permit, makes potential loan sources look to the tribe to secure the loan. This security inevitably requires restrictions on general tribal development.



INTERIOR/AGRICULTURE: OVERLAPPING, TWO-DEPARTMENT FEDERAL RESPONSIBILITY
FOR THE SIERRA BLANCA SKI RESORT

1. The Sierra Blanca Ski Resort is located on a very small portion of the Sierra Blanca mountain. The mountain itself is located primarily inside the Mescalero reservation, and therefore under the direct responsibility of the Tribe and the responsibility of the Department of the Interior. The Tribe and the Interior Department manage most of the mountain in terms of fire protection, watershed protection and forest management. They have also carried out some of these functions in the Sierra Blanca Ski area. For example: they have exercised a substantial amount of the responsibility for fire protection, because of more adequate budget and equipment, better observation capability and better positioning of fire fighting equipment. Every lightning strike fire in Sierra Blanca Ski Area has been discovered and extinguished by the Tribe, not the Forest Service. Any of their fires if not quickly dealt with could have destroyed the Tribe's 3 million dollar investment.
2. The Ski Resort is on Forest Service land but is used exclusively for Ski Resort purposes, and the Interior Department has substantial responsibility for the Tribal Ski Enterprise. The 3 million dollars of buildings and improvements are owned by the Tribe and under the trust responsibility of the Department of the Interior. The business operation at the Ski Resort is the responsibility of the Tribe, but also under the trust responsibility of the Department of the Interior. The basic financing of the Ski Resort of 1.5 million dollars, came from the revolving loan fund of the BIA and is therefore also a responsibility of the Interior Department.
3. The Forest Service does have a duty to provide for public recreation and to protect the forest resource. But it has no official or legal responsibility with respect to Indian life, Indian jobs, or Indian Tribal government stability. The Department of the Interior also has a duty to provide for public recreation, to protect the forest resource - and in addition it is charged with the fiduciary responsibility of a trustee regarding American Indians.

RECOMMENDATION:

The solution which is favored by the tribe and recommended by the Bureau of Indian Affairs, Department of the Interior regarding the Sierra Blanca Ski development would be the transfer by Presidential Executive Order of the 2,200 acres of land in question from the Forest Service to the Secretary of the Interior to be held in trust for the use and benefit of the Mescalero Apache Tribe.



LEGAL AUTHORITY.

Legal authority for the proposed action is believed to lie in 16 U.S.C. 473 and 25 U.S.C. 465.

The President is authorized by 16 U.S.C. 473 to "revoke, modify, or suspend any and all" executive orders establishing national forests, and that statute specifically provides that "(b)y such modification he may reduce the area or change the boundary lines (of) . . . a national forest." Since Lincoln National Forest was created by executive order, section 473 appears to authorize diminution of the forest in the manner herein suggested.

Section 465 of Title 25, the other statute referred to above, authorizes the Secretary of the Interior

"to acquire . . . any interest in lands . . .
within or without existing reservations
. . . for the purpose of providing land
for Indians."

Whether this section provides authority to have the land now in question placed in trust for the tribe is a difficult question. The provision appears to deal principally with the acquisition of land from third parties rather than the "transfer" of land already owned by the United States; and to date it has evidently been applied only to such third party acquisitions. In a number of instances, in fact, intra-governmental "transfer" of the sort referred to have been effected by specific legislation, thus suggesting that section 465 has not been regarded as applicable to such transfers. E. g., Act of August 21, 1967, 81 Stat. 173. The Supreme Court's 1973 decision in Mescalero Apache Tribe v. Jones, 411 U. S. 145 (1973), however, indicates that the term "acquire" in section 465 is sufficiently broad to encompass the transaction now contemplated. That decision dealt with the very ski area now in question, and considered whether the tribe's leasehold interest partook of the tax exemption granted by section 465 despite the fact that "(t)he ski resort land was not technically 'acquired' in trust for the Indian tribe." The Court concluded that the lease arrangement "was sufficient to bring the tribe's interest in the land within the immunity afforded by 465," since, "as the Solicitor General has pointed out, 'it would have been meaningless for the United States, which already had title to the forest, to convey title to itself for the use of the tribe.'" 411 U.S. at 155 n.11. On the basis of the liberal approach to the term "acquire" which is thus evidenced by the Court's opinion, the Solicitor's Office has resolved the admittedly close question of authority under section 465 in the affirmative.



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It is contemplated that the Secretary of the Interior will not exercise his authority under 25 U.S.C. 467 to proclaim the land part of the Mescalero Apache Reservation, and that the land will be off-reservation trust property.

The above discussion of the legal issues involved is subject to one qualification: the Solicitor's Office has concluded that because of the possible environmental effects of the proposed expansion of the ski area, an environmental impact statement must be prepared pursuant to the National Environmental Protection Act prior to any final decision to vest beneficial title to the land in the tribe.



ENVIRONMENTAL CONCERNS:

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The Bureau of Indian Affairs of the Department of the Interior and the Mescalero Tribe are presently managing the major portion of the Sierra Blanca mountain. The environmental concerns would be carried out in the 2,200 acres by the Bureau of Indian Affairs and the Mescalero Tribe. The capability to protect the environment has been demonstrated both on the reservation and in some instances on the U. S. Forest Service lands, i.e., fire fighting. Moreover, the Executive Order that would transfer the lands could contain language regarding the environmental concerns.

PRECEDENT:

Would the recommended transfer of the U. S. Forest Service lands into trust status for the benefit of the Mescalero Tribe establish a "precedent":

Surely a precedent would be established. However, the precedent would not be a dangerous or unwanted precedent. In the instant case the proposed expansion is the ultimate expansion for the ski area. Therefore, the Mescalero will not be making a request in the future for additional lands for expansion.

Moreover, what exists at the present is an economically viable business and the additional lands are not requested for an untried venture -- the economic success of the Ski Area has been established.

Further, the lands under consideration are contiguous to the reservation and in fact were at one time a part of the Mescalero reservation.

Finally, the expansion and economic viability of the tribal enterprise is a demonstration of the President's policy of self determination and economic development.

If a different tribe had a similar set of circumstances they could and should use the present recommended transfer as a precedent for requesting a transfer, uniqueness of the instant case makes it highly unlikely that other tribes would be able to use the recommended transfer as a precedent for requesting additional public lands to be brought under the trust status for their benefit. Therefore, the precedent that would be established would not be undesirable.



FRAMEWORK FOR DECISION

Mescalero Apache Sierra Blanca Ski Resort

I. Statement of Problem

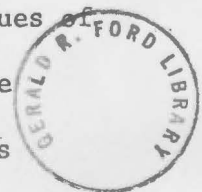
Sierra Blanca Ski-Resort is one of the most successful Indian business enterprises in the Nation. Its continued success and sound management have been severely impaired because the ski resort is on National Forest lands and must be operated under a Special Use Permit granted by the National Forest Service. This impairment has also had a negative effect on tribal income and employment, and if permitted to continue will undermine the success of a 16 million dollar tribal resort hotel complex, which is dependent upon sound management and maximum development of the Sierra Blanca Ski Resort for its own economic viability.

II. Basic Issues

A. The Forest Service has often interfered with, impeded and blocked sound management and development of the Sierra Blanca Ski-Resort.

1. The Forest Service has not provided any Forest Service personnel in Lincoln National Forest who have any expertise in ski slope management. In fact the Forest Rangers who have had the immediate responsibility for Sierra Blanca supervision have not even been skiers. It takes the tribe 2 years to educate them, at which time they are rotated somewhere else.

2. The Forest Service permit under which the tribe operates the ski slope is overly restrictive and has caused great delays in construction and maintenance of facilities. As the ski slope manager summarized it - the Forest Service has "knit-picked" to death numerous minor items while completely overlooking issues of major importance, such as lift safety. Example: One of the T-bar lifts is very dangerous for unloading purposes and has been the cause of numerous accidents. Forest Service has permitted this unsafe condition to continue and has blocked proper correction.



