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SAN FRANCISCO

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UPPER LAKE POMO ASSOCIATION, et al., Plaintiffs, vs. CECIL ANDRUS, et al., Defendants.	No. C-75-0181-SW FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

By their complaint, filed on January 28, 1975, plaintiffs seek a declaration that the trust status of the lands and the Indian status of the people of the Upper Lake Rancheria, a small Indian Reservation in Lake County, California, were not and have not lawfully been terminated "pursuant to" the provisions of the California Rancheria Act (Act of August 18, 1958, P.L. 85-671, 72 Stat. 619, as amended by the Act of August 11, 1964, P.L. 88-419, 78 Stat. 390); an injunction preventing various federal agencies and officers from treating said lands and people as terminated, an injunction against the taxatio of Rancheria lands by Lake County, and damages against the United States for breach of its statutory and trust obligations to plaintiffs.

On February 5, 1979, plaintiffs filed a motion for partial summary judgment as to all issues except the liability of the United States for damages and the amount of any such

damages. On March 1, 1979, the parties filed a "Stipulation for Entry Judgment," by the terms of which the parties agreed that, within the scope of plaintiffs' motion, there is no genuine issue as to any material fact, and that plaintiffs are entitled to partial judgment as a matter of law.

Based upon the record in this action, the Exhibits offered in support of plaintiffs' motion, and the stipulation of the parties filed on March 1, 1979, the court concludes that disposition of plaintiffs' claims for declaratory and injunctive relief by summary judgment is appropriate, and for that purpose finds the following material facts to be true:

1. All of the named plaintiffs are Indian people of the Upper Lake Rancheria. Among the original distributees of the assets of the Upper Lake Rancheria were Delvin Holder, Frank Treppa, Opal Maglaya Herrara, Verna Valez Ramos (nee Jeay), Armadine Jackson, Ermadine Treppa Wilshire, Ralph Holder, Samuel Toney, Curtis Dennison, Joaquin Miller, Mary Simon Brigham, Ellery Toney, Robert Snow, Foyle Bateman, Rodney Snow, Delphine Abasola, Melva Tomas, Donald Treppa, Lester Treppa, Clarence Augustine, Russell Davis, Louis Treppa and Betty Jean Torres. Several Upper Lake Indians including Laverda Miller, Jacqueline Miller and Joseph S. Miller, have become successors in interest to possession or ownership of lands of the Upper Lake Rancheria. It is the intention of the parties and the court that the benefits of this order extend to all persons named as distributees or dependents of distributees of the Upper Lake Rancheria.

2. Defendant Cecil Andrus is the Secretary of the Interior. Defendant William E. Finale is the Area Director, Sacramento Area Office, Bureau of Indian Affairs (hereinafter "B.I.A."). Defendant Forrest Gerard is the Assistant Secretary of the Interior for Indian Affairs (formerly know as the Commissioner of Indian Affairs). Defendant Joseph Califano is

the Secretary of Health, Education and Welfare (hereinafter HEW
Defendant George Blue Spruce is the Area Director of the Phoeni
Area Office of the Indian Health Service, U.S. Public Health
Service, HEW. Defendant Don Myer is the Director of the Office
of Environmental Health, Phoenix Area Office, Indian Health
Service, U.S. Public Health Service, HEW. Defendant Robert
McSwain is the Director of the California Program Office, Indi
Health Service, U.S. Public Health Service, HEW. All of the
above-named defendants (and their predecessors in this case) a
officers or employees of the United States and have direct or
delegated statutory duties in carrying out the provisions of t
Rancheria Act (as amended by the Act of August 11, 1964, 78 St
390), as well as the fiduciary obligations which the United St
has owed and continues to owe to the Indian people of the Upper
Lake Rancheria.

3. Defendant Cora Taylor, is the Tax Collector for the County of Lake, State of California, and as such is charged with the duty of collecting real property taxes levied upon property subject to taxation within said County.

