

**ATTACHMENT B**

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**ORIGINAL  
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CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY \_\_\_\_\_  
DEPUTY CLERK

9 UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF CALIFORNIA

CIV.S- 02-0912 FCD GGH 1

11 CALIFORNIA VALLEY MIWOK TRIBE, )  
12 formerly SHEEP RANCH OF ME-WUK )  
13 INDIANS OF CALIFORNIA, )  
14 Plaintiff, )  
15 vs. )  
16 UNITED STATES OF AMERICA, )  
17 UNITED STATES DEPARTMENT OF )  
18 THE INTERIOR, GAIL NORTON, )  
19 SECRETARY OF INTERIOR, NEAL )  
20 MCCALEB, ASSISTANT SECRETARY )  
21 OF INTERIOR FOR INDIAN AFFAIRS, )  
22 Defendants. )

Case No. C- \_\_\_\_\_

COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF

23 **INTRODUCTION**

24 This is an action for injunctive and declaratory relief against the United States and  
25 officials within the United States Department of the Interior, acting in their official capacity, to  
26 declare an Indian Tribe in north central California a "restored Tribe" within the meaning of 25  
27 U.S.C. §2719(b)(1)(B)(iii) and to compel the United States to take land into trust for the Tribe.  
28 The lands comprising the Sheep Ranch Rancheria, with a potential membership today of  
nearly 250 people, were illegally conveyed to a single tribal member in 1967. While officials  
within the Central California Agency and Pacific Coast Regional Office of the Bureau of Indian  
Affairs ("BIA") have attempted to rectify these violations of law, they have been unsuccessful.

1 As a result, the Rancheria, which was terminated under the California Rancheria Act and  
2 administratively restored, is landless.

3 Plaintiff has brought this action to remedy violations by the federal defendants of the  
4 California Rancheria Act and their fiduciary obligations as plaintiff's trustee.

### 5 JURISDICTION

6 1. This Court's jurisdiction over plaintiff's claims are based on the following:

7 a. 28 U.S.C. Section 1331, in that plaintiff's claims arise under the Constitution and  
8 laws of the United States;

9 b. 28 U.S.C. Section 1337, in that this action arises out of Acts of Congress  
10 regulating commerce with Indian Tribes, pursuant to Article I, Section 8, Cl. 3 of the United  
11 States Constitution;

12 c. 28 U.S.C. Section 1361, in that plaintiff seeks to compel officers and employees  
13 of the United States and its agencies to perform duties owed to plaintiff; and

14 d. 5 U.S.C. Section 701 et seq., in that plaintiff seeks to compel officers and  
15 employees of the United States to take action unlawfully withheld or unreasonably delayed.

16 2. A real and actual case or controversy now exists between the plaintiff Tribe and  
17 defendants calling for appropriate declaratory and injunctive relief. Plaintiff claims that it is an  
18 Indian Tribe with a potential membership of 250 people that has been restored to federal  
19 recognition, and that the United States has a mandatory, non-discretionary duty to take land into  
20 trust for the Tribe within its aboriginal territory, consisting today of Calaveras and San Joaquin  
21 Counties in California. Defendants deny that plaintiff was terminated and, therefore, deny that  
22 plaintiff has been restored. Defendants also deny that they have a mandatory duty to take land  
23 in trust for plaintiff to replace the land wrongfully conveyed by the United States to a single  
24 tribal member.

25 3. Venue is proper in this District under 28 U.S.C. §1391(e)(2) because a substantial  
26 part of the events and omissions giving rise to the plaintiff's claims occurred within the District  
27 and the property that is the subject of this action is situated within the District.

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**PARTIES**

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4. Plaintiff is an Indian Tribe that is now recognized as a federally recognized Tribe in that its name was published in the federal register pursuant to Section 104 of the Act of November 2, 1994, Pub. L. 103-454; 108 Stat. 4791,4792.

5. The United States of America is a governmental entity organized under the provisions of the Constitution of the United States.

6. Defendant, United States Department of the Interior ("DOI"), is an administrative agency of the United States of America, which has overall responsibility for administering the relationship between the United States and American Indian tribes and is primarily responsible for fulfilling the trust responsibility owed by the United States to American Indian tribes.