3. The Forest Service provides inadequate fire protection for the ski area which jeopardizes the tribe's 2.5 million investment. Its nearest fire fighting equipment is in Ruidoso, too far away to be of value. In the past 10 years there have been two lightning caused tree fires, both with major forest fire potential; in both instances the fires were extinguished with tribal fire equipment and tribal personnel.

B. The Forest Service has completely blocked the proper growth and development of the ski resort since it reached a full carrying capacity of 100,000 ski-man days more than four years ago.

1. After four years of extensive studies by the tribe, comprehensive expansion plans were presented to the Forest Service in 1969. The comprehensive expansion plans were turned down "in toto" by the Forest Service. Full implementation of these expansion plans would triple the carrying capacity of the Ski-Resort to 300,000 ski-man-days.

2. Under Forest Service regulations, the ski slope can only be operated under a Special Use Permit which is not mortgagable, can be cancelled on 30 days notice, provides for an undefined 80 acres, and completely blocks necessary private financing of the expansion (estimated at 4 million dollars)

3. The tribe is blocked from obtaining loans or grants from EDA because the ski resort is on National Forest land - not on "restricted Indian land."

4. When the tribe proposed a "land exchange" similar to what the Forest Service has done with other private ski resorts, the proposal was rejected on the basis of a one-sided, inaccurate, fear-mongering Environmental Impact Statement, which arrived at pre-determined conclusions with a highly slanted and selective presentation. The tribe was not consulted ~~xxing~~ during the 4 month preparation of the Impact Statement, was given only 8 days to respond to its numerous misrepresentations, and was excluded from most of the public presentation of the Impact Statement's findings.



C, Forest Service Dockage of the tribes carefully designed and professionally sound ski resort expansion plans has had an adverse effect on the ski resort enterprise, the economic welfare of the tribe, the economy of Southwest New Mexico and the general public interest.

1. Lack of expansion has led to overcrowded conditions at the ski resort which cause unnecessary delay in lift lines, increase safety hazards on the lifts and the slopes, decrease skiers satisfaction and have an overall adverse effect on the reputation of the ski resort and sound business marketing development.

2. Lack of expansion has led to a severe lack of advance ski runs, which is detrimental to sound management of the ski resort. An increasing part of the market requires advance ski runs, which if not available, restrict the market, or mix in an unsound manner advanced and less skilled skiers on available slopes. A significant part of advance slopes, which not only increases skier satisfaction and enhance sound market development, but also substantially improves ski slope safety and permits sound slope management.

3. Lack of expansion has restricted Indian employment at the ski resort. The ski resort is a major employer and training opportunity for tribal members providing between 70 and 100 jobs. Full expansion of the ski resort could triple the number of job and training opportunities.

4. Lack of expansion will seriously undermine the economic viability of a \$16 million resort hotel complex on the reservation. The Cienegita Resort hotel complex will be opening in less than one year, and its utilization during winter months which is restricted to its overall sources depends upon the sound management and expansion of the Sierra Blanca ski slopes.



5. Lack of expansion of the Ski-Resort has a severe negative effect on tribal income. Over the last 4 years the ski-resort has produced over \$100,000 in net profit for the tribe. Full expansion of the ski-resort could increase this amount by a factor of four. Lack of expansion will have a negative effect on present levels of return.

6. Lack of expansion has a substantial negative effect on the general economy of the Southwest New Mexico and the State of New Mexico. Skiers are presently spending over two million dollars a year in the local economy of Southwest New Mexico. Using a conservative multiplying factor of 3, this provides over 6 million dollars of economic activity which is a very significant factor in the overall economic health of this part of New Mexico. Expanding the ski-resort to its full capacity could triple this economic activity to the 20 million dollar level. In addition, this economic activity would generate (at a current top rate of 4%) an additional \$650,000 in tax revenue for the State of New Mexico.



BRIEFING STATEMENT ^{1/}

Sierra Blanca Ski Area Land Transfer

General Statement

The future of the Mescalero Apache Tribe's ability to survive as a viable and self-sufficient community depends upon the expansion and full development of the Sierra Blanca Ski Area. This ski resort is one of the most successful Indian business enterprises in the Nation, and provides of the best examples of President's Nixon's policy of Indian self-determination. The past ten years has seen the ski area grow at an average annual rate of 23% per year in the number of users and gross volume. The 120-day average annual ski season per year is supplemented by spring, summer and fall operations for sightseers. Presently, 134 persons are employed during the ski season and between 25 and 40 are employed during the off season. Skier mandays use have increased from 20,000 in 1963 to 85,000 in 1970. Growth projections indicate that by 1980, the Sierra Blanca Ski Area should experience at least 200,000 mandays of skiing use and could experience as high as 300,000 mandays. Full expansion of the ski-resort could triple the number of jobs and training opportunities for the Mescalero people. The heavy debt service carried by the ski area has been paid in full on a timely basis every year. Every cent of retained earnings has been placed back into ski area improvements since the tribe has owned the ski area.

At present, growth of the ski area is at a standstill, largely because of the failure to attract needed investment capital under existing land arrangements, and these expansion needs can no longer be met by reinvestment of retained earnings of the tribe. Solutions must be found not only to obtain needed capital but also to expand the existing land base to accommodate the area's full growth potential. Critical issues and problems and proposed solutions are briefly outlined below.

Basic Issues and Problems

1. Adverse Effects of Inability to Expand

- a. Lack of expansion has led to overcrowded conditions at the ski resort which causes unnecessary delay in lift lines, increases safety hazards on the lifts and the slopes, decreases skier satisfaction and has an overall adverse effect on the reputation of the ski-resort and sound business marketing development.
- b. Lack of expansion has led to a severe lack of advance ski runs, which is a detriment to sound management of the ski-resort. An increasing part of the market requires advance ski runs, which, if not available either restrict the market or mix advanced and

^{1/} The briefing notes contained in this paper are based largely on the Executive Summary and Supporting Documents previously prepared by the Mescalero tribe, from official tribal, BIA, Interior and other correspondence pertaining to the Sierra Blanca Ski land transfer, and from field conversations with Fred Heckman, Economic Program Director of the Mescalero Tribe.



less skilled skiers in a dangerous manner on available slopes. A significant part of the expansion plans are for advance slopes, which not only increases skier satisfaction and enhances sound market development, but also substantially improves ski-slope safety and permits sound slope management.

- c. Lack of expansion will seriously undermine the economic viability of a 14 million dollar resort hotel on the reservation. The Cienegita resort hotel complex will be opening in less than one year and its effective utilization during winter months which is critical to its overall success depends upon the expansion of the Sierra Blanca ski resort.
- d. Lack of expansion has a substantial negative effect on the general economy of Southwest New Mexico and the State of New Mexico. Skiers are presently spending well over two million dollars a year in the local economy of Southwest New Mexico. Using a conservative multiplier rate of 3, this provides over 6 million dollars of economic activity which is a very significant factor in the overall economic health of this part of New Mexico. Expanding the ski resort to its full capacity could triple this economic activity to the 18 million dollar level. In addition, this economic activity would generate (at a current tax rate of 4%) an additional \$650,000 in tax revenue for the State of New Mexico.

2. Inadequacies of the Forest Service Permit

The Sierra Blanca Ski Resort is on Forest Service land and operates under a special 30-year Forest Service use permit. This permit on which the facilities are now built or will be built lasts for 23 more years and is limited to an unspecified 80 acres by Congressional mandate. Restrictive regulations contained in the use permits are not conducive to attracting outside private investment capital. For example, the permit can be terminated on a 30-day notice from the Secretary of Agriculture or the Forest Service acting by or under his authority. Upon termination, revocation or cancellation of the permit, the permittee is required to remove within a reasonable period of time all structures and improvements owned by him and restore the site. Failure to remove improvements within a reasonable period of time forfeits title to the Forest Service. Also on expiration of the permit, the permittee will be given a renewal preference provided that the continuance of the use is warranted, and that compliance with their terms of the permit have been "satisfactory." This provides poor security for investment and has operated to the detriment of the tribe in their efforts to acquire additional monies for current and future development and operation of the ski resort.