4. The Upper Lake Rancheria consists of approximat 482 acres of land located near the town of Upper Lake, In Lake County, California, legally describes as follows:

> All those certain lots, pieces or parcels of land, situate, lying and being in the County of Lake, State of California, and bounded and particularly described as follows, to wit:
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> BEGINNING at a point on the West line of the East half of lot Eight (8) of Section One (1), Township Fifteen (15) North, Range Ten (10) West, M.D.M., distant 247.50 feet South of the Northwest corner of the East half of said Lot Eight (8), and running thence South 2,415 feet

to a point on the West line of the East half of the Southeast quarter of said Section One (1) that is distant 1,332.60 feet North of the South line of said Section One (1); thence East, on a line parallel to the South line of said Section One (1), 1,320 feet to the East line of said Section One (1); and thence North, along the East line of said Section One (1), 2,619.50 feet to a point 33 feet South of the Northeast corner of said Lot Eight (8); and thence South 80° 20' West 1,337 feet to the point of beginning.

All of Lot Seven (7) of Section Six (6), Township Fifteen (15) North, Range Nine (9) West, M.D.M., EXCEPTING therefrom that part thereof described as BEGINNING at the Northeast corner of said Lot Seven (7), and running thence West, along the North line of said Lot Seven (7), 354.0 feet; thence South 1,320 feet to the South line of said Lot Seven (7); thence East 354.0 feet to the Southeast corner of said Lot Seven (7); and thence North 1,320 feet to the point of beginning. ALSO, Lot three (3), the East half of Lot Five (5), and the West half of Lot Ten (10) of Section One (1), Township Fifteen (15) North, Range Ten (10) West, M.D.M., and beginning at the Northwest corner of Lot Six (6) of Section Six (6) in Township Fifteen (15) North, Range Nine (9) West, M.D.M., and run West in Section One (1), Township Fifteen (15) North, Range Ten (10) West, M.D.M., twenty chains; thence North Ten

& 68/100 (10-68/100 chains; thence East thirty-five and 46/100 (35-46/100) chains, more or less, to the center of Middle Creek; thence Southerly along the center of said Middle Creek eleven and 22/100 (11-22/100) chains, more or less, to the North line of said Lot Six (6) of said Section Six (6); thence West Eleven and 86/100 (11-86/100) chains, more or less, to the place of beginning and containing One hundred forty-four and 27/100 Acres of land (144-27/100), more or less. ALSO, Lot Six (6) of Section Six (6), Township Fifteen (15) North, Range Nine (9) West, M.D.M. Lot Nine (9), and the East half of Lot Six (6), in Section One (1), Township Fifteen (15) North, Range Ten (10) West, M.D.M; also the following described parcel: Beginning at the Northwest corner of the East half of Lot Eight (8), of Section One (1), Township Fifteen (15) North, Range Ten (10) West, M.D.M., and running thence South Fifteen (15) rods; thence in a Northeasterly direction to a point on the Township line between said Townships Nine (9) and Ten (10), Two (2) rods South from the Northeast corner of said Lot Eight (8); thence North Two (2) rods to said Northeast corner of Lot Eight (8); thence West to the point of beginning.

5. The Rancheria was purchased by and in the name of the United States of America by deeds recorded in Volume 110 of Official Records, Page 56; Volume 42 of Deeds,

Page 411; and Volume 136 of Official Records, Page 419, Lake County, California, under authority contained in the Acts of April 30, 1908 (35 Stat. 70, 76) and June 18, 1934 (45 Stat. 984).

6. The Upper Lake Rancheria was listed in the 1958 California Rancheria Act as one of 41 California Rancherias for which Congress had authorized the termination of federal trust status of Rancheria lands, and termination of the status of the Indian people thereof as Indians under the laws of the United States. In relevant part, the California Rancheria Act provided as follows:

> a. That the assets of the Rancherias named therein "shall be distributed in accordance with the provisions of this Act." [§1].
>
> b. That the Indians holding formal or informal assignments on each Rancheria, or the Indians of such Rancheria, or the Secretary of the Interior after consultation with such Indians shall prepare a plan for distributing to individual Indians the assets of the Rancheria ("distribution plan"), including the assigned and unassigned lands. [§2a]. However, implementation of the plan was to be conditioned upon approval by a majority of the adult Indians participating in the distribution of Rancheria assets, voting in a referendum called for that purpose. [§2b].
>
> c. No property distributed under the provisions of the Act was at the time of lawful distribution to be subject to

any Federal or State income tax. Following any lawful distribution of property made under the provisions of the Act, such property and income derived therefrom by the distributee was to be subject to the same taxes, State and Federal, as in the case of non-Indians. [§2(d)].

d. §3 of the Act provided, inter alia, that,

"Before making the conveyances authorized by this Act on any rancheria or reservation, the Secretary of the Interior is directed:

"(a) To cause surveys to be made of the exterior or interior boundaries of the lands to the extent that such surveys are necessary or appropriate for the conveyance of marketable and recordable titles to the lands.

