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UNITED STATES DISTRICT COURT
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 a beneficiary/trustee
of the Olliff Family Trust,
DIANNE L. OLLIFF,
individually and as a
beneficiary/trustee of the
Olliff Family Trust, and DOES
1-10,

Defendants.

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

**ORDER DENYING PLAINTIFFS' MOTION
FOR SUMMARY ADJUDICATION**

This case arises out of a dispute between Defendants Terrence and Dianne Olliff and Plaintiffs Grindstone Indian Rancheria et.al. over who owns a fifty-foot-wide strip of land between their properties. In October of 2017, the Grindstone Indian Rancheria and 100 of its residents (collectively "Plaintiffs") sued the Olliffs for trespass, intentional infliction of emotional distress ("IIED"), negligent infliction

1 of emotional distress ("NIED"), and declaratory judgment.
2 Compl., ECF No. 1. Pursuant to the parties' stipulation,
3 Plaintiffs' filed an amended complaint, adding claims for
4 conversion and civil harassment. First Am. Compl. ("FAC"), ECF
5 No. 10-2.

6 In response, Defendants raised four counterclaims. Answer
7 at 15-26, ECF No. 12. The Court dismissed the counterclaims
8 without prejudice because Defendants failed to plead an exception
9 to Grindstone's tribal immunity. Order Granting Mot. to Dismiss,
10 ECF No. 21. Defendants filed an amended answer, ECF No. 22, but
11 did not attempt to revive their counterclaims.

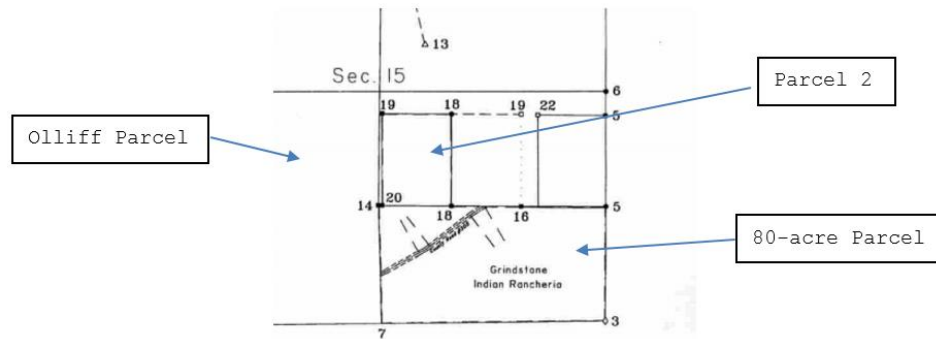
12 Plaintiffs filed a motion for summary adjudication on their
13 declaratory judgment claim. Mot. for Summ. Adjudication
14 ("Mot."), ECF No. 29. Defendants oppose this motion. Opp'n, ECF
15 No. 32. Because Defendants have demonstrated that genuine issues
16 of material fact exist, the Court DENIES Plaintiffs' motion for
17 summary adjudication.¹

18 19 I. FACTUAL ALLEGATIONS

20 The Grindstone Indians are a federally-recognized Indian
21 Tribe. Response to Statement of Undisputed Facts ("RSUF") ¶ 1,
22 ECF No. 32-3. The United States holds two parcels of land in
23 trust for the Grindstone Indians: a parcel recorded in 1909 ("80-
24 acre Parcel") and a parcel recorded in 1994 ("Parcel 2"). RSUF
25 ¶ 2. Parcel 2's southern border lies along a portion of the 80-
26

27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for August 13, 2019.

1 acre Parcel's northern border. RSUF ¶ 3. The Olliffs' property
2 is adjacent to the western borders of both the 80-acre Parcel and
3 Parcel 2. Id.



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11 BLM Survey, Exh. A. to Duran Decl., ECF No. 29-4. The parties
12 dispute whether the area between points 14, 20, and 19 ("disputed
13 strip of land") is part of Parcel 2 or part of the Olliff Parcel.
14 RSUF ¶ 4.