3. Overlapping, two-department Federal responsibility for the Sierra Blanca Ski Resort

- a. The Sierra Blanca Ski Resort is located on a very small portion of the Sierra Blanca mountain. The mountain itself is located primarily inside the Mescalero reservation, and therefore under the direct responsibility of the Tribe and the trust responsi-

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bility of the Department of the Interior. The Tribe and the Interior Department manage most of the mountain in terms of fire protection, watershed protection and forest management. They have also carried out some of these functions in the Sierra Blanca Ski area. For example, they have exercised a substantial amount of the responsibility for fire protection, because of more adequate budget and equipment, better observation capability and better positioning of fire fighting equipment. Every lightning strike fire in the Sierra Blanca Ski Area has been discovered and extinguished by the Tribe, not the Forest Service. Any of their fires if not quickly dealt with could have destroyed the Tribe's 3 million dollar investment.

- b. The Ski Resort is on Forest Service land but is used exclusively for Ski Resort purposes, and the Interior Department has substantial responsibility for the Tribal Ski Enterprise. The 3 million dollars of buildings and improvements are owned by the Tribe and under the trust responsibility of the Department of the Interior. The business operation at the Ski Resort is the responsibility of the Tribe, but also under the trust responsibility of the Department of the Interior. The basic financing of the Ski Resort of 1.5 million dollars, came from the revolving loan fund of the BIA and is therefore also a responsibility of the Interior Department. On a de facto basis, it is clear that the land from the standpoint of responsibility and utilization is National Forest in name only.
- c. The Forest Service does have a duty to provide for public recreation and to protect the forest resource. But it has no official or legal responsibility with respect to Indian life, Indian jobs, or Indian tribal government stability. The Department of the Interior also has a duty to provide for public recreation, and it also has a duty to protect the forest resource - but it also has the duty to care about Indians and their future and to help them develop.

Alternative Solutions

Three basic alternatives have been discussed or proposed to resolve the issues and problems to the present development and proposed expansion of the Sierra Blanca Ski area.

1. Provide for expansion of the Ski Area through a revised special-use permit. The Forest Service has the authority for issuing a 30-year permit on up to 80 acres. The Tribe's proposed expansion of facilities can be accommodated within the 80-acre limitation. The land interlaced with the facilities not covered by the term permit can be covered by an annual special-use permit, the usual practice on ski areas on National Forest Service lands operated under permit. This alternative is favored by the Forest Service based on the findings of their environmental impact statement.
2. Follow the legislative route, which would permit full public disclosure of the problem and a decision by the Congress whether to place the land desired in trust status.



3. Use of the President's authority under 16 U.S.C. 473. This authority empowers the President to revoke, modify or suspend Executive orders and proclamations which have reserved public domain land for National Forest purposes. By such modification he may change the boundary lines or eliminate an area from the National Forest.

Proposed Solution

The one solution which is favored by the tribe and most others concerned with the Sierra Blanca Ski development would be the transfer by Presidential Executive Order of the 2,200 acres of land in question from the Forest Service to the Secretary of the Interior to be held in trust for the use and benefit of the Mescalero Apache Tribe. There is ample legal authority to accomplish such a transfer. The following excerpts relative to the legality of such a transfer are taken from Mr. George E. Fettinger's letter to Mr. Reid Chambers, Office of the Solicitor, Department of the Interior, dated June 25, 1974:

1. The President is authorized to reduce the area of the Lincoln National Forest, and modify the boundary lines under the provisions of 16 U.S.C. 473.
2. Although 25 U.S.C. 211 prohibits any additions to reservations within the State of New Mexico, there is no prohibition against acquisition of land by the Secretary of the Interior to be held in trust, "without existing reservations". Section 211 was effective the 25th day of May, 1918.
3. Section 25 U.S.C. 465 provides that the Secretary of the Interior is authorized . . . to acquire . . . any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians . . . title to any lands or rights acquired pursuant to Sections . . . 465 . . . of this title shall be taken in the name of the United States in trust for the Indian tribe . . . for which the land is acquired." Section 25 U.S.C. 465 was effective the 18th day of June, 1934.
4. In Mescalero Apache Tribe v Jones, N.M. 1973, 93 S.Ct. 1267, 411 U.S. 145, the Supreme Court said "this section exempting any lands or rights acquired pursuant to Section 461 et seq. of this title from state and local taxation barred use tax that New Mexico sought to impose on personalty that Mescalero Apache Tribe purchased out of state and which had been installed as a permanent improvement at the ski resort operated by Tribe on off-reservation land. The Court further stated that "although government land on which Indian Tribe operated ski resort was not technically acquired in trust for the Indian tribe, the lease arrangement was sufficient to bring the Tribe's interest in the land within the immunity from State and local taxation afforded by this section with respect to any lands or rights acquired pursuant to Section 461 et seq. of this title."
5. Section 465 specifically authorizes the acquisition of any interest in land outside of existing reservations. Such acquisition of title is to be in the Name of the United States in trust for the Indian tribe.



6. Section 465 was enacted approximately sixteen years after Section 211 and appears to be adequate authority for the contemplated transfer.

In his letter to Mr. Adrian Parmeter dated April 19, 1974, Mr. F. Randolph Burroughs, Mescalero tribal attorney, cites the following reasons justifying the transfer of the land in question from the Forest Service to the Department of the Interior under 16 U.S.C. 473. These would appear to resolve most, if not all, of the issues and problems cited above.

1. Such a transfer would end the dual control of the land upon which the Sierra Blanca Ski Enterprise is operated. Presently, both the Forest Service (Department of Agriculture) and the B.I.A. (Department of the Interior) have supervisory responsibilities in regard to the area.
2. Such a transfer would end the confusion regarding erosion control that has existed for a number of years. Erosion control has been either prevented or delayed in a number of instances because of differences of opinion as to the procedures which should be followed, budget timing differences and some confusion as to exactly which agency has responsibility for such erosion control.
3. Such a transfer would fix the responsibility for fire prevention and fire control with the Department of the Interior. The Department of the Interior has more men, and better equipment available to fight fires in this area, and if actually transferred, such equipment could be made immediately available to the subject area. The Department of the Interior has fire control responsibility for the land immediately south of the Sierra Blanca Ski area.
4. Such a transfer would place the land in the control of the Department of the Interior, which department presently is the lending agency of a substantial sum of money loaned to the Mescalero Apache Tribe for purposes of purchasing the ski facilities.
5. Such a transfer would reduce the effect of a change of personnel assigned to supervise the ski enterprise. At the present time, since the approval of both departments is generally required before any significant steps can be taken, a change of personnel assigned to the ski enterprise, from either the Department of the Interior or the Department of Agriculture, results in a period of education and indoctrination. Such delays have proven costly in the past.
6. Such a transfer would place the land totally under the control of the Department of the Interior. If legislation was required from Congress, the controlling recommendations would be those of the Department of the Interior. For example, should it be desirable to change the status of this land to "restricted Indian status" (such as making it a part of the Reservation), the recommendation and consent of the Department of the Interior should be only significant requirement.



7. Such a transfer would vest the Department of the Interior with authority to lease the entire amount of specified land to the Mescalero Apache Tribe for a period of 50 or more years. Such a lease would be mortgagable. Also, such a lease would meet the "restricted Indian land" requirement of the Department of Commerce (Public Works and Economic Development Act of 1965), thereby, permitting the Mescalero Tribe to apply for Public Works Grants, Loans, Technical Assistance and possible loan assistance from the Economic Development Administration. The Department of Agriculture cannot now make such a lease. The Congress gives that Department authority to grant by special permit use of Forest Service lands for recreational purposes for a 30 year term and for tracts of land not to exceed 80 acres. A 50 year or more lease of the land to the Tribe by the Department of the Interior would probably give the Tribe adequate government supervision over the land to enable it to qualify for assistance from other government programs requiring the exercise of political jurisdiction by the grantee.
8. Such a transfer would clarify tax questions created by the dual status of the land (state taxes).