"(b) To complete any construction or improvement required to bring Indian Bureau roads serving the rancherias or reservations up to adequate standards comparable to standards for similar roads of the State or subdivision thereof...

"(c) To install or rehabilitate such irrigation or domestic water systems as he and the Indians affected agree, within a reasonable time, should be completed by the

United States."

e. The Act of August 11, 1964, P.L. 88-419, 78 Stat. 390, which amended the 1958 Rancheria Act, transferred responsibility for entering into agreements for installation or rehabilitation of domestic water and sanitation systems to the Indian Health Service (IHS), under the Department of Health, Education and Welfare.

f. The Secretary of the Interior was authorized, within the limits of available appropriations, to undertake a special program of education and training designed to help Indians affected by the Rancheria Act to earn a livelihood, to conduct their own affairs, and assume their responsibilities as citizens without special services because of their status as Indians. This program of special assistance was authorized to include language training, cultural orientation, vocational training and related subjects, and subsistence during training or instruction. [§9].

g. After lawful distribution of Rancheria assets pursuant to the 1958 Rancheria Act, the Indians who received any part of the Rancheria assets, and the dependent members of their immediate families, no longer were to be entitled to any services performed by the United States for Indians because of their status as Indians. [§10(b)]. In 1964, this provision was amended so as to effect the termination of the Indian status of only those dependents who, at the

time of distribution, were not members of any other Tribe or Band. [10(b)].

7. The United States, acting through defendant agencies, officers, agents and employees, failed in the following material respects to comply with its duties and obligations to the Indian people of the Upper Lake Rancheria as required by the Rancheria Act:

a. Because no funds actually were appropriated to carry out the termination process, other than the funds which had been regularly appropriated for the regular functioning of the Bureau of Indian Affairs, federal defendants did not provide the essential information and education, or the independent legal counsel necessary to an informed decision by plaintiffs regarding either their agreement to terminate or the contents of the distribution plan itself, particularly in view of the fiduciary relationship of the parties and the plain intent of the Rancheria Act;

b. The Upper Lake distribution plan, as drafted, approved and implemented by federal defendants, did not provide for domestic or irrigation water systems or sanitary facilities adequate in either quantity or quality to meet the reasonable needs of the plaintiffs as a condition of the termination of the trust status of the Rancheria and their status as Indians under the laws of the United States;

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c. Notwithstanding the above-mentioned failures to fulfill the duties owed to the people of the Upper Lake Rancheria, the United States issued fee patents to the lands of the Upper Lake Rancheria and to interests in trust allotments held by members of the Rancheria, and thereafter treated persons named in the plan for distribution of the Rancheria's assets as if said persons had been terminated pursuant to the Rancheria Act.

d. The United States failed to convey marketable title to some of the parcels which the United States purported to convey to distributees of the Upper Lake Rancheria;

e. The Bureau of Indian Affairs has determined that termination of the trust status of the lands of a Rancheria and the Indian status of the people of a Rancheria does not occur "pursuant to" the Rancheria Act unless and until the obligations imposed upon the federal government under §3 of said Act, both as originally enacted and as amended, have been fulfilled, and that until such obligations have been fulfilled, the people of a Rancheria are entitled to all federal services, rights and immunities, including the right to have land held in trust for them by the United States, extended to Indian people under the Constitution and laws of the United States;

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f. The Indian Health Service and the Bureau of Indian Affairs have determined that the obligations of the United States under, inter alia, §3 of the Rancheria Act had not been fulfilled prior to the distribution of the assets of the Upper Lake Rancheria.

