

EXHIBIT D

1 DAVID J. RAPPORT
LESTER J. MARSTON
2 CALIFORNIA INDIAN LEGAL SERVICES
200 West Henry Street
3 Post Office Box 488
Ukiah, California 95482
4 Telephone: (707) 462-3825

5 Attorneys for Plaintiffs
6
7
8
9

FILED
Nov 17 11 32 AM '03
WILLIAM L. WHITTAKER
CLERK
U.S. DISTRICT COURT
NO. DIST. 10-CA
W

96

10
11
12
13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15

16
17 TILLIE HARDWICK, et al.,) No. C-79-1710-SW
18)
Plaintiffs,) CERTIFICATE OF COUNSEL
19 v.) RE: HEARING ON APPROVAL
20 UNITED STATES OF AMERICA, et al.,) OF SETTLEMENT OF CLASS
21) ACTIONS
Defendants.)

22
23 David Rapport, attorney of record for plaintiffs
24 herein, hereby certifies as follows:

25 I am an attorney in the employ of California Indian
26 Legal Services (C.I.L.S.), a California non-profit corporation
27 receiving a grant from the Legal Services Corporation for
28 provision of legal services to indigent California Indians. One

1 of the principal activities of C.I.L.S., since its establishment
2 in 1968 has been representing Indian victims of the disastrous
3 federal policy of "termination" embodied in the California
4 Rancheria Act of 1958, 72 Stat. 390, in vindicating their rights.
5 When this action was filed in 1979, C.I.L.S. already was
6 litigating or had litigated (in 15 different lawsuits) the
7 validity of the implementation of the California Rancheria Act at
8 nine specific Rancherias. Among those cases have been Kelly v.
9 U.S. Dep't. of the Interior, 339 F. Supp. 1095 (E.D. Calif.,
10 1976); Duncan v. Andrus, 517 F. Supp. 1 (N.D. Calif., 1977);
11 Smith v. U.S.A., 515 F. Supp. 56 (N.D. Calif., 1978); Duncan v.
12 U.S.A. (Duncan I), 597 F.ed 1337 (Ct. Cl., 1979), vacated and
13 remanded sub nomine U.S.A. v. Duncan, 446 U.S. 903 (1980); Duncan
14 v. U.S.A. (Duncan II), 667 F.2d 36 (Ct. Cl., 1981), cert.
15 pending; Taylor v. Hearne, 637 F.2d 689, (9th Cir., 1981), cert.
16 den., 454 U.S. 851; Upper Lake Pomo Ass'n. v. Watt, No. C-75-0181
17 SW (N.D. Calif.; Partial Summary Judgment entered in May, 1979);
18 Table Bluff Band v. Watt, 532 F. Supp. 255 (N.D. Calif., 1981),
19 appeal on damages pending.

20 At present, C.I.L.S. is litigating the damage claims of
21 the people of the Robinson Rancheria in the Court of Claims
22 (Duncan v. U.S.A., supra), and similar claims of the people of
23 the Upper Lake and Table Bluff Rancherias before, respectively,
24 the Northern District of California and the Ninth Circuit Court
25 of Appeal.

26 The basic legal issues in these cases are (1) the
27 nature and extent of the obligations of the United States and the
28 rights of plaintiffs as Rancheria Indians under the trust

1 relationship which exists between the United States and
2 plaintiffs under the Rancheria Act and under the respective
3 Rancheria distribution plans, and (2) the nature and scope of the
4 relief to which plaintiffs would be entitled upon a showing that
5 federal defendants breached those obligations in implementing the
6 Rancheria Act at the rancherias represented in this action.

7 The essence of plaintiffs' legal claims is as follows:

8 1) both the trust relationship and the Rancheria Act
9 imposed upon the United States the legal obligation to provide
10 the Indians of the Rancherias subject to the Act with:

11 (a) sufficient accurate information upon which to
12 base an informed decision about whether or not to accept
13 termination under the Rancheria Act; and

14 (b) through, among other things, the promulgation
15 of regulations imposing standards on the provision of
16 improvements under the Rancheria Act that assured that all
17 improvements would meet applicable state and county legal
18 requirements, to ensure that the distribution plans prepared
19 under the Act -- as promulgated, approved and implemented --
20 fairly and adequately provided for the reasonable needs of the
21 people of the Rancherias for water and sanitation facilities and
22 other improvements, benefits and services necessary to enable
23 them successfully to assimilate into the surrounding non-Indian
24 community;

25 2) the distribution plans constituted binding contracts
26 under which the United States bound itself to provide adequate
27 water, sanitation and other improvements, benefits and services
28 to the people of the Rancherias in exchange for the termination

1 of plaintiffs' special Indian status under the trust relationship
2 between plaintiffs and the United States, and the termination of
3 the trust and Indian country status of the lands of the
4 Rancherias;

5 3) federal defendants' breach of fiduciary, statutory
6 and/or contractual obligations would entitle plaintiffs to relief
7 which would include restoration of their Tribal and personal
8 status as Indians, restoration of the Indian country status of
9 the rancherias, the right to restore Rancheria lands to federal
10 trust status for the benefit of persons or entities designated by
11 plaintiff landowners, the right to participate in federal
12 benefits, services and programs provided especially to Indians,
13 and money damages for losses proximately caused by the premature,
14 unauthorized or otherwise unlawful implementation of the
15 Rancheria Act.

16 Plaintiffs' basic factual contentions are that federal
17 defendants did not provide plaintiffs with sufficient accurate
18 information upon which to base informed decisions about whether
19 or not to accept termination; that by failing to adopt proper
20 standards and otherwise, federal defendants failed to ensure that
21 the distribution plans -- either as approved or as implemented --
22 for the Rancherias represented herein adequately provided for the
23 reasonable needs of all of the Rancherias' people; and thus that
24 the distributions of Rancheria assets and the concomitant
25 termination of plaintiffs' Indians rights and status were not
26 validly effected pursuant to, as authorized by, in accordance
27 with or under the provisions of the Rancheria Act.

28 Because proceedings were deferred pending the outcome

1 of settlement negotiations, plaintiffs have not moved for summary
2 judgment and defendants have not yet responded to any such
3 motion. However, based upon defendants' answers in this case and
4 the positions taken by federal defendants in other untermination
5 cases, plaintiffs anticipate that were these cases to proceed
6 further, defendants' legal contentions probably would be that
7 except as provided in the Rancheria Act, plaintiffs lacked vested
8 or other interests in Rancheria lands; that there has been no
9 government-to-government relationship between plaintiff Bands and
10 the United States; that the general trust relationship between
11 the United States and Indians did not impose any specific
12 obligations upon federal defendants in implementing the Rancheria
13 Act; that the Rancheria Act vested the federal agencies involved
14 with broad discretion in promulgating, approving and implementing
15 distribution plans thereunder; that distribution plans were and
16 are not binding contracts; that while a distribution of Rancheria
17 assets which is not preceded by provision of adequate services
18 under §3 of the Rancheria Act does not terminate the Indian
19 status of distributees and dependents, any declaratory and/or
20 equitable relief for violation of federal trust or statutory
21 obligations in the course of implementing the Rancheria Act should
22 be limited to restoring plaintiffs to their former status as
23 Indians and enabling Indian landowners to elect to return their
24 lands to exactly the same status as existed prior to approval of
25 the distribution plan -- i.e., ownership by the United States
26 without specification of a trust beneficiary; and that money
27 damages are not recoverable against the United States for any
28 losses which plaintiffs may have suffered by reason of the

1 premature or otherwise unlawful implementation of the Rancheria
2 Act, because the United States neither has waived its immunity to
3 suit nor has any federal statute or regulation created a cause of
4 action for money damages cognizable under the Tucker Act, 28
5 U.S.C. §1346(b).

6 Plaintiffs anticipate that defendants' factual
7 contentions would be that the United States provided Rancherias
8 with sufficient accurate information upon which to base their
9 respective decisions to accept termination; that the distribution
10 plans adequately provided for the needs of the people of the
11 Rancherias; that the facilities, benefits and services actually
12 provided to the Rancherias by the United States adequately met
13 the reasonable needs of the recipients; and that plaintiffs
14 sustained no compensable losses by reason of the distribution of
15 Rancheria assets.

16 Prior to filing motions for partial summary judgment,
17 plaintiffs in both cases conducted extensive discovery by means
18 of written interrogatories and deposition. Through this
19 discovery, plaintiffs have been able to document fairly detailed
20 histories of the Rancherias and their respective relationships
21 with defendants up until the present. Based on this material,
22 plaintiffs have prepared a memorandum in support of partial
23 summary judgment on all issues except defendants' liability for
24 money damages and various letters to the federal defendants.

25 Based upon this evidence, it is the opinion of the
26 undersigned that the principal material factual assertions made
27 in support of plaintiffs' motions for partial summary judgment
28 are not likely to be subject to genuine dispute, and that these

1 facts, considered in light of the legal principles established in
2 the unappealed final judgments in Knight v. Kleppe, supra, Duncan
3 v. Andrus, supra, Daniels v. Andrus, supra, Smith v. U.S.A.,
4 supra, and Table Bluff Band v. Watt, supra, clearly entitle
5 plaintiffs to the relief which they seek herein. However, it
6 also is the opinion of the undersigned that full and vigorous
7 dispute of plaintiffs' legal contentions and factual claims could
8 put at risk some of the most significant relief plaintiffs seek,
9 and would certainly and substantially delay the receipt of any
10 relief to which plaintiffs ultimately are held to be entitled.
11 Substantial delays in entry of judgments awarding plaintiffs
12 equitable relief could render the actual receipt of such relief
13 uncertain, because of the possibility of federal budget cuts and
14 policy changes.

15 Recognizing that a prompt settlement would be mutually
16 beneficial, the parties have pursued lengthy settlement
17 negotiations. After extensive, painstaking negotiations and
18 consultations with their respective clients, counsel for the
19 parties agreed upon the stipulations for entry of judgment which
20 were filed on July 23, 1983, and which is before the court for
21 approval.

22 Under the settlement plaintiffs and the "class members"
23 represented by them from seventeen (17) of the thirty-four (34)
24 rancheris represented herein would receive the following relief:

25 1) Their status as Indians under the laws of the
26 United States is confirmed;

27 2) Each Rancheria is to be listed in the Federal

28 ///

1 Register as an Indian Tribal entity pursuant to 25 C.F.R. Part
2 83.6(b);

3 3) Any plaintiff(s) or the Indian successor(s) thereof
4 who received fee title to an interest in a former trust allotment
5 by reason of the distribution of Rancheria assets will be
6 entitled to return said interest to trust status for the benefit
7 of such Indian person(s) as the grantor may specify;

8 4) Within two years from the date judgment is entered,
9 each plaintiff Band is entitled to convey its community-owned
10 lands to the United States to be held in trust for the benefit of
11 the Band or the Indians of the Rancheria, as the Band may
12 specify;

13 5) Any plaintiff(s) or Indian heir(s), devisee(s) or
14 successor(s) in interest thereof owning land within his/her/their
15 Rancheria may elect to convey said land back to the United States
16 to be held in trust for the Indian class member(s) or entity
17 specified by the grantor(s);

18 6) The Secretary of the Interior shall facilitate the
19 return of lands to trust status by providing reasonably necessary
20 survey, title and recording assistance;

21 7) The distribution plans for both Rancherias would be
22 of no further force and effect, and notice thereof would be
23 published in the Federal Register; however, there would be no
24 effect on vested rights created or conveyances authorized or
25 effected thereunder, or on the rights of subsequent bona fide
26 purchasers for value.

27 ///

28 ///

1 Class members from twelve (12) ¹/₁₇ of the remaining
2 seventeen rancherias represented in this action would be
3 dismissed from this action without prejudice to their right to
4 refile another action or other actions on their behalf. No class
5 member from these rancherias currently owns real property within
6 the original rancheria boundaries. The property was either sold
7 to non-Indians when the rancheria was terminated and the proceeds
8 of these sales distributed to rancheria members in lieu of deeds
9 to individual parcels of property or all of the property
10 originally distributed was subsequently sold to non-Indians.

11 In either case the federal defendants are unwilling to
12 re-assume responsibility for any of these rancherias without a
13 final judicial determination of their obligation to do so.
14 Plaintiffs attorneys do not concede that the sale of rancheria
15 property precludes distributees from obtaining judicial relief
16 for wrongful termination (in some cases these class members may
17 have the most significant damages claims). However, plaintiffs
18 believe that these rancherias do present unique considerations
19 and that it does not make sense to delay relief for those
20 rancherias upon which class members still reside, while the
21 parties litigate these other issues. Accordingly, plaintiffs
22 attorneys believe that it serves the interests of the entire
23 class to sever these claims from those of the seventeen

24
25 _____
26 1. Alexander Valley would have been the thirteenth rancheria in
27 this category but by oversight was omitted from the stipulation
28 for entry of judgment and notice of settlement to the class. The
parties propose to file an supplemental stipulation after the
Court approves the current one and to obtain approval after
notice to class members from Alexander Valley.

1 rancherias and to dismiss those claims from this action without
2 prejudice.

3 The other four (4) rancherias (Scotts Valley,
4 Guideville, Graton and Auburn) were the subject of prior law
5 suits. Plaintiffs attorneys were attorneys of record in these
6 prior actions and the undersigned reviewed the stipulations and
7 judgments in each of these cases prior to signing the stipulation
8 for entry of judgment in this case. I am satisfied that those
9 distributees from these rancherias who were parties to these
10 prior actions and received benefits under judgments in these
11 prior actions are precluded from further litigating the validity
12 of the government's actions in terminating their rancherias under
13 the California Rancheria Act. Some class members who were not
14 parties to prior actions from Scotts Valley, Guideville and
15 Graton rancherias will have the right under the proposed
16 settlement in this action to file a new law suit, since their
17 claims are dismissed without prejudice on the same terms as are
18 the class members from the other twelve (12) rancherias. The
19 action involving Auburn Rancheria was brought and settled as a
20 class action and for that reason binds all distributees from that
21 rancheria.

22 As to the seventeen (17) rancheria, in exchange for the
23 prompt and certain granting of this equitable and declaratory
24 relief without the risks, delays and ordinary uncertainties of
25 litigation and possible appeals, plaintiffs' claims for money
26 damages in these cases would be dismissed with prejudice and
27 further actions arising out of the purported termination of the
28 Rancherias would be foreclosed.

1 Having litigated to conclusion other major
2 untermination cases, being presently involved in the litigation
3 and/or appeal of the liability and damage aspects of such cases
4 in the Court of Claims, the Court of Appeals and the district
5 court, and having weighed the benefits of the proposed settlement
6 against the potential risks and delays inherent in litigating
7 this case to its conclusion, it is the opinion of the undersigned
8 that approval of the settlement would be in the best interests of
9 both the named plaintiffs and the class of persons represented by
10 them. This opinion is based upon the following considerations:

11 1. Likelihood of Recovery and Adequacy of Settlement

12 Although it is a virtually certainty that plaintiffs
13 would receive at least some equitable relief (if only because
14 defendants agree that provision of adequate water and sanitation
15 facilities under §3 of the Rancheria Act is a condition precedent
16 to lawful termination, and the Bureau of Indian Affairs and
17 I.H.S. both have identified numerous rancherias receiving
18 benefits under this settlement as among those at which §3 water
19 and sanitation facilities were not adequately completed prior to
20 distribution of Rancheria assets, see letter from Locke, dated
21 Feb. 1, 1982, and letter from Rapport, dated March 3, 1983
22 (copies of which are attached hereto as Exhibit "A"), the nature
23 and extent of the relief to which plaintiffs would be entitled is
24 likely to be the subject of considerable dispute. Based upon
25 experience in other similar cases, the undersigned anticipates
26 that defendants would be most likely to litigate to the fullest
27 extent the nature of the status quo ante, and thus plaintiffs'
28 right to have community lands returned to trust for the benefit

1 of specified Tribal entities, to have individual lands returned
2 to trust status for named individual beneficiaries, and to
3 receive B.I.A. assistance in returning lands to trust.

4 The undersigned believes that at least some plaintiffs
5 and unnamed class members have sustained money damages as the
6 direct result of wrongful termination, that such damages are
7 susceptible to proof and that the United States should be held
8 liable for such damages. However, individual class members with
9 significant damage claims will have the right to exclude
10 themselves from the settlement by giving notice to the Court.
11 Plaintiffs' attorneys believe this protects the rights of those
12 class members, while benefitting those others who believe that an
13 immediate settlement outweighs uncertain, future damage awards.
14 In addition to legal uncertainties, regarding liability (e.g.,
15 whether a particular rancheria was illegally terminated) some
16 plaintiffs' claims for money damages could be subject to problems
17 of proof and the passage of time.

18 In the opinion of the undersigned, the potential long-
19 term value of the equitable relief to be granted to the Bands,
20 individual plaintiffs and class members under the settlement
21 stipulations in all probability will far exceed the money damages
22 which might be recovered in these actions were they not to be
23 settled, particularly where those who feel they have significant
24 damages claims have the option not to participate in this
25 settlement.

26 2. Avoidance of Future Litigation and Other Problems

27 Unless this case is settled, trials may be necessary,
28 and appeals almost certainly would follow, thus delaying receipt

1 of any meaningful relief for at least one, and possibly as many
2 as three years. During that time, it is likely that some elderly
3 plaintiffs and class members will pass away, and thus be denied
4 the benefit of any relief eventually awarded. Additional delays
5 will increase the tax liability of Indian landowners and the risk
6 that lands may be lost. The transfer of interests in property by
7 conveyance or inheritance also will be more complicated and
8 costly. Also, during that time, plaintiffs
9 not only would be denied access to many of the federal Indian
10 services they desperately need, but also would run the risk that
11 changes in federal policies might eliminate some of the services
12 and benefits plaintiffs otherwise might have received.

13 In summary, the proposed settlement would immediately
14 grant plaintiffs substantially all of the equitable relief they
15 seek in their lawsuits, in exchange for dismissal with prejudice
16 of damage claims which are subject to legal uncertainties and
17 problems of proof, and may be of substantially less value over
18 time than the equitable relief provided. Moreover, there can be
19 no assurance that changes in federal Indian policy while this
20 case is being litigated will not render equitable relief awarded
21 several years from now much less valuable than that relief would
22 be today.

23 ///

24 ///

25 ///

26 ///

27 ///

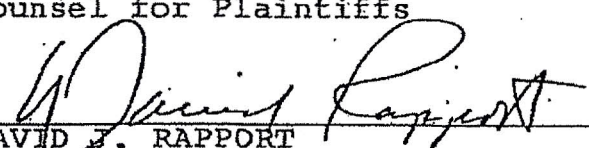
28 ///

1 For all of these reasons, it is the opinion of the
2 undersigned that the settlement set forth in the Stipulation for
3 Entry of Judgment is fair, adequate and reasonable, and thus
4 should be approved by the court.

5 DATED: 11/16/83

Respectfully submitted,

6 DAVID J. RAPPORT
7 LESTER J. MARSTON
8 CALIFORNIA INDIAN LEGAL SERVICES
9 Counsel for Plaintiffs

10 By: 
11 DAVID J. RAPPORT



U.S. Department of Justice
United States Attorney
Northern District of California

Refer to:

Land and Natural
Resources Division
#2073

16th Floor Federal Building- Box 36055
450 Golden Gate Avenue
San Francisco, California 94102

Branch Office:
675 N. First Street, Suite 508
San Jose, California 95112

February 1, 1982

Mr. David J. Rapport, Esq.
CALIFORNIA INDIAN LEGAL SERVICES
200 West Henry Street
P. O. Box 488
Ukiah, California 95482

Dear Mr. Rapport:

Re: Tillie Hardwick, et al. v. U. S., et al.
Civil No. C-79-1710 SW (N. D. Calif.)

Pursuant to our conversations and meeting of January 18, 1982, the Government is willing to discuss settlement of the following rancherias:

Chicken Ranch ^{IRA-TRA}	Potter Valley - ^{IRA}
Cloverdale ^{IRA}	Redwood Valley - ^{IRA}
Greenville ?	Rohnerville ?
Mooretown ?	Smith River - ^{IRA-TRA}
Picayune - ^{IRA-TRA}	

We also invite your arguments in support of any additional rancherias that you believe should be included in settlement discussions with those listed above.

In addition, there are several other rancherias listed in the Complaint which are the subject of litigation in other proceedings. We believe that disposition of this classification of rancherias should also be discussed in our settlement conference.

Very truly yours,

JOSEPH P. RUSSONIELLO
United States Attorney

By:

Paul E. Locke
PAUL E. LOCKE
Assistant United States Attorney

PEL:nam

cc: William M. Wirtz, Assistant Regional Solicitor, Department of the Interior, Sacramento, CA
Duke McCloud, Attorney, Department of Health & Human Services, Rockville, MD

EXHIBIT "A"