7. Defendant, Gail Norton, is the Secretary of DOI and the Chief Executive Officer of the DOI and has ultimate responsibility for administering the DOI. Defendant Norton is sued herein in her official capacity.

8. Defendant Neal S. McCaleb is the Assistant Secretary of Indian Affairs. In such capacity, defendant McCaleb is the administrative head of the BIA, a bureau within DOI. The BIA is the bureau within DOI that is primarily responsible for fulfilling DOI's administrative responsibilities for managing the federal relationship with American Indian tribes and the trust responsibility of the United States to American Indian Tribes. Defendant McCaleb is sued herein in his official capacity.

**GENERAL ALLEGATIONS**

9. On or about April 11, 1916, the United States purchased the Sheep Ranch Rancheria with a Homeless California Indians appropriation for the use and occupation of the remnants of a band of Northern Sierra Me-wuk Indians ("the Band"), probably part of the Omo or Noma tribelets, who were part of the Eastern Me-wuk, who inhabited what is now Calaveras and San Joaquin Counties.

10. At the time of the purchase of the Rancheria the BIA expected approximately 12 Indians of the Band to occupy the Rancheria, and most of those Indians moved to and took up residence on the Rancheria.

1           11. In 1958, Congress enacted the California Rancheria Act ("Rancheria Act"), Pub. L.  
2 85-671, 72 Stat. 619, which was amended in 1964 by Pub. L. 88-419, 78 Stat. 390. Under the  
3 Rancheria Act, any California Rancheria could terminate its relationship with the federal  
4 government in accordance with the following procedure. The BIA would prepare a  
5 "Distribution Plan" for an Indian tribe slated for termination under the Act. The Distribution  
6 Plan had to be approved by a majority vote of the Indians determined by the BIA to be eligible  
7 to participate in the termination of the Rancheria. The Plan would provide for a land survey of  
8 the Rancheria, the creation of separate parcels, if necessary, the identification of roads  
9 necessary to provide access to those parcels, and an identification of the services the BIA would  
10 be required to provide prior to the conveyance of the assets of the Rancheria to individuals  
11 entitled to receive title to them (so-called "Distributees"). Typical services included the  
12 provision of adequate water and sanitation systems and the improvement of access roads to  
13 county standards. Upon distribution of a tribe's assets, including its tribal lands, the  
14 relationship between the tribe and the United States was terminated and the tribal members and  
15 tribal lands became fully subject to state and local laws and regulations, including real and  
16 personal property taxes.

17           12. From its purchase until May 2, 1967, the United States maintained a government-  
18 to-government relationship with the Band, including the conduct of a referendum election on  
19 June 12, 1935, in which the Band accepted the provisions of the Indian Reorganization Act of  
20 1934, 25 U.S.C. §§ 461-479.

21           13. In or about 1965, the Sacramento Area Office of the BIA ("SAO"), now called the  
22 Pacific Coast Regional Office, began its investigation into the feasibility of terminating the  
23 federal relationship with the Band under the authority of the Rancheria Act. In the course of  
24 conducting that investigation, the BIA discovered three persons living on the Rancheria, two of  
25 whom, Mabel Dixie and Lenny Jeff, were eligible for membership in the Band. The third  
26 person, Merle Butler, was Mabel Dixie's male companion and was not eligible for membership  
27 in the Band. Mabel Dixie and Merle Butler were not and never had been legally married under  
28 the laws of the State of California.

1           13. In the course of conducting the investigation, agents of the BIA learned that Mabel  
2 Dixie was an alcoholic and indigent and was not capable of managing her own affairs.

3           14. After consultation exclusively with Mabel Dixie and Merle Butler, the BIA  
4 determined that it would prepare a Distribution Plan for the Rancheria in which Mabel Dixie  
5 was named as the sole Distributee.

6           15. Prior to the BIA's conditional approval of a Distribution Plan for the Rancheria on  
7 or about August 14, 1966, Mrs. Dora Mata, on her own behalf, and on behalf of her mother,  
8 Lena Hodges Shelton, filed a written protest with the SAO to the proposed conveyance of the  
9 Rancheria to Mabel Dixie, claiming eligibility for membership in the Band and indicating their  
10 intention to reside on the Rancheria.