Based upon the above-stated facts and the stipulation of the parties, the court concludes that the failure of the United States to perform each of its duties and obligations, as set forth hereinabove, constitutes a material breach of the Rancheria Act, for which this court has jurisdiction to grant declaratory and injunctive relief under, inter alia, 5 U.S.C. §701 et seq., 28 U.S.C. §§1331, 1343(3) and 1343(4). Plaintiffs are entitled to equitable relief restoring the exterior boundaries of said Rancheria to the status quo prior to the distribution of the assets thereof and, at their option, voiding some or all of the executed portions of the plan for distribution of the assets of the Upper Lake Rancheria, as well as restoring to trust status interests in trust allotments which were fee-patented to persons included in the Upper Lake distribution plan or termination proclamation (insofar as may be done without affecting either the vested beneficial rights acquired under the distribution plan or any vested rights of third party bona fide purchasers for value), and restoring, ab initio, all rights and benefits accruing to plaintiffs as Indians under the laws of the United States.

8. The court having made the aforementioned findings of fact and conclusions of law, and it appearing therefrom that plaintiffs are entitled to the relief sought as a matter of law,

IT IS HEREBY ORDERED as follows:

a. The court has jurisdiction over plaintiffs' claims for injunctive and declaratory relief pursuant to

5 U.S.C. §701 et seq., 28 U.S.C. §§1331, 1343(3) and 1343(4);

b. An actual controversy has arisen and exists between plaintiffs and defendants, and issuance of a declaratory judgment is appropriate pursuant to 28 U.S.C. §§2201. This judgment shall constitute a final declaratory judgment as to the respective rights and obligations of plaintiffs and defendants with respect to the attempted termination of the Upper Lake Rancheria, and distribution of its lands and assets under the Act of August 18, 1958, P.L. 85-671, 72 Stat. 619, as amended. However, nothing herein shall preclude any plaintiff hereto, or any other Indian of the Upper Lake Rancheria, from pursuing in this court or in the Court of Claims any claim for damages which any said person may have sustained by reason of the unlawful termination and/or distribution of the assets of the Upper Lake Rancheria, or the purported termination of the Indian status of any person named in the plan for distribution of the assets thereof or in the Upper Lake termination proclamation published in the Federal Register on April 11, 1961. In the event that plaintiffs desire to continue to pursue their claims for damages in this court (without prejudice to their right to transfer their claims to the Court of Claims, should it appear that their damages might exceed $10,000),

plaintiffs shall, within 30 days hereof, file a motion for partial summary judgment on the issue of the liability of the United States for damages under the facts and circumstances of this case. If plaintiffs prevail on that motion, the matter will be referred to a magistrate, before whom the parties shall present evidence concerning the nature and amount of damages for which the United States shall be liable;

c. The Rancheria lands affected by this action are located within the exterior boundaries of the Upper Lake Rancheria, Lake County, California, as described in Paragraph 4(d) above;

d. The lands and Indian people of the Upper Lake Rancheria never have been lawfully terminated pursuant to the California Rancheria Act, P.L. 85-671, 72 Stat. 619, as amended;

e. The persons listed in the Upper Lake distribution plan as distributees or dependent members of the families of distributees never have been nor are they now ineligible, by reason of the purported termination of the Upper Lake Rancheria, for any rights or benefits extended to Indians under the Constitution and laws of the United States;

f. The plan for distribution of the assets of the Upper Lake Rancheria, approved

by the Secretary of the Interior on January 14, 1960, and having an effective date of January 28, 1960, is declared to be void and of no effect, except to the extent which said plan created vested beneficial interests in Rancheria assets in persons listed therein, pursuant to 25 C.F.R. §242.7;

g. The deeds and conveyances issued or delivered by the Secretary of the Interior or his subordinates for the purpose of distributing lands of the Upper Lake Rancheria or interests in alloted lands belonging to persons or any entity listed in the Upper Lake distribution plan or termination proclamation, purportedly pursuant to the Rancheria Act, P.L. 85-671, 72 Stat. 619, are declared to be voidable as hereafter set forth;

h. The Termination Proclamation for the Upper Lake Rancheria, published in the Federal Register on April 11, 1961, hereby is declared to be void. The Secretary of the Interior is directed to publish immediately in the Federal Register a notice stating that the Upper Lake Rancheria Termination Proclamation of April 11, 1961, is revoked; that all distributees of the assets of the Upper Lake Rancheria, and all dependent members of their immediate families, retain their status as Indians under the laws of the United States and

