

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UPPER LAKE POMO ASSOCIATION, et
al.,

Plaintiffs,

v.

ROGERS C B MORTON, et al.,

Defendants.

Case No. 75-cv-00181-PJH

**ORDER DENYING MOTION TO HOLD
DEFENDANTS IN CONTEMPT AND
MOTION TO INTERVENE**

Re: Dkt. Nos. 320, 324

Jessica Jackson's motion to hold defendants in contempt and April Diwald's motion to intervene came on for hearing before this court on August 15, 2018. Jackson appeared through her counsel, Lester Marston. Diwald appeared through her counsel, Jack Duran. The government defendants appeared through their counsel, Michael Pyle. Having read the papers filed by the parties and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby DENIES Jackson's motion and DENIES Diwald's motion, for the reasons stated at the hearing as summarized below.

BACKGROUND

In the early years of the 20th century, the United States government established eighty "Rancherias," mostly in isolated rural areas of Northern California, for "homeless" members of California Indian tribes. The Rancheria lands were held in trust by the United States for the benefit of the various tribes. The Upper Lake Rancheria, located several miles north of Clear Lake, in Lake County, California, was established in 1907 for the Upper Lake Pomo Tribe, the land held in trust for homeless or landless Pomo Indians

1 in Lake County.

2 In 1958, pursuant to the California Rancheria Act, forty-one of the tribes, including
3 the Pomo Indian Tribe, agreed to have their trust relationship to the United States
4 terminated, and to have the assets of the Rancherias distributed to the individual
5 members of the respective tribes. The government promised the tribes that if they
6 disbanded, the land would be deeded to the individual members, and that the
7 government would make improvements such as installing water and sewer systems and
8 paving roads.

9 The Secretary of the Interior (the "Secretary") gave final approval to the distribution
10 plan for the Upper Lake Rancheria in January 1960. However, the government failed to
11 provide the promised improvements, and much of the land was subsequently lost to tax
12 liens and unpaid mortgages.

13 In 1975, the Upper Lake Pomo Association and several individual members of the
14 Association filed the above-entitled action against the United States, seeking
15 reinstatement for the Upper Lake Band of Pomo Indians as a sovereign nation. On
16 March 1, 1979, the parties agreed pursuant to stipulation that plaintiffs were entitled to
17 partial judgment as a matter of law.

18 On May 15, 1979, the court granted plaintiffs' motion for summary judgment,
19 finding that the failure of the United States to perform its duties and obligations with
20 regard to the Upper Lake Rancheria land constituted a material breach of the Rancheria
21 Act. See Findings of Fact, Conclusions of Law and Order Granting Plaintiffs' Motion for
22 Partial Summary Judgment, May 15, 1979 (the "1979 Order"). The court ruled that
23 plaintiffs were entitled to equitable relief restoring the exterior boundaries of said
24 Rancheria to the status quo prior to the distribution of the assets thereof and, at their
25 option, voiding some or all of the executed portions of the plan for distribution of the
26 assets of the Upper Lake Rancheria, as well as restoring to trust status interests in trust
27 allotments which were fee-patented to persons included in the Upper Lake distribution
28 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 all rights and benefits accruing to plaintiffs as Indians under the laws of the United States.

On August 31, 1983, the court entered a final judgment on the claims for declaratory and injunctive relief. The judgment provided, in part:

i. 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 such Rancheria, whenever possible. Restoration of trust status shall be accomplished as follows:

. . . .

(2) Within one year of receipt of actual notice of the terms of the 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 the Rancheria (however acquired) shall be entitled 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 ;

(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 such instrument as to form ;

(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 such lands are located;

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

Order and Final Judgment on Claims for Declaratory and Injunctive Relief, August 17, 1983 (the "1983 Order," together with the 1979 Order, the "Orders"), at 4–7 (emphasis added).

The judgment also provided that "[t]his court will retain jurisdiction over this action

1 for the purpose of granting such supplemental relief as is or may become necessary or
2 proper for the purpose of implementing the provisions of this judgment.” Id. at 8.