11           16. On or about February 3, 1966, the Area Director of the SAO gave formal notice to  
12 Mrs. Mata and Mrs. Shelton that Mrs. Dixie was the only person eligible to participate in the  
13 termination of the Rancheria. The Area Director relied upon 25 C.F.R. §242.3(a) (as amended  
14 by regulations adopted in 1965), which limited participation in a Rancheria's distribution to  
15 persons residing on the Rancheria at the time the Distribution Plan was prepared. Such reliance  
16 did not justify the exclusion of Lenny Jeff from the Distribution Plan. Section 243.3(a), as it  
17 read when originally adopted in 1959, permitted residents, like Mabel Dixie and Lenny Jeff, or  
18 other Indians with a special relationship to the Rancheria, such as that claimed by Mrs. Mata  
19 and Mrs. Shelton, to participate in its termination. The 1965 version of the regulations was  
20 declared invalid and void in Kelly v. United States Department of the Interior, 339 F. Supp.  
21 1095 (E.D.Cal. 1972).

22           17. On or about August 14, 1966, the DOI gave final approval to the Distribution Plan  
23 for the Sheep Ranch Rancheria. Under the terms of that Plan, the defendants were required to  
24 construct a new house for Mabel Dixie and install adequate water and sanitation facilities on  
25 the Rancheria.

26           18. On or about January 27, 1967, Mabel Dixie wrote the SAO requesting the  
27 appointment of a conservator of her estate to manage her affairs.

28           19. On or about February 17, 1967, the Area Director wrote the Regional Solicitor

1 requesting assistance in establishing a conservatorship for Mabel Dixie, the Area Office having  
2 concluded “. . . that Mrs. Dixie is in need of assistance in conducting her affairs.”

3 20. Despite the request described in paragraph 19, on or about May 2, 1967, before any  
4 conservatorship was established for Mrs. Dixie, and before providing any of the services  
5 required by the Distribution Plan, the Area Director of the SAO executed and recorded in the  
6 Calaveras County Recorder’s Office the deed conveying Sheep Ranch Rancheria’s land to  
7 Mabel Dixie, notifying her that title to the property had been transferred to her in “. . .  
8 unrestricted status (fee), and you may lease, mortgage or dispose of it as you so desire.”

9 21. Plaintiff alleges on information and belief that the SAO determined that conveying  
10 the property to Mrs. Dixie was a mistake in that on or about May 15, 1967, the Area Director  
11 wrote Mrs. Dixie that although the deed had been recorded, “. . . it is not intended to pass title  
12 to you until after the Conservator has been set up and made a record.”

13 22. Plaintiff alleges on information and belief that in an effort to correct the mistake as  
14 alleged in paragraph 21, on or about September 6, 1967, the SAO obtained a quitclaim deed  
15 from Mrs. Dixie purporting to convey the Sheep Ranch Rancheria to the United States.

16 23. On or about July 11, 1971, Mabel Dixie died intestate and without a  
17 conservatorship having been established.

18 24. In or about August 1971, Mrs. Mata and Mrs. Shelton requested permission from a  
19 representative of the SAO to occupy the Rancheria. They did not receive a response to that  
20 request. Instead, the BIA took the position that the Rancheria was part of the Mabel Dixie  
21 estate, and commenced probate proceedings pursuant to Subparts B and D of Part 4 of Subtitle  
22 A of Title 43 of the Code of Federal Regulations.

23 25. On or about November 1, 1971, a Hearing Examiner issued an order determining  
24 the heirs of Mabel Dixie as including Merle Butler and Mrs. Dixie’s four children. Mr. Butler  
25 was awarded a 1/3 interest in the estate, even though there was no evidence that he was legally  
26 married to Mrs. Dixie and, therefore, he would not be entitled to inherit from Mrs. Dixie under  
27 the California rules governing intestate succession. Under 25 U.S.C. §§348 and 464, the  
28 California rules on intestate succession are applied to determine the heirs of a deceased

1 beneficiary of federal trust property in California who dies without a will.