15 In 2011, the Bureau of Land Management ("BLM") surveyed
16 Parcel 2. RSUF ¶ 5. See also BLM Survey. The Olliffs
17 informally objected to the results of the survey, arguing they
18 either owned or held a prescriptive easement over a portion of
19 land that the BLM included in Parcel 2. RSUF ¶ 6. The Olliffs
20 did not, however, formally protest BLM's findings within 60 days
21 of receiving the survey. RSUF ¶ 9.

22 The BLM Survey purported to resolve a discrepancy between
23 two prior surveys: the Pride Survey (conducted in 1976) and the
24 Knock Survey (conducted in 1893). See Disputed Fact ¶ 7, ECF No.
25 32-3, see also BLM Survey at 14. The Knock Survey used a cedar
26 post to mark the corner of the "center south 1/16 section," i.e.,
27 point 14. Id. The Pride survey, however, declined to recognize
28 Knock's cedar post as the center south 1/16 section corner. Id.

1 Rather, Pride set the corner 48.15 ft. east of the cedar post,
2 i.e., point 20. Id. Notwithstanding the Pride survey, the BLM
3 survey found "the Knock monument . . . functions as the NW corner
4 of the Grindstone Indian Rancheria, being that property described
5 in the deed filed April 30, 1909." Id.

6 The parties advance two contrasting interpretations of what
7 the BLM Survey says regarding who owns the disputed strip of
8 land. Plaintiffs' position is that the survey adopted the Knock
9 monument not only to the northwest corner of the 80-acre parcel,
10 but also for the southwest corner of Parcel 2. DF ¶ 7.
11 Conversely, Defendants maintain the BLM survey did not displace
12 the Pride survey with respect to Parcel 2's boundaries;
13 therefore, the Pride monument functions as the southwest corner
14 of Parcel 2. Id.

16 II. OPINION

17 A. Legal Standard

18 A Court must grant a party's motion for summary judgment
19 "if the movant shows that there is no genuine dispute as to any
20 material fact and the movant is entitled to judgment as a matter
21 of law." Fed. R. Civ. Proc. 56(a). The movant bears the
22 initial burden of "informing the district court of the basis for
23 its motion, and identifying [the documents] which it believes
24 demonstrate the absence of a genuine issue of a material fact."
25 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). A fact is
26 material if it "might affect the outcome of the suit under the
27 governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
28 248 (1986). Once the movant makes this initial showing, the

1 burden rests upon the nonmoving party to "set forth specific
2 facts showing that there is a genuine issue for trial." Id. An
3 issue of fact is genuine if "the evidence is such that a
4 reasonable jury could return a verdict for the nonmoving party."
5 Id.

6 B. Evidentiary Objections

7 Defendants raised evidentiary objections to ¶¶ 7-8 in
8 Plaintiffs' statement of undisputed facts. RSUF ¶¶ 7-8. They
9 argue that these two "undisputed facts" misstate the evidence
10 cited. The court agrees. Defendants also objected to portions
11 of Hoagland's Declaration (¶ 3 and Exh. C), ECF No. 29-3, as well
12 as portions of Kirk's Declaration (¶¶ 6, 14-15), ECF No. 29-5.
13 Objections, ECF No. 32-4. Plaintiffs responded. Response, ECF
14 No. 35-1.

15 1. Objection 1

16 Paragraph 3 of Hoagland's declaration states, "I have
17 reviewed and authenticated as true and correct copies all
18 exhibits attached hereto." Accompanying Exhibit C contains
19 arrows pointing to the disputed strip of land alongside a caption
20 that says, "Unwritten rights and or use may exist for Parcel 2 of
21 Book 5 P.M. 43." Defendants argue this caption is impermissibly
22 speculative. Objection at 2-3. (citing Fed. R. Civ. Proc. 56(e);
23 Thornhill Publ'g Co., Inc. v. GTE Corp., 594 F.2d 730, 738 (9th
24 Cir. 1979)). The authority Defendants cite does not support
25 their objection. Both Rule 56(e) and Thornhill, 594 F.2d at 738
26 discuss the sufficiency of evidence adduced by non-moving parties
27 to defeat a motion for summary judgment, rather than the evidence
28 brought by a moving party to satisfy his initial burden.

1 Furthermore, Hoagland's sworn affidavit contends his survey was
2 based on "experience as a Professional Land Surveyor with the
3 State of California and as an employee of Compass Consulting
4 Incorporated." Hoagland Decl. ¶¶ 4-7; Response at 2-3.
5 Defendants' objection is OVERRULED.