are not and have not been ineligible for services and benefits provided by the United States to Indians because of their status as Indians; that all laws of the United States which affect Indians because of their status as Indians shall be applicable for the Indians of the Upper Lake Rancheria; and that, pursuant to and in accordance with the judgment of the United States District Court, Northern District of California, in Upper Lake Pomo Ass'n., et al., v. Cecil Andrus, et al., No. C-75-0181-SW, the conveyances issued by the Secretary of the Interior or his subordinates under the Act of August 18, 1958, P.L. 85-671, 72 Stat. 619, as amended, are or may be voidable. This notice also shall contain the name and date of birth of each individual originally listed in the Termination Proclamation of April 11, 1961;

f. The Secretary of the Interior is under a continuing obligation to restore to trust status lands of the Upper Lake Rancheria and fee interests in trust or former trust allotments issued to persons listed in the plan for distribution of the assets of the Upper Lake Rancheria by reason of the purported termination of said Rancheria, whenever possible. Restoration of trust status shall be

accomplished as follows:

(1) A copy of this judgment shall be published in a newspaper of general circulation within Lake County, California. Additionally, a copy of this judgment shall be (1) posted in two conspicuous places on the Upper Lake Rancheria; and (2) mailed to each individual Indian person listed in the April 11, 1961, Termination Proclamation for the Upper Lake Rancheria, and to such other persons who may be related to or descended from any such individual, for whom the Bureau of Indian Affairs has, or is able to obtain by reasonable inquiry, a current address;

(2) Within one year of receipt of actual notice of the terms of this judgment, each Indian or Indian organization of the Upper Lake Rancheria who has or retains any interest in or to the lands or assets of said Rancheria (however acquired), shall be entitled to elect to convey his or her interest to the United States, to be held in trust for the benefit of such Indian member(s) of the Upper Lake Rancheria (as defined under the constitution or bylaws thereof), or for the benefit of the Indians of the Upper Lake Rancheria or an entity which may be formed to govern said Rancheria, as may be specified in the instrument of conveyance. Each Indian

of the Upper Lake Rancheria who has or retains any interest in or to allotted lands, fee patent to which was issued upon or by reason of the purported termination of the Upper Lake Rancheria, may make a similar election, except that any such individual may specify the person for whom the land is to be held in trust by the United States without regard to membership in or affiliation with the Upper Lake Rancheria, so long as the person so named is otherwise eligible to have land held in trust by the United States for his or her benefit;

(3) Before accepting any instrument of conveyance which has the effect of restoring trust status to lands within the Rancheria, the Secretary of the Interior shall be entitled to approve or reject said instrument as to form; however, the existence of non-consensual liens and/or encumbrances shall not constitute a basis for declining to accept any such conveyance. Conveyance of title to the United States made pursuant to this judgment may, at the election of the grantor, provide that the United States will hold title in trust for an Indian or Indians of the Upper Lake Rancheria, and be subject to such conditions or restrictions as are set forth in the instrument of conveyance;

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(4) Upon acceptance of any instrument or instruments conveying title to lands within or without the Rancheria to the United States pursuant to this judgment, the Secretary of the Interior or his designee shall promptly record said instruments with the County Recorder of the County in which said lands are located;

(5) The time limits for restoring trust status to lands of the Rancheria may be modified by this Court upon application of any party to this action showing good cause for such action;

(6) It is the intent of this judgment that maximum flexibility be allowed in working out the administrative details of trust restoration, and the parties are specifically allowed to enter into one or more agreements for the purpose of specifying the terms and conditions on which trust restoration is to be effected;

(7) In the event that at any future time lands are acquired within the boundaries of the Rancheria by one or more Indian members thereof (as defined by the constitution or bylaws of said Rancheria), they may be similarly restored to trust status in accordance with the procedures outlined above;

j. Because the Indian-owned lands of the Upper Lake Rancheria never have lost

their immunity from taxation, and will not lose that immunity until the time for returning lands to trust status hereunder has expired, permanent injunctive relief against the Lake County Tax Collector is unnecessary at this time;

k. This Order, and any subsequent judgment and decree rendered pursuant thereto, shall not affect the validity of any title to Upper Lake Rancheria land held by a good-faith purchaser for value;

l. This Court will retain jurisdiction over this action for the purpose of granting such supplemental relief as is or may become necessary or proper for the purpose of implementing the provisions of this judgment;

m. Each party shall bear its own costs.

Dated: 3/15/79

SPENCER WILLIAMS
UNITED STATES DISTRICT JUDGE