

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
2020 Hurley Way, Suite 150
Sacramento, CA 95825
(916) 978-4326

PROBATE NO:
IP PH 76I 91

NOTICE
TO ALL PERSONS HAVING AN INTEREST IN THE
SUBJECT MATTER OF THIS PROCEEDING

NOTICE IS GIVEN That on APR 14 1993 a decision was entered in the estate of MABEL HODGE DIXIE, a deceased California Indian. A copy is attached to this notice.

This decision becomes final sixty (60) days from the date of this notice unless within such period, a written notice of appeal shall have been filed with the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, IN ACCORDANCE WITH THE PROVISIONS OF 43 CFR 4.320.

The notice of appeal shall give or shall be followed by a concise but complete statement of the grounds upon which the appeal is based.

THIS NOTICE TO PARTIES IN INTEREST HERE NAMED AND TO ALL PARTIES.

Land Titles & Records Section, Sacramento Area Office,
BIA, Federal Office Bldg., 2800 Cottage Way, Sacramento, CA.,
95825
Superintendent, Central California Agency, 1824 Tribute Rd.,
Suite J, Sacramento, CA 95815-4308
Merle Butler, c/o Central California Agency,
Sally N. Willett, Administrative Law Judge, 2901 N. Central Ave.,
Suite 955, Phoenix, AZ 85012
Yakima Dixie, PO Box 41, Sheep Ranch, CA 95252
Violet Girouard, PO Box 41, Sheep Ranch, CA 95252
Merle Butler, c/o Central California Agency, BIA
Melvin Dixie, c/o Violet Girouard, PO Box 41, Sheep Ranch, CA 95252
Melvin Dixie, c/o Central California Agency, BIA

Dated and mailed: APR 14 1993

By: *[Signature]*

William E. Hammett
William E. Hammett
Administrative Law Judge

CVMT-2011-000074



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

2020 Hurley Way, Suite 150

SACRAMENTO, CA 95825



IN THE MATTER OF THE ESTATE OF)	PROBATE IP PH 76I 91
)	(FORMERLY IP SA 7N 72
MABEL HODGE DIXIE)	ORDER DENYING RELIEF
)	REQUESTED IN PETITION TO
DECEASED CALIFORNIA INDIAN)	MODIFY ORDER DATED
)	NOVEMBER 1, 1971

BACKGROUND OF CASE

The land which comprises the Sheep Ranch Rancheria was purchased in 1916 pursuant to a Federal statute which authorized the purchase of land for homeless California Indians. No tribal designation was made in connection with the purchase. Later, such land was designated as the Sheep Ranch Rancheria.

In 1958, the Congress enacted an Act entitled "An Act to provide for the distribution of the land and assets of certain Indian rancherias and reservations in California and for other purposes", which Act was approved August 18, 1958. Such Act was amended by the Act of August 11, 1964, P.L. 88-419, 78 Stat. 390.

Pursuant to such legislation, a plan of distribution of the assets of the Rancheria was developed "after consultation with Mrs. Mabel Hodge Dixie of the Sheep Ranch Rancheria." This plan received final approval of the Assistant Commissioner of Indian Affairs, on October 12, 1966, and the effective date of the plan is October 14, 1966. A copy of the plan as approved is attached to and incorporated in this Order by reference. It is noteworthy that the plan contains the statement "accepted by distributee in referendum by vote of 1 for and 1 against." Correspondence in the case file and received as a part of Exhibit 1 at the hearing, discloses that the Bureau of Indian Affairs considered that Mabel Hodge Dixie was the only person it was necessary to deal with concerning the distribution plan.