6 2. Objection 2

7 Paragraph 6 of Kirk's Declaration says, "However, for
8 decades prior to 1994, the Grindstone Indians used portions of
9 Parcel 2 for ingress and egress to the Rancheria. This use was
10 open and obvious." Defendants object, arguing the statements
11 are conclusory, lack foundation, and are vague and ambiguous.
12 Objection at 3. The Court agrees that the statements lack
13 foundation. Contrary to what Plaintiffs argue, Kirk's role as
14 the Tribe's Chairman does not necessarily afford him personal
15 knowledge of what Parcel 2 was used for or for how long. See
16 Response at 3. Defendants' objection is SUSTAINED.

17 3. Objection 3

18 Paragraph 14 of Kirk's Declaration says, "The BLM Survey
19 determined that in 1976, Surveyor George Pride had moved a marker
20 that had been in existence for more than eighty years by the
21 original surveyor T.S. Knock in 1983." Defendants object,
22 arguing the statement is conclusory, hearsay lacking foundation,
23 and misstates the evidence. Objection at 4. The Court agrees
24 that this statement misstates the evidence, and is not, as
25 Plaintiffs argue, "an accurate paraphrase of the BLM Field
26 Notes." See Response at 4. Defendants' objection is SUSTAINED.

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1 4. Objection 4

2 Paragraph 15 of Kirk's Declaration says, "The 2011 BLM
3 survey re-established the original Knock boundary line,
4 Overruling [sic] Pride's boundary line, and providing the
5 disputed land along the border between Parcel 2 and the Olliff
6 Parcel to the Grindstone Rancheria." Defendants contend this
7 statement is conclusory, hearsay lacking foundation, and
8 misstates the evidence. Objection at 5. The Court agrees that
9 the statement misstates the evidence. Kirk's interpretation of
10 the BLM Survey and accompanying field notes go beyond what the
11 BLM expressly concluded. Defendants' objection is SUSTAINED.

12 C. Analysis

13 The Declaratory Judgment Act allows a district court to
14 "declare the rights and other legal relations of any interest
15 party seeking such declaration." 28 U.S.C. § 2201(a). Here,
16 Plaintiffs request a declaration from the Court affirming that
17 the Bureau of Land Management's 2011 Cadastral Survey
18 conclusively established Grindstone Rancheria's ownership of the
19 disputed strip of land. The Court denies Plaintiffs' motion
20 because the question of whether the BLM Survey included the
21 disputed strip of land in Parcel 2 is a genuine issue of material
22 fact.

23 Plaintiffs correctly maintain that federal law grants the
24 BLM authority perform cadastral surveys of public lands. See
25 Mot. at 13-14. These surveys, they argue, are dispositive in
26 establishing the boundaries of public land. Mot. 12-15. And
27 because Defendants failed to timely protest the BLM Survey in
28 2011, they are barred from doing so now. Mot. at 16-18.

1 Defendants, however, neither refute BLM's authority to prescribe
2 the metes and bounds of public land nor the conclusiveness of the
3 2011 survey. Rather, they contend the BLM Survey, on its face,
4 does not include the disputed strip of land as part of Parcel 2.
5 Opp'n at 7.

6 Defendants concede that the BLM Survey is dispositive in
7 prescribing the boundaries of Parcel 2. Opp'n at 3-4. They also
8 accept that the Knock monument functions as the northwest corner
9 of the 80-acre Parcel. Opp'n at 3. But they reject Plaintiffs'
10 contention that the BLM Survey also set the Knock monument as the
11 southwest corner of Parcel 2. Opp'n at 4-5, 7. The exhibits to
12 Defendants' brief support their opposition. See Exh. A-C to
13 White Decl., ECF No. 32-1. Relying on these exhibits, a
14 reasonable juror could interpret Parcel 2 and the 80-acre Parcel
15 as having two different corners. See id. The Pride Survey, the
16 BLM Survey, and the White Survey all show an unaccounted-for gap
17 between the line that appears to be the western border of Parcel
18 2 and the line that appears to be the eastern border of the
19 Olliffs' property. See id.