3 Amerdine Snow McCloud (also known as Amerdine Jackson) was an original
4 distributee for the distribution of the assets of the Rancheria and was eligible under the
5 court’s Orders to have her property located on the Rancheria (the “Parcel” or “Parcel 5”),
6 which she owned in fee, restored to trust status. See 1979 Order at 2 (listing “Armadine”
7 Jackson).

8 McCloud died on February 4, 2001. Dkt 320-1, Jackson Decl. ¶ 12. On
9 September 24, 2013, the Lake County Superior Court, during a probate hearing on
10 McCloud’s estate, found that it did not have jurisdiction to determine the ownership status
11 of the Parcel—whether it was in the estate or held in trust by the government.

12 On March 15, 2016, April Diwald filed a complaint for declaratory relief in the
13 Northern District of California, Eureka Division, Case No. 16-cv-01281-RMI, requesting
14 declaratory relief determining whether the Parcel was in trust with the United States.
15 That action remains pending. Jackson thereafter moved for a finding of contempt in this
16 action against the United States for failing to place the Parcel into trust with the United
17 States. Diwald then moved to intervene in this action.

18 **DISCUSSION**

19 This dispute raises the issue of whether McCloud conveyed Parcel 5 to the
20 government before her death and whether the government accepted any such
21 conveyance, thereby restoring the Parcel to trust status.

22 Two of McCloud’s daughters, Jackson and Diwald, contest that question. Jackson
23 filed the motion for contempt without first seeking to intervene, although she is not a
24 named party. Diwald moved this court for permission to intervene in the action in order to
25 oppose Jackson’s motion. The court hereby DENIES Diwald’s motion, as it is
26 unnecessary. Either both of McCloud’s daughters have standing to address these
27 issues, or neither does. The court assumes without deciding that the heirs of McCloud,
28 who was an original distributee for the distribution of the assets of the Rancheria, have a

1 sufficient concrete interest in Parcel 5 to warrant a hearing on their disputed claims. The
2 court will hear from all interested parties.

3 It is undisputed that McCloud made attempts to restore the Parcel to trust status a
4 number of times before her death. The papers submitted to this court detail an extensive
5 history of McCloud's efforts, each of which ultimately did not successfully restore the
6 Parcel to trust status with the government. Although the court recognizes that McCloud
7 attempted to convey the Parcel to be held in trust by the government, the government
8 had reason to refuse each attempted conveyance. The Orders which Jackson seeks to
9 enforce clearly afford the Secretary of the Interior the discretion to approve or reject such
10 conveyances. Because the Orders in this case provide that restoration of land to the
11 trust would only be accomplished after the Secretary of the Interior accepted a
12 conveyance, and the Secretary never accepted any of McCloud's attempted
13 conveyances, the court finds that the Parcel was never restored to trust status with the
14 government. See 1979 Order at 15–17; 1983 Order at 4–7. Accordingly, McCloud
15 owned the parcel in fee simple when she died in 2001. As such, the Parcel became part
16 of her estate. Jackson's motion therefore seeks an order from this court removing the
17 Parcel from the probate court's jurisdiction and requiring that the government now take
18 ownership of it in trust. However, the probate exception to this court's jurisdiction
19 precludes precisely what Jackson requests—seizing and controlling property that is in
20 the possession of a state court. See Goncalves ex rel. Goncalves v. Rady Children's
21 Hosp. San Diego, 865 F.3d 1237, 1251 (9th Cir. 2017) (citing Marshall v. Marshall, 547
22 U.S. 293, 311 (2006)).

23 Finally, the court notes that the government has represented repeatedly that,
24 notwithstanding the one-year limitation provided by the 1983 Order, it will accept the
25 Parcel into trust if petitioned to do so by its owners, once the state identifies the true
26 owners. This court will hold the government to that promise.

27 CONCLUSION

28 For the reasons stated above, this court finds that the Parcel is not currently held

1 in trust by the United States. Jackson's motion for contempt is DENIED. Diwald's motion
2 to intervene is DENIED as is her request to file a motion to dismiss.

3 **IT IS SO ORDERED.**

4 Dated: August 17, 2018



PHYLLIS J. HAMILTON
United States District Judge