Representatives of the Bureau of Indian Affairs have conceded that the Government did not meet the requirement of the Plan of Distribution. Nevertheless, a deed conveying the land comprising the Sheep Ranch Rancheria was prepared and executed by personnel of the Bureau of Indian Affairs and recorded by the Bureau, at Bureau expense, in the land records of Calaveras County, California, on April 26, 1967. A copy of the deed was sent to Mabel Hodge Dixie with a letter dated May 2, 1967. Copies of the deed and letter are attached and incorporated in this order. It is noted that the deed does not contain any language referring to any conditions upon which delivery is prefaced, and the letter does not contain any such language. In fact the letter reflects that the deed transfers title. The mere reference in the deed to the authority under which it is executed does not, in this forum's opinion, incorporate within such instrument any of the responsibilities set forth in the distribution plan.

The evidence elicited at the hearing on May 12, 1992, discloses that the Area Director, Bureau of Indian Affairs, stated in a letter addressed to Ms. Dixie through someone named Hayden Stevens, that "the setting up of the conservator is now in process (sic) and at such time that it is consummated, title will then be passed to you upon receipt of the deed." Also, there is further mention of a conservator in a memorandum from the Area Realty Officer, BIA, to the Area Director, subject "Sheep Ranch Rancheria," which memorandum is dated August 13, 1971. Of particular note is the language "the deed was never delivered to her (Dixie) because the Bureau of Indian Affairs was unable to get a court appointed conservator." Copies of the letter and the memorandum are attached and incorporated in this Order.

Mabel Hodge Dixie executed a quitclaim deed dated September 6, 1967, by which she purportedly reconveyed such land to the United States and such deed was recorded in the land records of Calaveras County, California, at the request of the United States Department of the Interior. A copy of the deed is attached and incorporated in this order by reference. Evidence adduced at the hearing held May 12, 1992, disclosed that the deed was prepared by the Bureau of Indian Affairs; that it was taken to the Sheep Ranch Rancheria and executed by Mabel Hodge Dixie; that her signature was acknowledged by a Bureau employee who was a notary public; and that the deed was recorded in the land records at the Bureau's request and expense.

Mabel Hodge Dixie died July 11, 1971, and the Bureau of Indian Affairs submitted probate data to then Hearing Examiner Alexander Wilson so that he could set the estate for hearing. Included with the probate assembly was an inventory entitled, "Inventory and Appraisal of Indian Trust Land of Mabel Hodge Dixie, Unallotted California Indian, Sacramento Area Office, Sacramento, California," which inventory described the land referred to as the Sheep Ranch Rancheria. The inventory was certified to by the Area Realty Officer.

On November 1, 1971, Examiner Wilson issued an Order Determining Heirs of Mabel Hodge Dixie. The Sheep Ranch Rancheria property was the only trust property which Mabel Hodge Dixie was shown to possess.

In October of 1990, the Superintendent of the Central California Agency, Bureau of Indian Affairs filed a petition to modify the decedent's estate to delete the Sheep Ranch Rancheria property from the inventory. Such petition was filed with

Administrative Law Judge Sally N. Willett who now has probate jurisdiction in the Central California area. After meeting the requirements of 43 CFR 4.242, Judge Willett reopened the estate and set the matter for further hearing on July 30, 1991. There was no appearance at such hearing and she transferred the case to this forum for further action. After due notice, this forum held a hearing on May 12, 1992. Testimony was taken and documents were received in the record as Comprehensive Exhibit No. 1. This forum is entering this decision based on the evidence elicited at such hearing.

An analysis of the record discloses that three concepts of title and possession are evident.

CONCEPTS OF TITLE AND POSSESSION

1. Notwithstanding the Government's contention as to lack of delivery, there was an effective delivery of the deed from the United States of America to Mabel Hodge Dixie, and that the title and possession acquired by the quitclaim deed is questionable considering the circumstances under which the quitclaim deed was acquired and executed.
2. That there was no delivery of the deed to Ms. Dixie and that the quitclaim deed cleared title in the United States of America but that the quitclaim deed could not be utilized to claim that it constituted a rejection of the plan of distribution for the Sheep Ranch Rancheria.
3. That there was no delivery of the deed to Ms. Dixie; that the quitclaim deed assured title in the United States of America; and the quitclaim deed can be used to show that Ms. Dixie rejected the distribution plan. This third concept appears to summarize the Government's position.