20 Plaintiffs' opening brief does not identify anything in the
21 BLM Survey or otherwise that accounts for this gap or clearly
22 states that Parcel 2's western border extends as far as the 80-
23 acre Parcel's western border. In fact, one of their exhibits
24 counsels the Court against accepting Plaintiffs' interpretation
25 of the BLM Survey. Exhibit B to Duran's declaration is the BLM's
26 response to Defendants' informal objections to the 2011 survey.

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1 The letter states:

2 With acceptance of Knock's center south 1/16 corner,
3 the monuments set during the 1976 survey by Pride to
4 mark the corners of Parcel 2, were accepted during our
5 resurvey as marking the corner of said parcel, but not
6 as points on the north and south centerline of the
7 section.

8 Exh. B. to Duran Decl. at 1. This statement is wholly consistent
9 with Defendants' argument that the Knock monument marks the
10 northwest corner of the 80-acre Parcel and the Pride monument
11 marks the southwest corner of Parcel 2. See Opp'n at 3-5, 7. It
12 also reinforces Defendants' position that they are not attempting
13 to challenge the BLM Survey; in this respect, they agree with it.

14 Plaintiffs' reply does not meaningfully respond to
15 Defendants' argument that disputed issues of fact preclude
16 summary adjudication. Reply ISO Mot. for Summ. Adjudication
17 ("Reply"), ECF No. 35. Instead, they double-down on their theory
18 that Defendants failed to timely exhaust their administrative
19 remedies and are now using a "backdoor approach" to "completely
20 contradict and challenge the BLM Survey." Reply at 2-5.

21 Despite these accusations, Plaintiffs are the only ones who seek
22 to muddle the distinction between interpreting the BLM's survey
23 and challenging the validity of that survey. See Reply at 3-4.

24 Citing the APA, 5 U.S.C. § 704, Plaintiffs argue the Court is
25 without authority to interpret the BLM Survey. Reply at 3-4.

26 This argument misses the mark. The APA allows courts to review
27 the accuracy of an administrative decision under certain
28 circumstances. 5 U.S.C. § 702. It does not curtail the Court's
ability to discern how an agency's decision applies to a set of
facts. As explained above, Defendants do not challenge the

1 accuracy of the BLM Survey; they challenge Plaintiffs' reading of
2 it.

3 Anticipating their exhaustion argument might fail,
4 Plaintiffs contend they are entitled to summary adjudication
5 because neither adverse possession nor prescriptive easements are
6 permitted on Indian land. Mot. 17-18. Both of these arguments
7 fail, as they assume what has not yet been proven: that
8 Grindstone Rancheria ever owned the disputed strip of land.

9 Finally, Plaintiffs insist the Court should grant their
10 motion for summary adjudication even if they failed to prove
11 their ownership interest in the disputed strip. Mot. at 15-16;
12 Reply at 4-5. They argue 25 U.S.C. § 194 places the burden of
13 proving ownership on non-Indians—here, the Olliffs—when there's a
14 property dispute between Indians and non-Indians. Id. Not
15 quite. Section 194 does not place the burden of proving
16 ownership on non-Indians until "the Indian [has made] out a
17 presumption of title in himself from the fact of previous
18 possession or ownership." The parties dispute both who
19 previously owned the land and who previously possessed it. See
20 DF ¶¶ 8, 13-15. Given this dispute, Plaintiffs cannot show, as a
21 matter of law, that they are entitled to Section 194's
22 presumption. Accordingly, Defendants were not obliged to prove
23 their ownership of the disputed strip of land to defeat
24 Plaintiffs' motion.

25 Questions of "where the line run by a survey lies on the
26 ground, and whether any particular tract is on one side or the
27 other of that line, are questions of fact." United States v.
28 State Inv. Co., 264 U.S. 206, 211 (1924), see also U.S. v.

1 Pappas, 814 F.2d 1342, 1343 n.2 (9th Cir. 1987). These issues of
2 fact are material and preclude the Court from granting summary
3 adjudication on Plaintiffs' declaratory judgment claim.

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III. ORDER

For the reasons set forth above, the Court DENIES Plaintiffs' motion for summary adjudication on their declaratory judgment claim.

IT IS SO ORDERED.

Dated: August 13, 2019


JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE