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MESA GRANDE BAND OF MISSION INDIANS
7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 MESA GRANDE BAND OF MISSION
INDIANS,
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Plaintiff,
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v.
14
KENNETH L. SALAZAR, Secretary of the
15 United States Department of the Interior, and
DOES 1-100,
16
Defendant.
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Case No. 08-CV 1544 LAB NLS
**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

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19
20 **INTRODUCTION**

21 1. Plaintiff the Mesa Grande Band of Mission Indians (“Mesa Grande”) brings this
22 action for administrative writ of mandate, declaratory relief and injunctive relief against
23 Defendants to set aside patents for certain Indian lands within the Santa Ysabel Reservation in
24 Southern California and to issue new patents that reflects the historic use and possession of such
25 lands by Mesa Grande.

26 2. Mesa Grande has no adequate administrative remedies. Mesa Grande has
27 repeatedly requested that Defendants comply with their obligations and redress the breaches of
28 trust herein complained of, without success. Mesa Grande has exhausted all avenues of redress

1 other than this action, and only this Court can provide Mesa Grande the relief to which it is
2 entitled.

3 **PARTIES**

4 3. Mesa Grande is a federally recognized American Indian Tribe in southern
5 California. The Mesa Grande Reservation is located near the town of Santa Ysabel, California in
6 the hills above the Cleveland National Forest.

7 4. Defendants are the officers empowered by Congress to administer affairs related to
8 land patents held in trust for American Indian Tribes. Defendants are charged with the proper
9 discharge the United States' duty to hold in trust 55.7 million acres of land for American Indians,
10 Indian tribes, and Alaska Natives.

11 5. Defendant Salazar is Secretary of the Interior and chief officer of the Department
12 of the Interior, and as such is charged by law with carrying out the duties and responsibilities of
13 the United States as trustee for Mesa Grande.

14 6. Defendant named herein as DOE 1 is the Assistant Secretary of the Interior–Indian
15 Affairs and head of the Bureau of Indian Affairs (“BIA”) within the Department of the Interior.
16 As such, the Assistant Secretary is the delegate of Defendant Salazar for carrying out certain of
17 his responsibilities with respect to the trust duties for Mesa Grande. Mesa Grande sued DOE 1
18 under a fictitious name because the true name is not known to Mesa Grande at this time. Mesa
19 Grande will amend this Complaint to insert the true names and capacities when ascertained.

20 7. Defendants named herein as DOES 2 to 100, and each of them, are sued under
21 fictitious names because their true names and capacities are not known to Mesa Grande at this
22 time. Mesa Grande will amend this Complaint to insert their true names and capacities when
23 ascertained. Mesa Grande is informed and believes and thereon alleges that each of the
24 fictitiously named Defendants is responsible in some manner for the occurrences herein alleged,
25 and that Mesa Grande’s injuries as herein alleged were proximately caused by such Defendants.

26 **JURISDICTION AND VENUE**

27 8. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 (federal question) and
28 28 U.S.C. § 1346 (federal defendant). Jurisdiction is further proper under 28 U.S.C. § 1361, in

1 that this action is an action of mandamus to compel an officer or employee of the United States to
2 perform a duty owed to Mesa Grande.

3 9. The Court also has jurisdiction under 28 U.S.C. § 1362, which vests district courts
4 with “original jurisdiction of all civil actions, brought by any Indian tribe or band with a
5 governing body duly recognized by the Secretary of the Interior, wherein the matter in
6 controversy arises under the Constitution, laws, or treaties of the United States.” There is a
7 present, actual, and justiciable controversy between the parties; the requested relief is, therefore,
8 proper under 28 U.S.C. § 2201 (declaratory relief) and § 2202 (injunctive relief).

9 10. Venue is proper under 28 U.S.C. § 1391(e), in that the relevant events occurred
10 and are occurring in this district.

11 **FACTUAL AND LEGAL BACKGROUND**

12 11. On December 27, 1875, President Ulysses S. Grant issued an executive order to set
13 aside approximately 15,000 acres for the Mission Indians known as “Santa Ysabel—including
14 Mesa Grande.” This was followed by another executive order in 1883, which set aside a 120-acre
15 tract for the “Mesa Grande Indian Reservation.”

16 12. On January 12, 1891, Congress enacted a statute, entitled “An act for the relief of
17 the Mission Indians in the State of California,” that established a three-person commission to
18 select “a reservation for each band or village of the Mission Indians residing within said State,
19 which reservation shall include, as far as practicable, the lands and villages which have been in
20 the actual occupation and possession of said Indians.” The selection of each reservation would be
21 valid when approved by the President and the Secretary of the Interior. 26 Stat. 712, § 2.

22 13. Based on the 1891 act, the Smiley Commission was charged with determining
23 where the Mission Indian Bands were living. The resulting report was approved by President
24 Benjamin Harrison by executive order dated January 29, 1891, and authorized patents for more
25 than 15,000 acres (known as Tracts One, Two, and Three) to the Santa Ysabel Band, “including
26 the Mesa Grande,” and for 120 acres solely for Mesa Grande. The patents were issued on
27 February 10, 1893.

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1 14. The patents for the Santa Ysabel Band created by the Smiley Commission were a
2 mistake and did not accurately reflect the intentions of the United States to issue patents for
3 Tracts One and Two to Mesa Grande. Indeed, almost from the start, the Smiley Commission's
4 conclusions were called into questions by Mesa Grande and the federal government. In
5 correspondence from 1925 to 1971, Defendants acknowledged that the land belonged to Mesa
6 Grande, admitting that the land patents were made erroneously, in that the Tracts One and Two
7 were historically occupied and used by Mesa Grande, not the Santa Ysabel Band. Congress also
8 expressed its understanding that Mesa Grande was the proper patentee for Tracts One and Two by
9 twice granting land to Mesa Grande, in 1926 and 1988, adjacent to the tracts. 44 Stat. 496; 102
10 Stat. 2938. Indeed, in 1926, Congress granted 80 acres to Mesa Grande "for the occupancy and
11 use of the Indian of the Mesa Grande Reservation, known also as Santa Ysabel Reservation
12 Numbered 1." 44 Stat. 496. Mesa Grande has consistently occupied this land and viewed it as
13 Mesa Grande tribal land. Furthermore, all area maps refer to the land as "Mesa Grande" and both
14 the Department of Housing and Urban Development and the Bureau of Indian Affairs have
15 treated the land as if it belongs to Mesa Grande when disbursing funds. Those entities have
16 acknowledged that the land belongs to Mesa Grande in letters to the tribe.

17 15. Despite widespread recognition that Mesa Grande is the rightful beneficial owner
18 and occupant of Tracts One and Two, and in direct contradiction with the past treatment of the
19 property by the federal government, Mesa Grande was informed by the Bureau of Indian Affairs
20 in 1992 that they could not make improvements on Tracts One and Two without the approval of
21 the Santa Ysabel. Even then, this appeared to be a finding without any direct impact or
22 consequence, as Mesa Grande was not prevented from continuing their use and enjoyment of their
23 tribal lands, and the federal government and other entities continued to treat the Mesa Grande as
24 the rightful occupiers of such lands, as they had for decades before. As a result, until recently,
25 Mesa Grande had no reason to believe that Defendants' technical error would result in any
26 tangible impacts or harm to its interests.

27 16. Yet, starting a few years ago, this all changed. Based on the Defendants' failure to
28 remedy the patent error, the Santa Ysabel tribe has recently taken action to physically assert

1 ownership of Mesa Grande's land and deprive Mesa Grande of its use of the property. Thus,
2 Defendant's breach of trust has caused hardship on the Mesa Grande, including but not limited to
3 the following:

- 4 • Santa Ysabel has expressly prohibited Mesa Grande from conducting any projects on
5 Tracts One and Two, including, but not limited to, Housing Improvement Program
6 ("HIP") housing, road maintenance, Housing and Urban Development housing, Indian
7 Health Service water and sewer services, woodcutting of any kind, and any type of
8 economic development.
- 9 • Since 2003, Mesa Grande has been unable to obtain HIP homes for tribal members,
10 including some of the tribal Elders, because Santa Ysabel has been unwilling to agree
11 to appropriate lease terms.
- 12 • Santa Ysabel has repeatedly denied Mesa Grande access to ancestral grounds,
13 including areas where tribal members are buried.
- 14 • Since 2005, Santa Ysabel has been directing additional members to Tracts One and
15 Two for their occupancy, contrary to the interests of Mesa Grande.
- 16 • Mesa Grande members living on Tracts One and Two have been unable to make
17 improvements to their homes or construct fencing for their livestock due to
18 interference by Santa Ysabel.

19 Examples of communications from Santa Ysabel to Mesa Grande tribal members interfering with
20 such rights are attached hereto as **Exhibit A**. Mesa Grande is unable to occupy and possess its
21 lands or to take action to improve its lands, and, thus, has been deprived of the benefits of
22 ownership and quiet enjoyment. Santa Ysabel asserts its rights to this land based on the
23 government's widely acknowledged drafting error.

24 17. Defendants have been aware of the recent impacts of its error on Mesa Grande as
25 detailed in Paragraph 16, but have failed to take any action to remedy its actions. Specifically,
26 Defendants have the power and obligation to reform the patents to remedy their errors and to
27 ensure the proper exercise of their trust duties. Mesa Grande has requested repeatedly, without
28 success, that Defendants to comply with their obligations and redress the breaches of trust herein

1 complained of. Defendants have, thus, failed to exercise their mandatory duties in the manner
2 required by law. As a consequence of these and other acts of mismanagement in breach of trust
3 and errors committed by Defendants, Mesa Grande has been continuously prohibited from full
4 use, possession, control, and enjoyment of its tribal lands, cumulating in efforts beginning in 2003
5 that would physically deprive Mesa Grande of the use of their ancestral home. This harm to
6 Mesa Grande is ongoing and continues to this day.

7 **EXHAUSTION OF REMEDIES**

8 18. Mesa Grande has performed all conditions precedent to the filing of this
9 complaint. In 1976, in an attempt to alleviate the confusion surrounding the proper ownership of
10 Tracts One and Two, Administrative Law Judge (“ALJ”) William E. Hammett held a series of
11 administrative hearings. In his decision, ALJ Hammett held that Mesa Grande had shown by the
12 preponderance of the evidence that the Smiley Commission’s report was erroneous. However,
13 ALJ concluded that reissuance of the patents to Tracts One and Two was beyond the scope of an
14 administrative hearing, but held that a federal court would be the proper forum for such a remedy.
15 Accordingly, Mesa Grande has exhausted its administrative remedies.

16 19. Mesa Grande has no plain, speedy, and adequate remedy in the ordinary course of
17 law, other than the relief sought in this Complaint.

18 **FIRST CAUSE OF ACTION**

19 **(Violation of Administrative Procedure Act – 5 U.S.C. §§ 701-706)**

20 20. Mesa Grande incorporates allegations 1 through 18.

21 21. Defendants have statutory and general trust duties to manage Indian resources and
22 lands for the benefit of Indians. 25 U.S.C. § 348; *United States v. Mitchell*, 463 U.S. 206 (1983).
23 As a result, Defendants have a fiduciary duty to Mesa Grande that the lands held in trust by the
24 United States are properly managed, supervised, and controlled so that the best interests of Mesa
25 Grande are served and the property rights of Mesa Grande are not alienated.

26 22. Defendants have continuously and egregiously failed to comply with these and
27 other responsibilities of a trustee and continue to do so. Such breaches of trust include, without
28 limitation:

1 a. Failure to remedy the mistakes in the patents by reforming the patents,
2 despite express recognition that the patents were erroneous and did not accurately reflect the use
3 and occupancy of Mesa Grande.

4 b. Failure to prevent others from interfering with the rights of Mesa Grande to
5 fully use and occupy its tribal lands, including, but not limited to, the full use and enjoyment of
6 ancestral lands, the procurement of home loans, and the installation of improvements (including
7 to roads, homes, and fences).

8 23. Defendants' actions were not taken in accordance with the law, without
9 observance of the procedures required by the law, and are arbitrary and capricious within the
10 meaning of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706. Defendants'
11 failure to remedy their mistakes in the patents constitutes an ongoing violation of the APA and an
12 evasion of its important non-discretionary duties under the law. *See id.*

13 24. The acts of Defendants constitute final agency action and the unlawful withholding
14 of action. Mesa Grande is entitled to legal review of the Defendant's action under 5 U.S.C.
15 § 702.

16 25. Mesa Grande has suffered legal wrong and is aggrieved and adversely affected
17 thereby. Mesa Grande is entitled to have this Court decide all relevant questions of law
18 concerning Defendants' obligations and responsibilities under the law, and to have this Court
19 issue corresponding declaratory and other equitable relief. Mesa Grande is further entitled to
20 mandatory injunctive relief compelling Defendants to perform their duty and to prevent further
21 interferences with Mesa Grande's rights.

22 **SECOND CAUSE OF ACTION**

23 **(Violation of Common Law Trust Obligations)**

24 26. Mesa Grande incorporates allegations 1 through 24.

25 27. Mesa Grande is composed of members that are in whole or in part of Indian blood
26 or descent.

27 28. The federal government owes Mesa Grande a common law trust obligations to
28 provide Mesa Grande with secure title to its land.

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- (6) For a preliminary and mandatory injunction restraining and enjoining any hindrance or interference with Mesa Grande’s lawful use, possession, and ownership of Tracts One and Two.
- (7) For an award of Mesa Grande’s costs of suit, including, without limitation, attorneys’ fees under the Equal Access to Justice Act and under general principles of law and equity, and the fees and costs of expert assistance.
- (8) For such other and further relief as the Court may deem just and proper.

Dated: March 3, 2009

MORRISON & FOERSTER LLP

By: /s/ Edgar B. Washburn
Edgar B. Washburn

Attorneys for Plaintiff MESA GRANDE
BAND OF MISSION INDIANS