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RANCHERIA, et al.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GRINDSTONE INDIAN RANCHERIA and
ONE HUNDRED PLUS MEN, WOMEN
AND CHILDREN LIVING ON THE
GRINDSTONE INDIAN RESERVATION,

Plaintiffs,

v.

TERRENCE OLLIFF, individually and as
beneficiary/trustee of the Olliff Family
Trust, DIANE L. OLLIFF, individually and
as a beneficiary/trustee of the Olliff Family
Trust and DOES 1-10,

Defendants

Case No. 2-17-cv-02292-JAM-EFB

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY ADJUDICATION OF
DECLARATORY RELIEF CLAIM**

[Fed. R. Civ. P. 56(a); L.R. 260]

Concurrently Filed With:

1. Notice of Motion and Motion for Summary Adjudication;
2. Statement of Undisputed Facts;
3. Declaration of Jack Duran, Jr;
4. Declaration of Ronald Kirk;
5. Declaration of Daniel E. Hoagland

Date: July 30, 2019
Time: 1:30 p.m.
Courtroom: 6, 14th Floor
Judge: Hon. John A. Mendez

Trial Date: October 21, 2019
First Amended Complaint: March 3, 2018

1
2 **I. INTRODUCTION**

3 This case asks a simple question: “Who has the right, title and interest to a forty-foot strip
4 of land between Plaintiff Grindstone Indian Rancheria and its neighbor—Defendants Terrence
5 and Dianne Olliff et al” Defendants say they do, based on a 1976 land survey. Plaintiff says it
6 does, based on a 2011 Bureau of Land Management (BLM) Cadastral Survey which reverted a
7 property line bordering the two parcels to a survey from 1893. Defendants argue Plaintiff’s
8 interpretation of the 2011 BLM Survey is wrong. But Plaintiff’s interpretation is not wrong.
9 Further, the BLM Cadastral Survey is unchangeable which Defendants never challenged. Hence,
10 the answer to the question: who has the right, title and interest in the disputed land is—Plaintiff
11 Grindstone Indian Rancheria. The Court should therefore grant Plaintiff summary adjudication,
12 or partial summary judgment, as to its declaratory relief claim in its First Amended Complaint.

13 **II. FACTUAL BACKGROUND**

14 The Grindstone Indians have resided in Glenn County, California for eons. In the early
15 1900s, the United States government, pursuant to a federal statute used to purchase lands on
16 behalf of homeless California Indians, bought an 80-acre parcel of land in Glenn County on
17 behalf of the area “Grindstone Indians.” (Decl. R. Kirk, ¶ 5, Ex. A to Duran Declaration). These
18 80 acres were later placed into trust with the United States for the benefit of the Grindstone
19 Indians. The 80-acre parcel was later named the Grindstone “Rancheria”—as opposed to
20 “Reservation” because “Reservations” are typically larger. (Decl. R. Kirk, ¶ 5). Nonetheless, the
21 Grindstone Rancheria’s purpose was to house homeless Indians by the U.S. government. (Id.)

22 In the early 1990s, Grindstone Rancheria’s leadership, desiring to expand its tribal
23 housing offerings to tribal members, bought a 20-acre parcel contiguous to the Rancheria, known
24 as “Parcel 2.” (Decl. R. Kirk, ¶ 6). In 1994, Parcel 2 was surveyed and also placed in trust by the
25 federal Department of Interior for the Grindstone Indians, increasing the Rancheria to 100 acres.
26

1 (Decl. J. Duran, ¶ 8-9, Ex. C, Parcel 2 Survey).

2 Before 1994, Parcel 2 was vacant undeveloped grassland. However, for decades prior to
3 1994, the Grindstone Indians used portions of Parcel 2 for ingress and egress to the Rancheria.
4 This use was open and obvious. After the Tribe bought Parcel 2, it erected a fence line on a
5 portion of the parcel along its western boundary adjacent to land owned by Defendants Terrence
6 and Dianne Olliff. (Decl. R. Kirk, ¶6, Decl. J. Duran, ¶8).

7
8 ***The Cadastral Survey***

9 In 2011, the federal Bureau of Land Management (BLM), under the auspices of the
10 Department of Interior, and responsible for managing federal trust lands, conducted a “Cadastral
11 Survey” of the original Rancheria land acquired in the early 1900s as well as Parcel 2 acquired in
12 1994. (Decl. R. Kirk, ¶ 7, Ex. A, BLM Survey). Cadastral Surveys are required by the federal
13 government and authorized by the Act of July 4th 1836, and conducted by the BLM. The BLM,
14 unique among federal agencies, has specific authority to conduct Cadastral Surveys of federal
15 lands, including lands in trust for the beneficial ownership of Indian tribes. Cadastral Surveys
16 are conducted using the BLM Manual of Survey Instructions. However, once a Cadastral Survey
17 is “accepted” by the BLM, jurisdiction over said survey is governed by 43 United States Code
18 section 752 et seq.—which makes the boundary lines in this case unchangeable. (Hoagland
19 Ex.C).