As indicated by the evidence, representatives of the Government have presumed over a period of time that the responsibilities of the Government, as set forth in the plan, are conditions precedent to execution and delivery of a deed conveying the land covered by the Sheep Ranch Rancheria to Mabel Hodge Dixie and that since the deed was executed and recorded before the conditions were performed by the Government, the deed did not pass title to Mabel Hodge Dixie.

The letter dated May 2, 1967, discloses that a copy of the deed was sent to Mabel Hodge Dixie, and the record discloses that the Bureau had the deed recorded at its expense in the land records of Calaveras County, California. The deed did not contain any language which imposed conditions precedent to delivery of title, and it did not incorporate any conditions by reference. Mere recitation of authority for execution of the deed could not be construed as incorporation of the Government's responsibilities under the distribution plan within the framework of the deed.

Where an issue is raised as to the nondelivery of a deed, the party raising, and having the affirmative of, that issue has the burden of proving it; and when a presumption of delivery arises, nothing except the most satisfactory evidence of nondelivery can prevail against it, (see cases cited in 23 Am Jur 2d 150 and 172). It has been stated that "the delivery of a deed is completed when the grantor has put it beyond his power to reclaim, and hence placing in a mailbox a deed in a stamped envelope addressed to the grantee operates as a delivery to him," and it has also been stated that "while the fact that a deed is on record is prima facie evidence of delivery, the deposit for recording of a deed by the grantor or his agent and the actual recording thereof do not constitute delivery as a matter of law, for the question remains whether, by so doing, the grantor intended to deliver the deed." (See 23 Am Jur 2d, 137). The Government had the burden of proving nondelivery and it has not offered any evidence to show that at the time the deed was sent to Ms. Dixie and at the time that it was recorded that the Government intended the delivery to be other than final. For the reasons stated, I find that delivery of the deed to Ms. Dixie was completed when she was sent a copy of the deed and the deed was recorded in the land records without any instruction to the recorder that the recordation was to be conditioned on any other event.

The Government's role in the preparation, execution, and acquisition of the quitclaim deed from Mabel Hodge Dixie to the United States of America raises serious questions as to the quality of the title received. The quitclaim deed recites that "for a valuable consideration paid by the party of the second part, the receipt of which is hereby acknowledged" that the land comprising the Sheep Ranch Rancheria is conveyed to the United States of America. The deed makes a further recitation as follows:

This quitclaim deed is executed in order to clear the record and to restore title in and to the United States of America just as though that certain deed dated April 11, 1967, from the United States of America to Mabel Hodge Dixie, which was inadvertently executed and recorded in Book 229, Page 184, in the Records of Calaveras County, California, on April 26, 1967, was never in fact executed and recorded, the said deed having been executed and recorded prior to compliance with all of the statutory requirements set forth in the Rancheria Act of August 18, 1958 (72 Stat. 619), as amended August 11, 1964 (78 Stat. 390) and which deed was not intended to pass title nor did said deed actually pass title.

If, in fact, the deed to Mabel Hodge Dixie was a valid conveyance, the recitations made in the deed were a material misrepresentation of the facts, no matter how innocently made, leading Mabel Hodge Dixie to execute the quitclaim deed. Further, the quitclaim deed was prepared by employees of the Bureau of Indian Affairs; taken to the Rancheria by an employee of the Bureau where the deed was executed by Ms. Dixie; her signature was acknowledged by an BIA employee; and the deed was recorded in the land records of the said county at BIA expense. There is no indication that Mabel Hodge Dixie was provided independent counsel as to the legal consequences of her action, or that, indeed, she had to take any action. In addition, if the deed to her was valid and delivery made, then, in this forum's opinion, it could be well argued that there was a lack of consideration for the quitclaim deed. Certainly, the vague assertion of "valuable consideration paid" taken in context with the definitive statement of the purpose of the deed would lead one to believe that the only consideration for the deed was the purpose stated concerning clearing the record and restoring title in the United States of America. Lastly, there is a very disturbing matter introduced into the record at the hearing. For reasons not disclosed in the record, BIA personnel thought that a conservator was required for the affairs of Mabel Hodge Dixie. This raises some concern that she made not have been considered competent. The law does not invalidate a conveyance to an incompetent, however, it is a different matter when reviewing a deed executed by a person whose competency may be at issue.

For the reasons, I have stated herein, I am of the opinion that there was a valid delivery of the deed to Mabel Hodge Dixie, however, the record is not sufficient to determine the quality of title, if any, received by the United States of America by virtue of the quitclaim deed.

As to the second concept of title and possession, the Government appears to recognize that it might still have some obligations under the distribution plan, otherwise, why would its representatives feel the need to treat the quitclaim deed as a refutation of the distribution plan by Mabel Hodge Dixie. Regardless of why the Government might consider that the quitclaim deed be treated as refutation of the plan, I find that it cannot be used for such purpose. The clearly stated purpose of the quitclaim deed is to clear the record and restore title in the United States of America. There would have had to have been an intent of Mabel Hodge Dixie to refute the plan and plainly such intent is not revealed in the deed. The Government's representatives are responsible for the wording in the deed, and it would constitute an act of misrepresentation on the Government's part to use the quitclaim deed for a purpose other than the stated purpose. This forum is certain that the Government's representatives would not want to engage in conduct which would be tantamount to misrepresentation. The Government has failed to produce any other document or any statement of Mabel Hodge Dixie in which she stated, or even in which it could be implied that, she refuted the distribution plan. For the reasons stated, I find that the quitclaim deed cannot be used as evidence that Mabel Hodge Dixie refuted the distribution plan.

The Federal employee who testified at the May 12, 1992, hearing indicated that she was most knowledgeable about matters surrounding the termination of the California rancherias and the problems which developed from such termination. She further testified that she was not aware of any subsequent legislation which abolished the distribution plans authorized by the Federal legislation providing for termination of the rancherias. Therefore, if the quitclaim deed does not constitute refutation of the distribution plan by Ms. Dixie, then it may well be argued that the plan is still viable.

As the Federal employee testified, the reason why the members of other terminated rancherias, or their heirs, were allowed to bring the land of such rancherias back into trust status was because it was a part of the settlements made in the various class actions filed against the Government. Mabel Hodge Dixie was not

a party plaintiff in any class action. Notwithstanding that the quitclaim deed could not have brought the property back into trust status, if one assumes the Government's position that the deed from the United States of America to Mabel Hodge Dixie was invalid, then it is certainly arguable that the Sheep Ranch rancheria land did not lose whatever trust status it may have enjoyed prior to execution of the deed to Mabel Hodge Dixie.

If one accepts the third concept of title and possession, which this forum most does not, then the Government would be correct in its contention that the Sheep Ranch Rancheria land should not have been included as trust land in the inventory of the estate of Mabel Hodge Dixie and that the Government should be granted the relief requested, i.e., that such land be excluded from the inventory of her trust land.

Based on the findings, conclusions, and rulings made herein, this forum finds and so determines that it cannot grant the relief requested in the petition to modify the estate to exclude the said land from the inventory of trust interests.

Accordingly, it is hereby ordered that the requested relief be, and is, denied.

This decision is final for the Department unless notice of appeal is filed with the Interior Board of Indian Appeals pursuant to 43 CFR 4.320, et seq, within sixty days from the date hereof. Rights of appeal are more fully described in the notice accompanying this Order.

Dated at Sacramento, California,

APR 14 1993

William E. Hammett
William E. Hammett
Administrative Law Judge