2 26. On or about June 25, 1975, the Interior Department took the position that upon  
3 distribution of their assets, Rancherias were "terminated"; that is, the provisions of Sections  
4 2(d), 10(b) and 11 of the Act applied. Those provisions extinguished the restriction on  
5 alienation of Rancheria property, the tax immunity of Rancheria property, and the entitlement  
6 of distributees and their families to benefits and services performed by the United States for  
7 Indians because of their status as Indians.

8 27. On or about October 24, 1990, the Superintendent of the Central California Agency  
9 ("Agency") of the BIA, filed a petition with the Office of Hearings and Appeals in Phoenix,  
10 Arizona, to remove the Sheep Ranch Rancheria as an asset of the Mabel Dixie estate, the SAO  
11 having determined that it should take steps to restore the Band as a federally recognized tribe  
12 and to recover the Rancheria property for the benefit of the Band.

13 28. On or about April 14, 1993, William E. Hammett, an Administrative Law Judge of  
14 DOI's Office of Hearings and Appeals, determined that the government conveyed good title to  
15 Mabel Dixie in the May 2, 1967, deed, and that the quitclaim deed from Mabel Dixie to the  
16 United States was invalid. He also found that the quitclaim deed did not repudiate the  
17 Distribution Plan as argued by the Regional Solicitor on behalf of the Agency. In denying the  
18 requested relief, Judge Hammett refused to exclude the Rancheria lands from the inventory of  
19 trust land included with the order determining heirs.<sup>1</sup> The Agency did not appeal that decision,  
20 which has become final.

21 29. On or about March 17, 1995, the Superintendent of the Agency, in a memorandum  
22 to the Area Director of the SAO, issued a "clarification" that the Sheep Ranch Rancheria of  
23 Me-wuk Indians of California shall remain on the BIA's list of Indian Entities Recognized and  
24 Eligible to Receive Services and that the .92 acres of land formerly comprising the Rancheria  
25 would be "... moved from our acreage reports as "tribal" land and will be added to our listing  
26

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28 <sup>1</sup>The logical conclusion based on the ALJ's decision is that the government conveyed the land in fee to Mabel Dixie in 1967. Nevertheless, the ALJ refused to exclude the land from the estate's trust assets and the BIA continues to regard the land as individually owned trust land.



1 of "individually-owned" land.

2 30. On or about June 8, 1999, the Superintendent of the Agency stated that the Band's  
3 recognition began in 1916, and although Rancheria assets were distributed pursuant to the  
4 Distribution Plan, the Rancheria "... was likely never terminated."

5 31. As a result of the foregoing facts, plaintiff is a landless Band that was restored to  
6 federal recognition by administrative action, including the publication of its name in the federal  
7 register pursuant to Section 104 of the Act of November 2, 1994, Pub. L. 103-454; 108 Stat.  
8 4791,4792.

9 32. On or about August 5, 2000, the Tribe, through its federally recognized Chairman,  
10 met with the Assistant Secretary of Indian Affairs in Washington, D.C. and presented a detailed  
11 memorandum with supporting documentation establishing the facts as alleged in paragraphs 1-  
12 31 herein. The Assistant Secretary stated that he was interested in assisting the Tribe and  
13 directed his staff to investigate the Tribe's allegations.

14 33. In response to questions asked by the Assistant Secretary, the Tribe submitted  
15 additional information to him on November 13, 2000 and November 28, 2000.

16 34. On or about March 25, 2002, the Tribe made a formal demand on defendant  
17 McCaleb to (1) recognize that the Tribe was terminated and administratively restored to  
18 federal recognition within the meaning of 25 U.S.C. §2719(b)(1)(B)(iii); and (2) recognize that  
19 the Department of Interior has a mandatory duty to accept into trust for the Tribe land within its  
20 aboriginal territory as part of a restoration of lands for the Tribe. (A true and correct copy of  
21 the letter containing that demand is attached hereto as Exhibit A and incorporated herein by  
22 reference.)

23 35. Despite plaintiff's request that defendant McCaleb respond to its March 25, 2002,  
24 letter by April 14, 2002, defendant has made no response to that letter and has failed and  
25 refused to provide the requested remedies.

26 36. Plaintiff has exhausted any and all available administrative remedies in that no  
27 administrative appeal is available to remedy the action or inaction of the Assistant Secretary of  
28 Indian Affairs.

**FIRST CLAIM FOR RELIEF  
(Violation of California Rancheria Act)**

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2  
3 37. Plaintiff realleges and incorporates herein the allegations contained in paragraphs 1-  
4 36.

5 38. Under the Rancheria Act, as originally adopted in 1958, a plan to distribute the  
6 assets of each Rancheria was to be devised for each Rancheria named in the Act. As part of the  
7 plan and "... [b]efore making the conveyances authorized by this Act," Section 3, the  
8 Secretary of Interior was directed:

9 1. to make such land surveys of the Rancherias as were necessary to convey  
10 marketable title to the lands comprising the Rancherias, Section 3(a);

11 2. to construct or improve roads serving the Rancherias (e.g. access roads) to the  
12 standards of the counties where the Rancherias were located and transfer the roads to the county  
13 roads systems upon termination, Section 3(b);

14 3. to install or rehabilitate such irrigation and domestic water systems as the  
15 Secretary and the Indians affected agreed should be completed, Section 3(c);

16 4. to develop a special program of education and training designed to help the  
17 Indians to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as  
18 citizens without special services because of their status as Indians, Section 9; and

19 5. to protect the rights of individual Indians who are minors, non compos  
20 mentis, or, in the opinion of the Secretary, were in need of assistance in conducting their affairs,  
21 by causing the appointment of guardians for such Indians in courts of competent jurisdiction, or  
22 by such other means as he may deem adequate without application from the Indians. Section 8.

23 39. In 1964 Congress amended the Act, in part, by authorizing the termination of any  
24 California Rancheria and transferring a portion of the Section 3(c) duties from the Interior  
25 Department to the Department of Health, Education and Welfare [now Health and Human  
26 Services] and required that sanitation systems (in addition to water facilities) be installed before  
27 conveying Rancheria assets to Distributees.

28 40. Defendants violated the California Rancheria Act as follows:

1 a. Conveying title to the Rancheria lands to Mabel Dixie in 1967 before making  
2 the improvements required by the Distribution Plan violated Section 3 of the Act, which makes  
3 the provision of the improvements required by the Distribution Plan a condition precedent to a  
4 valid termination of a Rancheria under the Act. See Duncan v. United States (Duncan II) 667 F.  
5 2d 36 (Ct. Cls. 1981), cert. denied 463 U.S. 1228 (1983); Smith v. United States, 515 F. Supp.  
6 56 (N.D.Cal. 1978); and

7 b. Conveying the Rancheria lands to Mabel Dixie before establishing a  
8 conservatorship for her violated Sections 3 and 8 of the Act.

9 41. As a direct and proximate result of these breaches of the Rancheria Act, the  
10 plaintiff's relationship with the United States was terminated, its members were denied the  
11 benefits of membership in a federally recognized Tribe, its land was alienated, and it was  
12 rendered landless.

13 **WHEREFORE**, plaintiff prays for relief as further provided below.

14 **SECOND CLAIM FOR RELIEF**  
15 **(Breach of Fiduciary Duty)**

16 42. Plaintiff realleges and incorporates herein the allegations contained in paragraphs  
17 1-41.

18 43. The Rancheria Act imposed on the United States specific trust obligations in  
19 purporting to terminate a Rancheria under the provisions of that Act. The United States  
20 occupied the position of a fiduciary in carrying out the provisions of the Rancheria Act. The  
21 United States owed this trust duty to plaintiff and all of the members of the Band.

22 44. In failing to follow the Act by illegally excluding tribal members from participating  
23 in the decision to develop and approve a Distribution Plan and in prematurely and unlawfully  
24 alienating the Band's trust lands in direct violation of Sections 3 and 8 of the Rancheria Act, the  
25 United States breached those trust duties. As a trustee, the United States knew or should have  
26 known that Mabel Dixie was incapable of making an informed decision to approve the  
27 Distribution Plan. The United States never clearly repudiated the trust. As a result, it has and  
28 continues to be under a continuing trust obligation to remedy the breaches of trust alleged

1 herein.

2 45. As a direct and proximate result of these breaches of trust, and the defendants'  
3 continuing failure to remedy its breaches of trust as alleged herein, the plaintiff's relationship  
4 with the United States was terminated, its members were denied the benefits of membership in  
5 a federally recognized Tribe, it was administratively restored, its land were alienated, and it was  
6 rendered and remains landless.

7 **WHEREFORE**, plaintiff prays for relief as further provided below.

8 46. Plaintiff has exhausted all adequate administrative remedies available to it in that  
9 (1) the Agency unsuccessfully petitioned to remove the Rancheria lands from the Mabel Dixie  
10 estate and failed to timely appeal the order denying that petition. As a result that decision is  
11 final and not subject to further review, and (2) for the reasons set forth in paragraphs 32-36.

12 47. There is no adequate remedy at law available to the Band in that its recognition by  
13 the United States as a restored tribe within the meaning of 25 U.S.C. §2719(b)(1)(B)(iii) and a  
14 trust land base are unique and cannot be adequately compensated in money damages. Absent  
15 the injunctive relief requested herein, plaintiff will suffer severe and irreparable injury.

16 48. An actual case or controversy exists between plaintiff and defendants in that  
17 plaintiff contends that all of the members of the Band should have been afforded an opportunity  
18 to participate in the decision to approve the Distribution Plan. Plaintiff contends that the  
19 United States has a mandatory, non-discretionary duty to take land into trust for the Band  
20 within its aboriginal territory to replace the Rancheria land wrongfully conveyed in violation of  
21 the trust duty of the United States and the Rancheria Act. Defendants dispute these contentions.

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, plaintiff prays for relief as follows:

24 1. For a judicial declaration that:

25 a. the distribution plan for the Sheep Ranch Rancheria approved by the United  
26 States Department of Interior ("Department") on August 14, 1966, excluded members of the  
27 Band in violation of 25 C.F.R. §243.3(a), adopted in 1959, and that the tribal lands comprising  
28 the Sheep Ranch Rancheria were alienated on May 2, 1967, in violation of Sections 3 and 8 of

1 the California Rancheria Act, Pub. L. 85-671, 72 Stat. 619, which was amended in 1964 by  
2 Pub. L. 88-419, 78 Stat. 390; and

3 b. the Band was restored to federal recognition in 1994 as a federally recognized  
4 Band that has a government-to-government relationship with the United States; and that the  
5 Band exercises all of the same rights, powers and privileges, including sovereign governmental  
6 powers, as are exercised by other federally recognized Indian tribes and is a restored tribe  
7 within the meaning of 25 U.S.C. §2719(b)(1)(B)(iii) .

8 2. For orders from this Court directing defendants and each of them, and their  
9 subordinate officers, agents and employees to:

10 a. Accept in trust, as a restoration of Reservation land to the Band, which has  
11 been restored to federal recognition, any fee interests in land in San Joaquin or Calaveras  
12 Counties, California, owned by the Band on the date judgment is entered herein or which are  
13 acquired thereafter, provided that the federal defendants shall not be obligated to accept into  
14 trust for the Band more than 240 acres in total within said counties;

15 b. Make the defendants' mandatory, non-discretionary duties under paragraphs  
16 2(a) subject to the following requirements only: (1) defendants' reasonable approval of title and  
17 (2) their reasonable determination that the lands are not contaminated by hazardous or toxic  
18 substances in accordance with 602 Department Manual ("DM") 2 and the instructions for  
19 implementing that Chapter of the DM contained in 54 Bureau of Indian Affairs Manual  
20 ("BIAM") Bulletin 1, dated March 9, 1990, and any duly adopted revisions of the DM or  
21 BIAM. Defendants shall pay the costs of any title investigation, including preliminary title  
22 reports and title insurance and of the investigations pursuant to 602 DM 2 and 54 BIAM 1; and

23 c. As to any lands accepted into trust pursuant to paragraph 2(a), issue a  
24 proclamation in accordance with 25 U.S.C. §467, declaring that said lands constitute an Indian  
25 Reservation.

26 3. For attorneys fees and costs of suit; and

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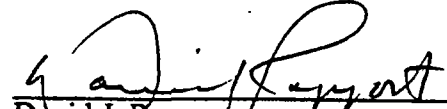
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4. For such other and further relief as this Court deems just and proper.

DATED: 4-25-02

RAPPORT AND MARSTON

By:

  
\_\_\_\_\_  
David L. Rapport  
Attorneys for Plaintiff