20 After the BLM’s 2011 Cadastral survey of the Rancheria and Parcel 2, the BLM provided
21 the survey to Defendant, Terrance Olliff, who owns a parcel next to Parcel 2, for review and
22 comment. Mr. Olliff provided comments on the survey, of which the BLM provided responses.
23 (Decl. J. Duran, ¶14-17, Ex B, BLM response to Olliff). The chief area of concern for Defendant
24 Olliff was the replacement of the parcel’s southern 1/16 section centerline originally placed by
25 Surveyor T.S. Knock in 1893. This center line was re-established by Knock at that time based
26 on the subdivision of the Estate of Millsaps, located in Sections 3, 4, 5, 8, 9, 10, 15-17, in Book 1

1 of Maps and Survey's Glenn County Recorder's Office. (Decl. J. Duran, ¶16-18, Decl. D.
2 Hoagland, ¶5, Ex. B, Compass Consulting Follow Up Survey 2014). Defendant Olliff disagreed
3 with the BLM survey and maintained that a 1976 survey conducted by G.F. Pride, controlled and
4 superseded the Knock monument and relocated the southern section 1/16 corner. (Decl. J.
5 Duran, ¶15).

6 Below are the three parts of the BLM survey at issue in this case:

7
8 1893 - T.L. Knock, LS 6, subdivided the estate of Joseph
9 Millsaps located in sections 3, 4, 5, 8, 9, 10, 15, 16
10 and 17, as shown on his plat filed May 8, 1893, in Book
11 1 of Maps and Surveys, Page 39, Glenn County Recorder's
12 Office. Knock recovered several of the N. Gray corners
13 during his survey, and he also subdivided several of the
14 aforementioned sections, including section 15; where he
15 established the center south 1/16 section corner.

16 This phrase is important: **“and he also subdivided several of the aforementioned**
17 **sections, including section 15; where he established the center south 1/16 section corner.”**

18 (emphasis added) (Decl. R. Kirk, ¶15; Decl. J. Duran, ¶16-17, Ex. A, BLM Survey, p. 49).

19
20 1976 - G.F. Pride, LS3747, subdivided section 15 as shown on
21 the Parcel Map filed September 17, 1976, in Book 5 of
22 Parcel Maps, at Page 43, Glenn County Recorder's Office.
23 Pride recovered the 4 x 4 in. post established by Knock
24 at the center south 1/16 section corner of section 15,
25 where he utilized said monument in establishing the
26 south boundaries of Parcels #1 and #2 as shown on said
27 Parcel Map. Pride rejected the Knock monument as the
28 center south 1/16 corner, and established his own point
for the corner.

29 This phrase is important: **“Pride rejected the Knock monument as the center south**
30 **1/16 corner, and established his own point for the corner.”** (emphasis added). (Decl. R. Kirk,
31 ¶ 14; Decl. J. Duran, ¶16-17, Ex. A, BLM Survey, p. 50).

1 This is the BLM's survey results at page 62, discussing the discrepancy between Knock's
2 1893 survey and Pride's 1976 survey:

3 21.141 The center south 1/16 sec. cor. of sec. 15, monumented with the
4 remains of a cedar post, 4 ins. square, 15 ins. below ground. This
5 corner was recovered by G.F. Pride, LS3747 during a survey shown on
6 the Parcel Map filed September 17, 1976, in Book 5 of Parcel Maps,
7 at Page 43, Glenn County Recorder's Office. The cedar post was
8 established by T.L. Knock, LS 6, during his survey filed May 8,
9 1893, in Book 1 of Maps and Surveys, Page 39, Glenn County
10 Recorder's Office. Mr. Pride did not accept the cedar post as the
11 center south 1/16 sec. cor., but instead, established a position
12 for the corner using existant sectional control and the current
13 rules for subdividing sections. This position was not monumented,
14 and bears S. 56°25'37" E., 0.730 chs. (48.15 ft.) dist. from the
15 cedar post. Pride used the cedar post established by Knock as
16 control for the southerly parcel corners shown on his
17 aforementioned Parcel Map.

11 The Grindstone Indian Rancheria (S1/2 SE1/4 of sec. 15) occupies
12 land that was acquired in 1909, shortly after Knock performed his
13 survey. The Knock survey established the monuments in section 15
14 that determined the Grindstone Indian Rancheria boundaries. Prior
15 to the Pride survey, the Knock center south 1/16 monument had been
16 accepted as the corner for 83 years, and its position is also
17 referenced in a road easement deed recorded June 1, 1965 in Book
18 478 of Official Records, Page 427, Glenn County Recorder's Office.
19 The Knock monument is also utilized as the corner in several
20 recorded surveys, and the lines of occupation in the area are to
21 fence lines that originate at this corner; therefore, this corner
22 is accepted as the center south 1/16 section corner.