[6/11/74]

BRIEFING PAPER ON MESCALERO-APACHE TRIBE
LAND EXCHANGE PROPOSAL FOR
SIERRA-BLANCA SKI AREA

The Mescalero-Apache Tribe is the permittee on the Sierra-Blanca Ski Area on the Lincoln National Forest, New Mexico. They purchased the interest in the ski area of the former permittee -- the Sierra-Blanca Company -- in September 1963. They operate the area under a 30-year term permit for the maximum allowable 80 acres. The 80 acres are unspecified in Secs. 33 and 34, T. 10 S., R. 11 E., adjacent to the Mescalero-Apache Indian Reservation. From 1873 to 1876 this land was a part of the Reservation but was eliminated in 1876 by Executive order.

In the spring of 1971, the Tribe presented a master development plan for the ski area to the Forest Service. This plan provided for three stages of expansion of the existing facilities, two on National Forest land and one on the Reservation. With the exception of an expansion into a valuable watershed area -- the Rio Bonito watershed -- the plan was approved in concept by the Forest Supervisor.

In September 1971 the Tribe requested an exchange of land, 2,240 acres, which would involve both the existing and expansion areas as well as an additional section (27) that was not included in any proposed ski development.

In considering the exchange proposal, the Regional Forester prepared a draft environmental statement that was released on January 14, 1972. The Tribe and the BIA distributed a clarification statement on January 15, 1972 that took exception to the Forest Service statement. A public meeting was held on January 22, 1972 in Ruidoso Downs, New Mexico. A Final Environmental Statement was transmitted to CEQ on June 21, 1972.



The Environmental Statement concludes that the land requested for exchange should remain in National Forest ownership.

The Tribe's stated reason for its desire to own these lands is that ownership is necessary to obtain financing for the development of the ski area. The land under consideration is adjacent to the White Mountain Wilderness. About one-half of the area is unroaded and undeveloped and may qualify for inclusion in the Wilderness. The headwaters of three watersheds are on these lands. They include approximately 1,000 acres of the Rio Bonito Watershed which by the Act of June 13, 1939 was withdrawn from mineral entry to safeguard water values. The water serves several small communities, the City of Alamogordo and Holloman Air Force Base. About 1,000 acres have been recommended by University people and a Forest Service study team for inclusion in a Cork Bark Fir Research Natural Area. The world's largest known specimens of Cork Bark Fir are believed to exist in this area.

It appears that the preponderance of public support is with the Regional Forester's decision to retain the land as National Forest. Local school districts fear the loss of revenue if the ski operation is included within the Reservation. Local governments are concerned over any possible deterioration in water quality. The sportsmen's clubs and Game Commission fear the loss of public hunting lands. The Environmental Statement shows that Lincoln County would probably soon qualify for assistance from the Economic Development Administration for up to 70 percent financing in Lincoln County. All of the considered National Forest land is in Lincoln County.



The Environmental Statement shows agreement with the ski area expansion except in the Bonito Watershed. It strongly infers that there would be no assurance that the environment would be protected or enhanced as well under tribal administration as under the National Forest System. It rationalizes that the objectives of the Tribe are more determined by economics than by stewardship of land and resources.

After the 30-day minimum waiting period following issuance of the final environmental statement on the Mescaleros' proposal to transfer by exchange National Forest lands to the Mescalero-Apache Tribe the Regional Forester decided that the exchange was not in the public interest. He advised Mr. Wendell Chino, President of the Mescalero-Apache Tribe of his decision not to enter into negotiations with the Tribe for exchange on August 10, 1972.

On August 17, 1972, Dr. Cowden wrote to Senator Bellmon advising him that the Forest Service decision was adverse to the exchange. The Forest Service decision was expressed again in a September 19, 1972 letter to Senator Tower stating in addition that we would consider expansion of the ski area on National Forest lands.

Sometime during November 1972 Mrs. Wendell Chino visited Mr. E. F. Behrens to discuss the case and was told that he would personally review the case. On December 1, 1972 Mr. Behrens wrote Mr. Chino that because of present environmental concerns further review of the case would not be in the best interest of the Tribe and the Forest Service would cooperate if they choose to expand on National Forest land.



Mr. Wendell Chino and other tribal representatives met with Assistant Secretary Long in May 1973. Their discussion involved the Tribe's continued interest in additional land for their ski area expansion.

On August 20, 1973, Deputy Assistant Secretary VanderMyde wrote Mr. Chino as a follow-up to the meeting. He suggested that the Tribe consider an expansion under special use permit. He also suggested that if it were determined that financing was not available without trust status, they explore the opportunities of acquiring the land through legislation since this has the distinct advantage of providing full and complete public disclosure. As a final alternative, his letter stated that if neither of the other two alternatives to exchange was feasible the Chief would ask the Regional Forester to again explore the opportunities available to provide the lands necessary for expansion through land exchange. Prior to August 20 we explored financing possibilities and suggested several to the tribe. In our letter we asked the Tribe to let us know what sources of financing were available on Trust lands that would not be available on National Forest lands. We have not received a reply to date.

We have inquiries on this matter from Senator Domenici, and Congressmen Lujan and Runnels and they were advised of our position.

Land Classification
June 11, 1974



*Return to L. C. Lm 42045
Forest Service*

5540

August 20, 1973.

Mr. Wendell Chino
President
Mescalero- pache Tribe
Mescalero, New Mexico 88340

Dear Mr. Chino:

We appreciated the opportunity to meet with you and your associates on May 1, 1973, and to hear your proposal to acquire through land exchange 2,240 acres of National Forest land on the Lincoln National Forest for expansion of the Sierra Blanca Ski Area.

As you know, a decision was made in June 1972 by the Regional Forester in Albuquerque against exchange of the land in question only after careful study of the proposal and the preparation and issuance of an Environmental Statement under the procedural rules issued under Section 102(c) of the National Environmental Policy Act.

During our May visit, we understood that you were interested in acquiring only the land needed for ski area expansion beyond the land now covered by term special use permit. The land needed for facilities to accomplish expansion could be satisfied by a revision of the term special use permit without exceeding the 80 acre limitation. The closely associated lands served by the ski facilities can be covered by an annual special use permit. In this manner all of the area actually used or needed for expansion would be under permit. This combination of permits is the common practice.

In view of the financing problem you have pointed out for developments on National Forest land, we have explored a number of possibilities that may be of some help to you. These are discussed in Attachment No. 1.

If it is determined that you cannot secure financing unless the lands are placed in trust status, we suggest you explore the opportunities of acquiring the land through legislation. This has the distinct



advantage of providing full and complete public disclosure and would in my opinion be the most desirable way to consider transferring land of this character from National Forest to Indian trust status.

If it is determined that neither of the above alternatives to exchange is feasible, we will ask the Chief, Forest Service, to have the Regional Forester in Albuquerque again explore with you the opportunities available to provide the lands necessary for expansion through land exchange. It would help in any further consideration of this matter if you could let us know what sources of funding would be available for ski area development on trust lands that would not be available for the same purpose on National Forest land.

We look forward to working with the Tribe and have hopes that mutually satisfactory arrangements can be made for expansion of the Sierra Blanca Ski Area on National Forest land.

Sincerely,

PAUL A. VANDER MYDE
Deputy Assistant Secretary

Enclosure

Reurite FS-PJ-55-25 *Reurite* FS-PS-ST-14
LC:MLYuhas/JWGreth:hb:Rm.4204S:Ext.72363
8-10-73
2cc: Sec's Record
3cc: R-3
cc: LA

Reurite 5/7, 5/9, 5/23, 5/29

REXFORD A. RESLER
Associate Chief
Forest Service
8/16/73



Handwritten signatures and initials:
JW
JW
JW
JW

Attachment No. 1

Many ski area businesses operating on National Forests under special-use permit have been successful in obtaining financing, and we have every reason to believe the Tribe's enterprise will be also. We have determined from the Department of the Interior that there are presently no grants or loans available through either the Bureau of Indian Affairs or the Economic Development Administration. However, the BIA informed us that there is a possibility that some loan or grant funds may become available in the future as a result of phasing out the Economic Development Administration. Details of such funds are still uncertain and legislation would be required for any use of the funds by the BIA. They have suggested that the Tribe contact them concerning these funds. The contact suggested is Mr. Charles Swallow, Chief, Division of Credit and Financing, Bureau of Indian Affairs, Department of the Interior, Washington, D.C. 20240.

The Department of the Interior has also suggested the Small Business Administration as a loan source. The Department is familiar with the Sierra Blanca Ski Area and believes it likely that the business would qualify for such a loan.

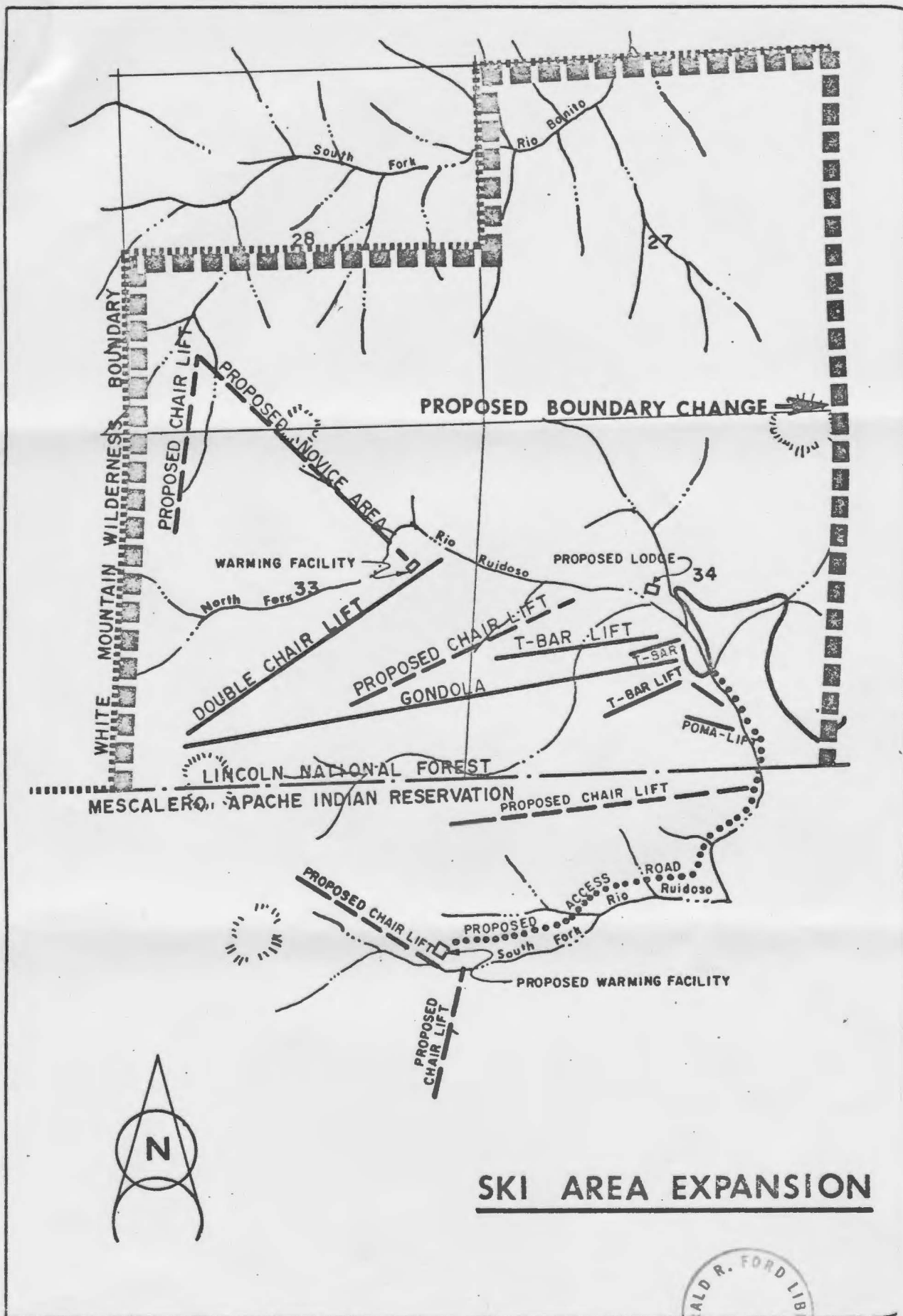
Available private funding may also be improved if H.R. 1403 (with suggested amendments) introduced by Mr. Johnson of California, January 6, 1973, is enacted. This legislation would provide authority for the Forest Service to issue a lease for up to 50 years, improving the tenure situation.

If enacted, H.R. 6493, introduced April 3, 1973, would greatly enhance the possibility of the Mescalero-Apache Tribe to obtain funds for expanded development. It is "To provide for the economic development of Indians, Indian Tribes, and other Indian organizations, and for other purposes." This bill would amend the Act of June 18, 1934 (43 Stat. 986, as amended, which established a Revolving Loan Fund.

The Farmers Home Administration may also soon be able to guarantee loans made from commercial banks for development of ski area facilities. This will be done under the Business and Industrial Loans Program authorized under the Consolidated Farm and Rural Development Act, PL 92-419, signed August 30, 1972. Contact should be made by the Tribe with the State Director of FHA in New Mexico to determine what assistance may be available. The address is:

Carroll D. Hunton
State Director, FHA
3414 Federal Building
517 Gold Ave., S.W.
Albuquerque, N.M. 87101





SKI AREA EXPANSION





THE WHITE HOUSE
WASHINGTON

2/16/74

F.S.

When IT uses 16 USC 473
it becomes public domain
land -- as it was before
IT signed the Ex Order.

Has IT now used his
465 authority to ~~take~~ take
land from public domain
& give to deleas? No.

Only used re private land.

Inter o Agis Saluton
must get together.

Also: E.I.S. required.

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

AUG 23 1974

Honorable Rogers C. B. Morton
Secretary of the Interior

Dear Mr. Secretary:

Please refer to your August 2 letter concerning your desire to assist the Mescalero Apache Tribe in their efforts to expand the Sierra Blanca ski area and suggested alternatives for land adjustments to accomplish the expansion.

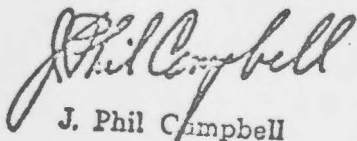
We welcome the opportunity to participate further in this effort to allow the Mescalero Apache Tribe to become more self-sufficient.

We are prepared to issue a long term permit comparable to those for the Aspen, Colorado, ski areas, proposed by you as a third alternative. The Tribe's proposed expansion of facilities can be accommodated within our authorizations. We would issue a new 30-year term permit for all of the developed facilities under our 80-acre term special-use permit authorization. The intermingled land would be covered under an annual permit. This will be consistent with other permitted private ski operations on National Forest lands throughout the United States. Financial institutions have accepted these permit arrangements as sufficient security.

This alternative also has the advantage of being consistent with the Final Environmental Statement transmitted to the Council of Environmental Quality on June 21, 1972. This Statement, as required under the Environmental Quality Improvement Act of 1970, concluded that the retention of the subject lands in National Forest ownership would be in the public interest.

We look forward to cooperating fully with you in an effort to have this matter resolved.

Sincerely,



J. Phil Campbell

Acting Secretary



OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240COPY FURNISHED BY THE
STAFF SECRETARY'S OFFICE

Dear Secretary Butz:

As you know, the President in 1970 inaugurated a fundamentally new governmental policy with respect to American Indians -- a policy of self-determination and of encouraging tribes to become self-sufficient through active participation in the American economy.

Although the opportunities for the implementation of this policy generally fall to the Department of Interior, there now exists a specific opportunity for the Department of Agriculture to participate in this policy in a highly visible context.

The Mescalero Apache Tribe has for some time been operating a successful ski recreation area in the Lincoln National Forest, which is adjacent to the Mescalero Reservation. The Sierra Blanca ski area -- and for that matter, the total tribal operation -- is one of the most dramatic illustrations in the country today of successful tribal entrepreneurship and the development of tribal resources.

The time has now come, however, for the tribe to expand its operation. In response to their efforts to capitalize this expansion, it has been pointed out to them by financial institutions that their interest in the land is not sufficient to allow it to be used as security.

Mr. Frank Zarb, at the Office of Management and Budget, as recently as July 16, 1974, met with representatives of the Department of Agriculture and the Department of Interior and members of the tribe to brainstorm ways to improve the land interest of the tribe. At that meeting, Mr. Zarb directed that the General Counsel for your Department and my Solicitor identify and resolve any legal issues that might impede the results the tribe would like to achieve. Mr. Jack Knebel and Mr. Kent Frizzell met on July 23, 1974, and have made some recommendations concerning how the status of the Indian land interests can be improved without embroiling our respective Departments in potentially prolonged and complex legal issues.

Basically, three possible solutions have been suggested. First of all, legislation might be proposed transferring the present 1,300 acre tract, plus the approximately 900 acres needed for expansion, to the Department of Interior to be held in trust for the tribe. Unfortunately, since time is of the essence for the tribe's expansion and capitalization, this alternative is very likely not a practical one.

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STAFF SECRETARY'S OFFICE

COPY FOR THE SECRETARY'S OFFICE



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Alternatively, the 2,200 acres in question could be transferred by Executive order to the Department of Interior, which then could enter into a leasing or similar arrangement by which the tribe could probably secure the necessary financing. If this becomes a viable alternative we could possibly explore a land exchange between our Departments.

As a third alternative, the Forest Service itself might be able to enter into a long-term permit or lease arrangement with the Hescalero Tribe for the entire 2,200 acre tract in question, comparable to the arrangements which I understand exist at the Aspen, Colorado, ski area. In this way, it might be possible to aid the tribe in securing financing without disturbing Forest Service jurisdiction over and ownership of the land.

I have advised Mr. Zarb's office of the direction in which this matter is moving as a result of the July 23, 1974, meeting between counsel for our Departments.

In view of the urgency of this matter and the real opportunity for this Administration to help the Indians help themselves, I hope this matter can be expeditiously addressed and resolved.

I would appreciate your thoughts concerning which of these alternatives, combination of alternatives, or additional alternatives you feel might be most viable.

Sincerely,

[Sgd] Rog

Secretary of the Interior

Honorable Earl L. Butz
Secretary of Agriculture
Department of Agriculture
14th Street & Independence Ave., S.W.
Washington, D.C. 20005

Copies to: Mr. Frank Zarb
Mr. Leonard Garment
Mr. Brad Patterson
Mr. Jack Knebel
Mr. Kent Frizzell

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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

August 2, 1974

Dear Secretary Butz:

As you know, the President in 1970 inaugurated a fundamentally new governmental policy with respect to American Indians -- a policy of self-determination and of encouraging tribes to become self-sufficient through active participation in the American economy.

Although the opportunities for the implementation of this policy generally fall to the Department of Interior, there now exists a specific opportunity for the Department of Agriculture to participate in this policy in a highly visible context.

The Mescalero Apache Tribe has for some time been operating a successful ski recreation area in the Lincoln National Forest, which is adjacent to the Mescalero Reservation. The Sierra Blanca ski area -- and for that matter, the total tribal operation -- is one of the most dramatic illustrations in the country today of successful tribal entrepreneurship and the development of tribal resources.

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Basically, three possible solutions have been suggested. First of all, legislation might be proposed transferring the present 1,300 acre tract, plus the approximately 900 acres needed for expansion, to the Department of Interior to be held in trust for the tribe. Unfortunately, since time is of the essence for the tribe's expansion and capitalization, this alternative is very likely not a practical one.



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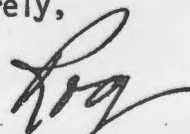
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Department of Agriculture
14th Street & Independence Ave., S.W.
Washington, D.C. 20005

Copies to: Mr. Frank Zarb
Mr. Leonard Garment
Mr. Brad Patterson
Mr. Jack Knebel
Mr. Kent Frizzell



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OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

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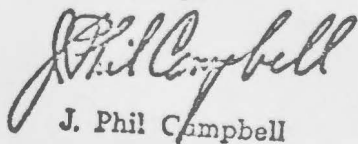
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J. Phil Campbell

Acting Secretary



OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

COPY FURNISHED BY **AUG 2 - 1974**
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COPY FOR THE SECRETARY'S OFFICE



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[Sgd] Rog

Secretary of the Interior

Honorable Earl L. Butz
Secretary of Agriculture
Department of Agriculture
1400 Street & Independence Ave., S.W.
Washington, D.C. 20005

Copies to: Mr. Frank Zarb
Mr. Leonard Carmant
Mr. Brad Patterson
Mr. Jack Knobel
Mr. Kent Frizzell

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The White House
Washington

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002 ALBUQUERQUE, NEW MEXICO AUGUST 30, 1974
PMS BRADLEY H. PATTERSON, JR.
EXEC ASST. TO MR. LEONARD GARMENT
WHITE HOUSE
WASHINGTON, D. C.

RE: MESCALERO APACHE TRIBE

A LEASEHOLD INTEREST VESTED IN THE MESCALERO APACHE TRIBE
UNDER THE TERMS OF A SPECIAL USE PERMIT OF 30 YEARS DURATION
COVERING A DEFINITE 30 ACRES, PLUS AN ANNUAL PERMIT OF THE
BALANCE OF THE LAND LEASE FOR THE OPERATION OF THE SIERRA
BLANCA SKI AREA WOULD NOT QUALIFY AS SECURITY FOR A
SIGNIFICANT LOAN TO THE MESCALERO APACHE TRIBE.

ANY PROPOSED BORROWING WOULD HAVE TO BE SUPPORTED BY MORE
ACCEPTABLE COLLATERAL WHICH WOULD NOT INCLUDE ASSIGNMENT OF
SPECIAL USE PERMIT AND ANNUAL PERMIT.

J. W. CRAIG
EXECUTIVE VICE PRESIDENT
BANK OF NEW MEXICO
NNNN





MESCALERO *Apache* **TRIBE**

Wendell Chino, President

Mescalero, New Mexico 88340

November 1, 1974

Mr. Frank Zarb, Associate Director
Office of Management and Budget
The White House
Washington, D.C. 20242

Dear Mr. Zarb:

The Mescalero Apache Tribe will be able to obtain financing for expansion of the Sierra Blanca Ski Area when the land on which the ski area is located is leased to the tribe by B.L.M. for a long term or is purchased by the tribe.

Attached are two documents in support of this statement. The letter from our bank clearly states their position. The resolution of the Mescalero Tribal Council indicates our willingness to commit tribal resources and assets in support of accomplishing the expansion program.

We greatly appreciate the effort and patience you have put forth in behalf of the Mescalero Apache people. Your assistance will serve the Apache people well for generations to come.

Sincerely,

Wendell Chino, President

cc: Mr. John C. Whitaker
→ Mr. Brad Patterson
Mr. Kent Frizzell



Bank of New Mexico

P. O. BOX 1830

ALBUQUERQUE, NEW MEXICO 87103

J. W. CRAIG
EXECUTIVE VICE PRESIDENT

October 30, 1974

AREA CODE 505
264-9169

Mr. Wendell Chino, President
Mescalero Apache Tribe
Box 176
Mescalero, New Mexico 88340

Dear Wendell:

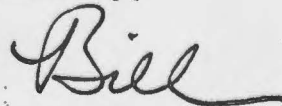
The Bank of New Mexico has been pleased to provide substantial financial assistance to the Mescalero Apache Tribe during the past decade in the financing of major tourism developments on Mescalero Apache Land.

We informed Mr. Kenneth Evans, of the U. S. Forest Service, Lincoln National Forest, on February 10, 1972 of our inability to consider assisting the Tribe in the realization of its expansion goals relating to the Sierra Blanca Ski Area because of the present land status in terms of the U. S. Forest Service Land Use Permit. We expressed our belief then that a transfer of the land to Tribal status was the only practical course for the Tribe to follow in achieving their expansion goals. We also expressed our belief that the public interest would best be served by the land transfer and the resulting expansion of the Sierra Blanca Recreation Facility.

With Tribal ownership of the land, or conversely with a pledgeable, long-term lease posture relating to the land, the Bank of New Mexico would be pleased to consider future Tribal requests for extensions of credit to enable you to bring your expressed development goals to fruition. Normal banking considerations vis-a-vis such a request for credit would obviously enter into our deliberations at that time.

The Bank of New Mexico has enjoyed a most pleasant and successful relationship with the Mescalero Apache Tribe for many years. We have been proud of the fact that we have been able to share in your progress, and that our mutual confidence has been maintained on such a high level continuously over the years. We are hopeful of joining you in future projects that will be equally rewarding to all concerned. It is our hope that as your banker we can provide the financial assistance that when combined with your Tribal assets and proven ability will result in the desired social and economic benefits to your Tribe, our bank and the public we serve. We look forward to the opportunity to discuss the matter further with you in the near future.

Sincerely,



J. W. Craig

JWC:cem



MESCALERO APACHE TRIBE
MESCALERO, NEW MEXICO

RESOLUTION NO. 74-33

WHEREAS, The Mescalero Apache Tribe, an Indian Tribe recognized under the Indian Reorganization Act of June 18, 1934 (48 Stat 984) and under its Revised Constitution has full power and authority to act for the Tribe, and

WHEREAS, The Mescalero Apache Tribal Council has the power to regulate the uses of Tribal property pursuant to Article XI, Section 1 (b) of the Revised Constitution, and

WHEREAS, The Mescalero Apache Tribal Council is vested with authority to borrow funds and pledge their Tribal assets as security for such borrowings under Article XI of the Revised Constitution of the Mescalero Apache Tribe approved 25 March 1936 and revised 12 January 1965;

WHEREAS, The Tribal Council has full authority under said section to adopt and approve plans of operation to govern the conduct of any business or industry that will further the economic well-being of the members of the Tribe, and has full authority to use Tribal funds in such manner as the Tribal Council may determine in conformity with the Constitution of the Tribe and to be consistent with applicable Federal laws and regulations;

WHEREAS, The Tribal Council further has authority to authorize the President of the Tribe to negotiate contracts, leases, and agreements of every description not inconsistent with Federal law or with the Constitution of the Mescalero Apache Tribe, subject to review or approval of the Secretary of the Interior where such review or approval is required by statute or regulation;

WHEREAS, further, The Tribal Council has authority to borrow money from the Federal government or other lenders for Tribal use;

WHEREAS, The Tribal Council has conducted under its authority the Sierra Blanca Ski Enterprise for many years;

WHEREAS, It is presently contemplated that the land upon which the Sierra Blanca Ski Enterprise is presently operating will be transferred to the Secretary of Interior, and leased for long term and/or sold by B.L.M. to The Mescalero Apache Tribe under its statutory authority;

WHEREAS, if such transfer to the Secretary of the Interior, and subsequent lease and/or sale to the Mescalero Apache Tribe were in fact to occur, The Tribal Council would be willing to utilize the general credit and assets of The Mescalero Apache Tribe to such extent as is reasonably necessary to provide for the expansion of the Sierra Blanca Ski Enterprise;



WHEREAS, as a matter of policy The Mescalero Apache Tribal Council cannot authorize the expenditure of additional large sums of money on the Sierra Blanca Ski Enterprise unless such improvements are placed upon land held under reasonably secure tenure such as a long term B.L.M. lease or held in trust by the Department of Interior for The Mescalero Apache Tribe;

WHEREAS, The said Sierra Blanca Ski Enterprise is located on land immediately adjacent to the northern boundary of the Mescalero Apache Reservation;

NOW, THEREFORE, BE IT RESOLVED, That The Tribal Council of the Mescalero Apache Tribe hereby pledges to utilize the general credit and assets of The Mescalero Apache Tribe to the extent which may be reasonably necessary to provide for the reasonable further development and expansion of the Sierra Blanca Ski Enterprise, PROVIDED that the land upon which said Sierra Blanca Ski Enterprise is located is in fact transferred to the Secretary of the Interior, and leased for a long term and/or sold by B.L.M. to The Mescalero Apache Tribe under its statutory authority.



CERTIFICATION

The foregoing enactment of the Mescalero Apache Tribal Council is duly adopted and approved on October 29, 1974, at a legally called session of the Mescalero Apache Tribal Council, at which a quorum was present and at which a majority of the members voted in favor thereof. This enactment is approved by the President of the Mescalero Apache Tribe under authority of Article XII, Section 1, of the Revised Constitution.

Berle Kanseah, SECRETARY
Wendell Chino, PRESIDENT

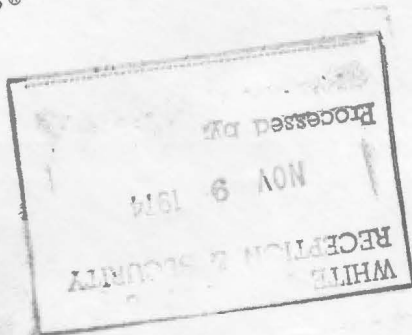
Berle Kanseah, Secretary
Wendell Chino, President





MESCALERO *Apache* TRIBE
Mescalero, New Mexico 88340

AIR MAIL



Mr. Brad Patterson
The White House
Washington, D. C. 20242



WHITE HOUSE MAIL
RECEPTION & SECURITY
NOV 9 1974
Processed by:

May 29, 1975

MEMORANDUM FOR

JIM LYNN

FROM:

JIM CANNON

SUBJECT:

Memo to the President on
Mescalero Apache Economic
Enterprise

In our staffing of your memo to the President on the Mescalero Apache economic enterprise, the Counsel's office recommended that your memo set forth for the President's decision options involving the method by which the expansion can best be achieved.

I have been further advised that the Secretary of Agriculture opposes the issuance of an Executive Order removing the subject land from the Lincoln National Forest. He believes that it would not be in the public interest to remove the land and the action would set a bad precedent which could have far-reaching consequences on National Forests.

The Department believes that if the ski expansion is not economically feasible and must depend upon Federal grants and low interest Federal or Federally insured loans that this could not be considered as making the Tribe self-supporting and would be an extraordinary and questionable alternative to solve the economic problems of the Tribe.

NEROSS/ee



May 13, 1975

MEMORANDUM FOR: JIM LYNN
FROM: JIM CANNON
SUBJECT: Memo to the President
on Mescalero Apache
Economic Enterprise

The Counsel's office has recommended that your memo should set forth for the President's decision options involving the method by which the expansion of the Mescalero Apache economic enterprise can best be achieved.

In addition to your memo attached are the opinions and recommendations of the Department of Agriculture on your proposed action.

Attachments - original incoming letter from Jim Lynn recommendations of the Dept. of Ag. received from Vanderm^{one} ~~one~~.

NEROSS/ee



THE WHITE HOUSE

WASHINGTON

May 15, 1975

MEMORANDUM FOR: JIM LYNN

FROM: JIM CANNON

SUBJECT: Memo to the President
on Mescalero Apache
Economic Enterprise

The Counsel's office has recommended that your memo should set forth for the President's decision options involving the method by which the expansion of the Mescalero Apache economic enterprise can best be achieved.

In addition to your memo attached are the opinions and recommendations of the Department of Agriculture on your proposed action.

Attachments

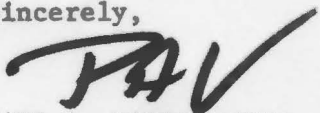


TO: Mr. Norman Ross
The White House

Dear Mr. Ross :

In response to your request of May 12, 1975, enclosed is a brief document listing the opinions and recommendations of this Department on the removal of lands from the National Forest system by Executive Order for the proposed expansion of the Sierra Blanca Ski Resort by the Mescalero Apache Tribe.

Sincerely,


PAUL A. VANDER MYDE
Deputy Assistant Secretary

Enclosure



Department of Agriculture Opinions and Recommendations

The USDA believes that it would not be in the public interest to remove this land from the National Forest. This conclusion is supported by the Environmental Impact Statement which addressed the issue and was prepared in compliance with the National Environmental Policy Act. Because the statement concluded that the land should remain in the National Forest, there could be litigation challenging its removal from the Lincoln National Forest.

The action would set a bad precedent and could have far-reaching consequences on National Forests. In a similar situation with the Pueblo de Taos Indians of New Mexico, it was considered to be in the public interest to remove lands from the Carson National Forest for religious and other uses. It was deemed advisable to avoid the precedent of removing the land from the National Forests by Executive Action and instead the withdrawal was made by statute: (P.L. 91-550, December 15, 1970, 84 Stat. 1437 et seq.). This procedure provides full public exposure.

Based on its experience with development of ski areas on nearly 200 sites authorized by similar special use permit arrangement, the USDA believes that the permit does not present a major obstacle to securing adequate financing if the development is economically feasible. The present system has proven successful in promoting facilities which are both recreationally valuable to the public and profitable to the ski resort operators. The Department is in agreement with use of the National Forest land for the proposed ski area expansion if done under permit.

The Department believes that if the ski expansion is not economically feasible and must depend upon Federal grants and low interest Federal or Federally insured loans, that this could not be considered as making the Tribe self-supporting and would be an extraordinary and questionable alternative to solve the economic problems of the Tribe. While the debt service carried by the present ski areas has technically been paid in full on a timely basis every year since 1963, this annual payment of principal and interest is actually collected on April 1 by BIA and returned to the Tribe on July 1. The net effect has been the deferral of payment.

Few lands in National Forests in the Southwest have greater multiple resource value. The headwaters of three important watersheds serving several communities are on these lands. This area also includes 1,000 acres of the Rio Bonito Watershed withdrawn from mineral entry by law to safeguard watershed values. About 1,000 acres have been recommended for inclusion in a Cork Bark Fir Research Natural Area. The area is open to the public for hunting and recreation. Continued USDA Forest Service administration would assure protection and public use of these valuable resources as well as allow for an expansion of the ski area by the Mescalero Apache Tribe.

In view of the above, ~~USDA opposes~~ the issuance of an Executive Order removing the subject land from the Lincoln National Forest.



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: May 6, 1975

Time: 8:00pm

FOR ACTION: Mike Duval
Ted Marrs
Max Friedersdorf
Ken Lazarus
Paul Theis

cc (for information): Jim Cavanaugh
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: May 7

Time: 5:00pm

SUBJECT:

Mescalero Apache Economic Enterprise

ACTION REQUESTED:

___ For Necessary Action

☒ For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

☒ For Your Comments

___ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

5/7/75

involving

Would suggest that the options ~~XXXXX~~ the method by which the expansion can be achieved be set forth for the President's decision.

Ken Lazarus

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Cavanaugh
For the President



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: May 6, 1975

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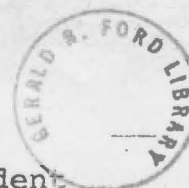
Please return to Judy Johnston, Ground Floor West Wing

*Having just visited this operation
I am convinced of the
wisdom of the decision.
Marrs*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Cavanaugh
For the President



THE WHITE HOUSE
WASHINGTON

May 8, 1975

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *M.L.*
SUBJECT: Action Memorandum - Log No.
Mescalero Apache Economic Enterprise

The Office of Legislative Affairs concurs with the agencies
that the subject memorandum be signed.

Attachments





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 6 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES T. LYNN
SUBJECT: Mescalero Apache Economic Enterprise

The federally recognized Mescalero Apache Tribe of New Mexico wishes to expand its ski resort, Sierra Blanca, by approximately 1000 acres. The resort is situated on Forest Service land contiguous to the reservation. The Mescaleros have successfully operated this resort for the past 11½ years, and find the expansion necessary for the following reasons:

- to make a long term investment in the economic future of the tribe;
- to provide over 300 new jobs for tribal members (achieving almost total employment of the existing work force);
- to ensure, to the fullest extent possible, that a new \$14M resort hotel complex located on the reservation will be a profitable venture; and
- to provide for more expert ski slopes which would improve the reputation of the operation, and attract additional skiers.

Present USDA/Forest Service permit regulations have acted as a deterrent to prospective lenders, frustrating the tribes attempt to improve and enlarge their recreational facility, and preventing the establishment of a solid economic base for their future.

The Departments of Agriculture, Interior and Justice are all in favor of the ski resort expansion. Disagreement has existed over the method by which the expansion is best achieved.

An analysis was made of the options available for expansion, the economic feasibility of the operation, the precedence issue, and external economies to the tribe. As a result, I have determined that the best way to achieve the objective

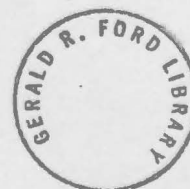


will be to transfer, by Executive Order, the acreage comprising the resort and that land needed for the proposed expansion (2240 acres total) to DOI, Bureau of Land Management. BLM can provide the necessary long term lease (50 years) to ensure the needed expansion.

Prior to signing an Executive Order transferring the acreage from USDA to DOI, an Environmental Impact Statement will be completed to ensure full public exposure of this matter.

Therefore, I have attached, for your signature, a Memorandum of Proposed Federal Action outlining the actions to be taken.

Attachment



DRAFT 4/21/75

MEMORANDUM OF PROPOSED FEDERAL ACTION

To: Secretaries of Interior and Agriculture

From: The President

Your Departments have been involved in considering questions having to do with the proposed expansion of the Sierra Blanca ski area in New Mexico, which is currently operated by the Mescalero Apache Tribe of Indians on land located within the Lincoln National Forest.

I have reviewed papers dealing with these issues prepared in part by your Departments and submitted to me by the Office of Management and Budget, and have concluded that the expansion of Sierra Blanca is in the public interest and can best be facilitated by the plan suggested by the Mescalero Apache Tribe and supported by the Department of the Interior. This plan involves my signing an executive order removing some 2200 acres of land (the current ski area plus the area needed for the planned expansion) from the Lincoln National Forest and bringing that land under the jurisdiction of the Department of the Interior (Bureau of Land Management), which would then be able to lease it to the Tribe for a substantial



period of time, possibly with an option to purchase, under the Recreation and Public Purposes Act, 43 U.S.C. §§ 869 et seq.

Sierra Blanca is one of the most prominent examples of successful, tribally operated economic enterprises in the country, and your efforts to aid in its expansion are fully consistent with this Administration's policy of supporting self-determination and economic self-sufficiency for American Indians. I am persuaded that no alternative course of action can assist that expansion as adequately as the plan I have referred to.

Accordingly, I propose to sign an executive order of the sort I have described, dependent upon an assessment of pertinent environmental considerations. A final determination with respect to the signing of such a proposed order will be made following the preparation and consideration of an environmental impact statement pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq.; and I direct the Secretary of the Interior to supervise the expeditious preparation of such an impact statement, with appropriate assistance to be provided by the Department of Agriculture upon request.

Gerald Ford



THE WHITE HOUSE

WASHINGTON

May 7, 1975

MEMORANDUM FOR: JUDY JOHNSTON

FROM: NORM ROSS

SUBJECT: Mescalero Apache Economic Enterprise

The President should have the position of the Secretaries of Agriculture and Interior and the Attorney General on the proposed land transfer prior to sending them a memorandum directing that certain action be taken. The Office of Management and Budget memorandum to the President should be redrafted to reflect the positions of Agriculture, Interior and Justice.

5/9/75

Norm Ross

Please do come
memos for the P
on this including the
positions you feel
are left out.
By Monday C.O.B.
Thanks



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: May 6, 1975

Time: 8:00pm

FOR ACTION:

Norm Ross
~~Mike Duval~~
Ted Marrs
Max Friedersdorf
Ken Lazarus
Paul Theis

cc (for information):

Jim Cavanaugh
Jack Marsh

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Jim Cavanaugh
For the President





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 6 1975

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Gerald Ford



→ Steve Hobson - Guam
South Pacific Games

Emmitt
Rice

1-10 August

No having funds to put game on
14 Nations participate

0.5 million - short

0.65 million - Total

\$500,000

\$650,000

477-9845 (Guam)