17 This corner also functions as the NW corner of the Grindstone
18 Indian Rancheria, being that property described in the deed filed
19 April 30, 1909 in Book 29 of Deeds, Page 103, Glenn County
20 Recorder's Office.

19 (Decl. R. Kirk, ¶15; Decl. J. Duran, ¶16-17, Ex. A, BLM Survey, p. 62).

20 The Olliffs' disagreed that the Knock survey now governed their property border with
21 Parcel 2. (Decl. J. Duran, ¶15-17, Ex. B, BLM Response to Olliff).

23 The BLM responded, in part:

24 **“With the acceptance of Knock's center south 1/16 corner, the**
25 **monuments set during the 1976 survey by Pride to mark the corners of**
26 **Parcel 2, were accepted during our resurvey as marking the corners of**
27 **said parcel, but not as points on the north and south centerline of the**
28 **section. The Grindstone Rancheria consists of two parcels of land: the**

1 **aforementioned Parcel 2, and the south 1/2 of the southeast quarter of**
2 **section 15. The latter parcel was created in 1892 as part of the Vandeford**
3 **Estate, and was one of several parcels created simultaneously in section**
4 **15, based on Knock's survey. Given the length of local acceptance and**
5 **occupation to Knock's center south 1/16 corner (83 years prior to the**
6 **Pride survey) and the approval of this resurvey on September 14, 2011, it**
7 **is the Bureau's opinion that Knock's corner, not Pride's calculated point,**
8 **is the center south 1/16 corner and therefore the northwest corner of that**
9 **portion of the Grindstone Rancheria.”**

10 (Decl. J. Duran, ¶ 15-17, Ex. B , 2012 BLM Letter to T Olliff; DKT # 1, Ex 1).

11 Included in the BLM correspondence was the right for Defendant Olliff to appeal the
12 BLM decision adverse to him under Title 43 of the Code of Federal Regulations, section 4.410.
13 (*Id.*) Defendants did not appeal the BLM’s survey, which included its decision to return the
14 boundary line to the 1893 Knock marker. This BLM position was based upon BLM’s Cadastral
15 Survey regulations, which establish that it is against policy to move original markers from
16 established sections. As Knock’s marker had been in place since 1893, Knock’s mark was
17 presumed to be the original mark. Hence, Mr. Pride’s moving of the prior Knock monument was
18 improper and inconsistent with BLM Cadastral Survey policies and procedures. Additionally, in
19 re-establishing the marker, Pride’s survey gave the Olliffs’ the false belief they were *entitled* to
20 property to which they had no rightful claim.

21 The BLM letter advised Defendants they could “appeal” the BLM’s survey to the next
22 level of administrative review. The letter specifically stated:

23 **“If you disagree with this resurvey, you have the right to protest any decision of this**
24 **office which is adverse to your interests.**

25 **In past and current practice, the Bureau of Land Management accepts ‘written**
26 **protests against specific corners and/or lines of official resurveys and surveys’ as**
27 **inducted by the Cadastral Survey staff and accepted by the Bureau. The Bureau**
28 **carefully considers all evidence and data submitted with any such protest, along**
29 **with the official record of the survey being protested. and the protestor is notified of**
30 **the decision by this office.**

1 **Should you decide to pursue such a protest, please be advised that the protest must**
2 **be filed with this office no later than 60 days after receipt of this letter. A statement**
3 **which clearly expresses your reasons for believing that the Bureau's resurvey is**
4 **erroneous must accompany your notice of protest, along with any additional**
5 **evidence you can provide in support of your protest. This does not include the**
6 **materials accompanying your inquiry of August 8, 2012, as that evidence was**
7 **already evaluated in the resurvey.”**

8 (Decl. J. Duran, ¶18, Ex. B, 2012 BLM Letter to T Olliff DKT # 1, Ex 1).

9 Defendant Olliff **did not file a protest** of the BLM survey within the 60-day
10 period set forth in the letter, which expired on October 16, 2012. SUF 9. Additionally, in
11 his Second Amended answer to Plaintiff’s complaint, Defendants freely admit on several
12 occasions they did not protest the BLM’s survey. (Decl. J. Duran, ¶19, Ex. C, Second
13 Amended Answer, DKT #22, p. 5 ¶¶ 7-9).

14 In 2013, in response to Mr. Olliff’s belief that he was entitled to the “disputed”
15 area, the Rancheria commissioned consultant Compass Consulting of Grass Valley to
16 perform a re-survey of the BLM 2011 survey. Compass’s report and survey notes arrived
17 at the same conclusion as the BLM survey—that the Knocks southern 1/16th section
18 marker was properly placed by T.S. Knock in 1893 and that the Pride’s 1976 re-
19 establishment and replacement of the Knock 1893 1/16 section marker was improper
20 under federal law. (Decl. D. Hoagland, ¶5- 6, Ex. B, Compass Survey). Further, in
21 February 2019, Compass Consulting Incorporated confirmed the findings of the BLM’s
22 2011 survey related to corner monuments surveyed by T.S. Knock and Pride, noting that
23 the 2011 BLM survey was “unchangeable.” (Id. EX. C, 2019 Compass Supp. Report).
24 SUF 11.

1 Additionally, following Compass and the BLM’s 2011 survey and even the BLM’s
2 re-survey, there is no “disputed” area at all, and by following the Knock section line, the
3 “disputed” 40-foot area is non-existent because the area falls within the Knock section
4 line boundary area.

5
6 Additionally, even if some of the property alleged to be in dispute is *not* within the
7 Knock centerline, the Rancheria would have a *primary claim* to any excess property
8 pursuant to established survey law, specifically Title 43, section 752 of the United States
9 Code. (Decl. D. Hoagland, ¶6, Ex. C, Compass Report). In sum, there is no boundary
10 dispute, or disputed area, and the area Defendants claim an interest in is within the Knock
11 1/16 centerline and as such the land belongs to the Tribe. Further, Defendants failed to
12 exhaust their administrative remedies, which is a total bar to any real property boundary
13 claim. SUF 9.
14

15 **III. ISSUES TO BE DECIDED**

16 1. Whether the BLM 2011 Cadastral Survey awards a strip of land (the “disputed
17 area”) to the Grindstone Rancheria, thereby superseding a 1976 survey that did not award this
18 strip of land to the Rancheria?
19

20 2. If the answer to issue 1 is yes, whether the Grindstone Rancheria has the primary
21 claim of right—over Defendants’ claim—to the “disputed area” as alleged by Defendants
22 Terrence and Dianne Olliff?
23

24 //

1 **IV. PROCEDURAL HISTORY AND UNDISPUTED FACTS**

2 **A. Procedural History**

3 Plaintiff Grindstone Indian Rancheria filed its Complaint on or about October 31, 2017.
4 (DKT #1). Defendants Terrence and Dianne Olliff thereafter answered with affirmative defenses
5 and counterclaims.
6

7 On March 8, 2018, Plaintiff filed its First Amended Complaint for damages, pursuant to a
8 stipulation. (See DKT #11). This complaint includes a claim for declaratory relief. Thereafter,
9 Defendants filed their Answer to the First Amended Complaint. The answer added four counter-
10 claims: (1) Trespass; (2) Quiet Title-Adverse Possession; (3) Quiet Title —Establishment of
11 Prescriptive Easement (4) Declaratory Relief. (DKT # 12).
12

13 Plaintiff filed a Motion to Dismiss the counterclaims based on sovereign immunity.
14 (DKT #16). The Court granted the motion to dismiss the counterclaims with leave to amend.
15 (DKT #21). Defendants thereafter filed a Second Amended Answer but did not bring any
16 counterclaims. (DKT # 22). Defendants answer asserted adverse possession/prescriptive
17 easement as affirmative defenses. (DKT # 22).
18

19 The Court set the following deadlines: July 2, 2019—last day to file dispositive motions;
20 July 30, 2019—last day dispositive motions could be heard, and a trial date of October 19, 2019.
21 (DKT # 26).
22

23 **C. The Declaratory Relief Claim in the First Amended Complaint**

24 Plaintiff's First Amended Complaint recognizes the boundary dispute with Defendants,
25 wherein Plaintiff and Defendants have asserted their right to possess land along the border of
26 Parcel 2 and the Olliff Parcel. (DKT #10-2, ¶¶ 39-40). Plaintiff contends that as the land is in
27

1 trust pursuant to federal law, and the BLM survey results from 2011 are unchangeable, Plaintiff
2 is entitled to its use and possession and asks the Court to issue a declaratory judgment to that
3 effect. 28 U.S.C. §§ 2201, et seq.
4

5 **D. Undisputed Material Facts**

6 The following facts are undisputed as set forth in Plaintiff's concurrently filed Separate
7 Statement of Undisputed Facts:

- 8 1. The Grindstone Indians are a federally recognized Indian Tribe.
- 9 2. The Grindstone Indians occupy property held in trust with the United States
10 government for the benefit of the Grindstone Indians, including an 80-acre parcel recorded in
11 1909 and Parcel 2, recorded in 1994.
- 12 3. Parcel 2 is contiguous to both the Grindstone Indians' 80-acre parcel to the south
13 and a parcel to the west owned by Defendants Terrence and Dianne Olliff in a family trust (the
14 Olliff Parcel).
15
- 16 4. There is a boundary dispute between Plaintiff and Defendants regarding Parcel 2
17 and the Olliff Parcel where the Grindstone Rancheria claims Defendants are not entitled to
18 occupy or use certain land along the border between Parcel 2 and the Olliff Parcel and
19 Defendants claim they are entitled to occupy and use certain land along the border between
20 Parcel 2 and the Olliff Parcel.
21
- 22 5. Parcel 2 was surveyed in 2011 by the Bureau of Land Management (BLM).
- 23 6. Defendants Terrence and Dianne Olliff received a copy of the 2011 BLM survey and
24 sent correspondence challenging the survey, stating Defendants either owned a portion of Parcel 2 via
25 adverse possession or at a minimum held a prescriptive easement to a portion of Parcel 2.
26

1 7. The 2011 BLM survey determined that in 1976, Surveyor George Pride had moved a
2 marker that had been in existence for more than eighty years by original surveyor T.S. Knock in 1893.

3 8. The 2011 BLM survey re-established the original Knock boundary line, overruling
4 Pride's boundary line, and providing the disputed land along the border between Parcel 2 and the Olliff
5 Parcel to the Grindstone Rancheria.
6

7 9. Defendants Terrence and Dianne Olliff did not protest the BLM's findings that the
8 disputed land belonged to the Grindstone Rancheria within 60 days of receipt of the BLM's written
9 findings.
10

11 10. Terrence and Dianne Olliff are not members of the Grindstone Indian Tribe.

12 11. In February 2019, Compass Consulting Incorporated confirmed the findings of
13 the BLM's 2011 survey related to corner monuments surveyed by T.S. Knock and Pride, noting
14 that the 2011 BLM survey was "unchangeable."
15

16 12. Terrence and Dianne Olliff have not applied to the Bureau of Indian Affairs for a
17 right of way over the land held in trust for the benefit of the Grindstone Indians.

18 **V. ARGUMENT**

19 **A. Legal Standard for Summary Judgment and Summary Adjudication** 20 **(Partial Summary Judgment)**

21 Summary judgment is proper where the pleadings and materials demonstrate "there is no
22 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."
23 Fed. R. Civ. P. 56(a). A material issue of fact is a question the trier of fact must answer to determine
24 the rights of the parties under the applicable substantive law. *Anderson v. Liberty Lobby, Inc.*, 477
25 U.S. 242, 248 (1986). A dispute is only genuine however "if the evidence is such that a reasonable
26 jury could return a verdict for the nonmoving party." *Id.* at 248. This burden may be met by merely
27

1 “pointing out to the district court that there is an absence of evidence to support the nonmoving
2 party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

3 For summary judgment or adjudication, the moving party bears “the initial responsibility of
4 informing the district court of the basis for its motion.” *Celotex*, 477 U.S. at 323.

5 To satisfy this burden, the moving party must demonstrate that no genuine issue of material
6 fact exists for trial. *Id.* at 322. However, the moving party is not required to negate those portions of
7 the non-moving party's claim on which the non-moving party bears the burden of proof. *Id.* at 323.
8 Rather, to withstand a motion for summary judgment, the non-movant must show that there are
9 genuine factual issues which can only be resolved by the trier of fact. *Reese v. Jefferson Sch. Dist.*
10 *No. 14J*, 208 F.3d 736, 738 (9th Cir. 2000) (citing Fed. R. Civ. P. 56; *Celotex*, 477 U.S. at 323).

11 The nonmoving party may not rely on the pleadings; it must present evidence of specific facts
12 creating a genuine issue of material fact. *Nissan Fire Marine Ins. Co. v. Fritz Co*, 210 F.3d 1099,
13 1103 (9th Cir. 2000). Conclusory allegations as to ultimate facts are not adequate to defeat summary
14 judgment. *Gibson v. County of Washoe, Nev.*, 290 F.3d 1175, 1180 (9th Cir. 2002). Nor is the Court
15 required “to scour the record in search of a genuine issue of triable fact,” *Keenan v. Allan*, 91 F.3d
16 1275, 1279 (9th Cir. 1996), but rather “may limit its review to the documents submitted for purposes
17 of summary judgment and those parts of the record specifically referenced therein.” *Carmen v. San*
18 *Francisco Unified Sch. Dist.*, 237 F.3d 1026, 1030 (9th Cir. 2001).

19 The standard that applies to a motion for *partial* summary judgment is the same as that
20 which applies to a motion for summary judgment. See Fed. R. Civ. P. 56(a); *State of Cal. ex rel.*
21 *Cal. Dep’t of Toxic Substances Control v. Campbell*, 138 F.3d 772, 780 (9th Cir. 1998) (applying
22 the summary judgment standard to motion for summary adjudication).

23 Here, Plaintiff only seeks partial summary judgment, or summary adjudication, as to its
24 declaratory relief claim in its First Amended Complaint.

25 **B. The BLM Survey is Dispositive as to the Boundary Dispute between the**
26 **Grindstone Rancheria’s Parcel 2 and the Olliff Parcel**

1
2 **1. The Department of Interior Has Jurisdiction Over Indian
Land (Plaintiff's Parcel 2)**

3 Congress has authorized the federal government to buy land and hold it in trust for Indian
4 tribes. 25 U.S.C. § 465; *Carcieri v. Salazar*, 555 U.S. 379, 381–82 (2009). Such land may be
5 held in trust within an Indian reservation, but parcels outside a reservation may also be held in
6 trust. See *Onieda Tribe of Indians of Wisconsin v. Village of Hobart*, 732 F.3d 837, 838 (7th Cir.
7 2013) (citing 25 U.S.C. § 465). That is, section 465 of Title 25 of the United States Code—the
8 Indian Reorganization Act—grants the Secretary of the Interior authority to place land in trust, to
9 be held by the Federal government for the benefit of the Indians and to be exempt from state and
10 local taxation after assuming such status. 25 U.S.C. § 465; *Cass County v. Leech Lake Band of
11 Chippewa Indians*, 524 U.S. 103, 114 (1998). “The Secretary of the Interior is authorized, in his
12 discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, and
13 interest in lands . . . *within or without existing reservations* . . . for the purpose of providing land
14 for Indians . . .” *Cass County v. Leech Lake*, *supra*, 524 U.S. at 114 (emphasis added). “Title to
15 any lands . . . shall be taken in the name of the United States in trust for the Indian tribe or
16 individual Indian for which the land is acquired, and such lands . . . shall be exempt from State
17 and local taxation.” *Id.* (analyzing 25 U.S.C. § 465).

18 The regulations implementing section 465 of the Indian Reorganization Act are found in
19 Title 25, section 151 of the Code of Federal Regulations. These regulations explain that the
20 Secretary of the U.S. Department of Interior must approve an acquisition, such as a grant deed.
21 That is, the Secretary of the Interior must approve all acquisition of land held in trust by the
22 United States. 25 C.F.R. § 151.3, subd. (a)(3); §151.2, subd. (a). Unrestricted land owned by an
23 individual Indian or tribe may be conveyed into trust, subject to the applicable federal
24 regulations. 25 C.F.R. § 151.4. Whether an on-reservation acquisition, or off-reservation, before
25 accepting conveyed land into trust, the Secretary of the Interior must consider many criteria
26 before accepting the conveyance. See 25 C.F.R. §§ 151.10, 151.11. The Secretary of Interior

1 must review each request federal trust acquisition request and may request additional information
2 or justification deemed necessary to reach a decision. 25 C.F.R. §151.12, subd. (a). A decision
3 made by the Secretary, or Assistant Secretary—Indian Affairs is final. 25 C.F.R. §151.12, subd.
4 (c). If the Secretary approves the acquisition, he/she must promptly notify the applicant of the
5 decision. 25 C.F.R. §151.12, subd. (c)(2)(i). However, a decision on the acquisition made by the
6 Bureau of Indian Affairs official pursuant to delegated authority is not final until administrative
7 remedies are exhausted. 25 C.F.R. §151.12, subd. (d).

8 If the Secretary of Interior determines that he/she will approve a request for land
9 acquisition from unrestricted fee status to trust, he/she shall require the applicant to furnish title
10 evidence. 25 C.F.R. §151.13, subd. (a). Formal acceptance of land in trust shall be accomplished
11 by the issuance or approval of an instrument of conveyance by the Secretary of the Interior as is
12 appropriate in the circumstances. 25 C.F.R. §151.14.

13 The above discussion establishes that the Secretary of Interior has jurisdiction over issues
14 of acquisition and title of Indian Land. Parcel 2 is Indian Land. SUF 1-2.

15 **2. The Bureau of Land Management’s Cadastral Survey Findings**
16 **Control**

17 The Secretary of the Interior is tasked with overseeing the surveying of public lands. See
18 43 U.S.C. §§ 2, 6, 12, 14, 17. In 1946, the Bureau of Land Management formed under the
19 authority of the Department of Interior. See 43 U.S.C. §§ 1, 1201, 1451. Performing Cadastral
20 Surveys is a function of the BLM. 5 U.S.C. § 903; 43 U.S.C. § 1451. The Department of Interior
21 may accept Cadastral Surveys. 43 U.S.C. § 1737, subd. (c). Cadastral Surveys are recognized by
22 various Federal courts. *Verhaag v. Stevens County*, 2011 U.S. Dist. LEXIS 146353, *4 (E.D.
23 Wash 2011) (Cadastral Survey recognized); *Keller v. United States*, 6 Cl. Ct. 724, 726 (1984)
24 (Cadastral Survey performed by BLM); *Kane County v. United States*, 2013 U.D. Dist. LEXIS
25 40118, 74-75 (D. Utah 2013) (same); *K&B Family L.P. v. United States*, 2007 U.S. Dist. LEXIS
26 99241, 3, n.3 (D. Ore 2007) (“This is done by the BLM Office of Cadastral Survey, which

1 establishes the boundaries of public lands of the United States.”)

2 The Office of Hearings and Appeals is an authorized representative of the Secretary of
3 the Interior for the purpose of hearing, considering, and determining matters within the
4 Department of Interior involving review functions of the Secretary of the Interior. The Interior
5 Board of Land Appeals (IBLA) is the administrative body that, on behalf of the Secretary, hears
6 appeals of decisions rendered by Department officials relating to the use and disposition of
7 public lands and their resources. See 43 U.S.C. § 1201; 43 C.F.R. § 4.1. Any party who is
8 adversely affected by an official survey of the BLM has the right to appeal to the IBLA. 43
9 C.F.R. §4.410. Decisions by the IBLA are binding for the official survey appealed and serve as
10 precedent for future surveys. See *Koch v. United States*, 824 F.Supp. 996, 998-1002 (D. Col.
11 1993).

12 Here, it is undisputed that Parcel 2 was acquired by the Grindstone Indian Rancheria and put in
13 trust for the benefit of the Grindstone Indians. SUF 2. It is undisputed this Parcel 2 had a recognized
14 boundary adjacent to the now-Olliff Parcel from 1893 (Mr. Knock’s survey) to 1976 (Mr. Pride’s
15 survey). SUF 7-8. It is undisputed that in 2011, the BLM surveyed the Grindstone Rancheria’s Parcel
16 2 and reverted its western boundary adjacent to the Olliff Parcel to the boundary recognized from 1893
17 to 1975 (the year before the Pride survey). SUF 8.

18 Hence, this Court should declare that the BLM 2011 survey of Parcel 2 is definitive and
19 dispositive and that the disputed area along the western boundary of Parcel 2 adjacent to the Olliff
20 Parcel is Plaintiff’s and not Defendants, to be used for the benefit of the Grindstone Indians. Summary
21 adjudication, or partial summary judgment, as to Plaintiff’s declaratory relief cause of action should
22 be granted.

23 **C. The Burden of Proof Shifts To Defendants To Establish Their Right of**
24 **Possession But They Cannot Meet This Burden**

25 Plaintiff, as an Indian Tribe, has established its right to the disputed area in this boundary
26 dispute. Yet, what the Grindstone Rancheria can prove or not prove regarding its property rights is

1 not dispositive. Defendants as “non-Indians” have the burden of proving their right to the disputed
2 area. Section 194 of Title 25 of the United States Code establishes that Defendants have the burden
3 of proof, and not Plaintiff: “In all trials about the right of property in which an Indian may be a party
4 on one side, and a white person on the other, the burden of proof shall rest upon the white person,
5 whenever the Indian shall make out a presumption of title in himself from the fact of previous
6 possession or ownership.” 25 U.S.C. § 194. The burden of proof applying to non-Indians in property
7 disputes has been recognized by the United States Supreme Court. *Wilson v. Omaha Indian Tribe*,
8 442 U.S. 653, 664-666 (1979) (recognizing the burden of proof shifts to non-Indians in property
9 disputes with an Indian Tribe).

10 Hence, Defendants, Mr. and Mrs. Olliff as non-Indians [SUF 10], must prove that despite the
11 dispositive 2011 findings of the BLM Cadastral Surveyors, they are entitled to the disputed area. Put
12 another way, Defendants must prove that the survey conclusions of George Pride in 1976 supersede
13 the survey findings of T.S. Knock from 1893 to 1975 as recognized by the BLM in 2011. They
14 cannot so prove. Summary adjudication as to Plaintiff’s declaratory relief claim should be granted.

15 **D. Defendants’ Failure to Exhaust Administrative Remedies Bars Any Claim or**
16 **Defense that the Disputed Land Was “Adversely Possessed” or They Are**
17 **Entitled to a Right-of-Way via “Prescriptive Easement”**

18 In their Second Amended Answer (DKT #22), Defendants aver as a defense that
19 Defendants have adversely possessed the disputed area along the Olliff Parcel and Parcel 2.
20 (DKT #22, ¶¶ 5(j) and (k)). They also aver that they have established a “prescriptive easement”
21 over the disputed area. (*Id.*)

22 These defenses—and any others—fail because Defendants have failed to exhaust their
23 administrative remedies. It is established doctrine that administrative remedies must be
24 exhausted prior to judicial review of administrative action. *United States v. Consolidated Mines*
25 *& Smelting Co.*, 455 F.2d 432, 438 (9th Cir. 1971). The general rule under the exhaustion
26 doctrine is that failure to appeal an administrative decision to higher administrative authority
27 precludes judicial review. This rule was formulated in *United States v. Sing Tuck*, 194 U.S. 161,

1 (1904). The rule laid down in *Sing Tuck* has been consistently followed. *United States v.*
2 *Consolidated Mines, supra*, 455 F.2d at 439. “The doctrine of exhaustion of administrative
3 remedies is one among related doctrines including abstention, finality and ripeness that govern
4 the timing of federal-court decision making.” *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992).
5 The doctrine is well established in the jurisprudence of administrative law, and provides that “no
6 one is entitled to judicial relief for a supposed or threatened injury until the prescribed
7 administrative remedy has been exhausted.” *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S.
8 41, 50-51 (1938).

9 The exhaustion doctrine applies to claims made against Indian Tribes. *Joint Bd. Of*
10 *Control v. United States*, 862 F.2d 195, 201 (9th Cir. 1985); *Wilson v. Horton’s Towing*, 906
11 F.3d 773, 778-783 (9th Cir. 2018) (exhaustion of tribal remedies and federal government
12 remedies required in civil forfeiture against non-Indian’s truck). The Interior Board of Land
13 Appeals (IBLA) is the appellate administrative tribunal for Bureau of Land Management decisions.
14 *Northfolk Energy, Inc. v. Hodel*, 898 F.2d 1435, 1436 (9th Cir. 1990). A case may be dismissed for
15 failure to appeal to the Interior Board of Land Appeals. *Moncrief v. United States*, 43 Fed. Cl.
16 276, 286-287 (1999).

17 At issue here is Defendants’ failure to appeal the BLM’s survey decision to the IBLA.
18 That is, Plaintiff is not arguing Defendants failed to exhaust any Tribal remedies. The right to
19 appeal to the IBLA is set forth in Section 4.410 of Title 43 of the Code of Federal Regulations,
20 which states in part: “(a) Any party to a case who is adversely affected by a decision of the Bureau
21 or Office or an administrative law judge has the right to appeal to the Board [of Land Appeals],
22 [inapplicable exceptions] . . .” Section 4.410 continues: “(b) A party to a case, as set forth in
23 paragraph (a) of this section, is one who has taken action that is the subject of the decision on appeal,
24 is the object of that decision, or has otherwise participated in the process leading to the decision
25 under appeal, e.g., by filing a mining claim or application for use of public lands, by commenting on
26 an environmental document, or by filing a protest to a proposed action.” 43 CFR § 4.410. A party has

1 30 days after the date of service of the decision the party wants to appeal to transmit a notice of
2 appeal. 43 CFR § 4.411, subd. (a)(2)(i).

3 It is undisputed Defendants did not appeal the 2011 BLM survey to the IBLA. SUF 9; DKT #
4 22, ¶ 8. Instead, Defendants claim Plaintiff has misinterpreted the BLM’s survey findings.
5 Defendants were advised of their right to file a “notice of protest” but did not—although they had 60
6 days to appeal, not 30. SUF 9. With no appeal, the 2011 BLM survey therefore became the final
7 decision of the Interior Department. Defendants failed to exhaust their administrative remedies and
8 therefore cannot assert any affirmative defenses designed to negate Plaintiff’s declaratory relief
9 claim. Summary adjudication should be granted.

10 **E. Indian Trust Land Cannot Be Adversely Possessed**

11 Even if the Court does not agree with Plaintiff’s exhaustion argument, a state-law defense like
12 adverse possession or laches does not apply to Indian land title claims. *Ewert v. Bluejacket*, 259
13 U.S. 129, 137-138 (1922); *United States v. Ahtanum Irrigation District*, 236 F.2d 321, 334 (9th
14 Cir. 1956), cert. denied, 352 U.S. 988 (1957); *County of Oneida v. Oneida Indian Nation*, 470
15 U.S. 226, 240 (1974); *Catawba Indian Tribe v. South Carolina*, 865 F.2d 1444, 1448 (4th Cir. 1989)
16 (citation omitted).

17 **F. Prescriptive Easements Are Not Permitted on Trust Land**

18 Lastly, the process for a non-Indian to obtain a right-of-way over Indian land is set forth in
19 Title 25, section 169 of the Code of Federal Regulations. In particular sections 169.101 through
20 169.105 set forth the process. 25 C.F.R. 169.1-169.105. Defendants did not formally apply for a right
21 of way with the Bureau of Indian Affairs, a sub-agency of the Interior Department. SUF 12. Right of
22 ways are established under state law through prescriptive easements. *S. Utah Wilderness Alliance v.*
23 *BLM*, 425 F.3d 735, 778 n.31 (10th Cir. 2005) (citations omitted); *Baltic Inv. Co. v. Perkins*, 965
24 (D.C. Cir. 1973).

1 Any affirmative defense of prescriptive easement fails as well. Summary adjudication should
2 be granted.

3 **V. CONCLUSION**

4 For the foregoing reasons, summary adjudication, or partial summary judgment, should be
5 granted in Plaintiff's favor as to its declaratory relief claim.
6

7 Dated: July 2, 2019

DURAN LAW OFFICE

8 By: /s/ Jack Duran

9 Attorneys for Plaintiff
10 GRINDSTONE INDIAN RANCHERIA ET
11 AL
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