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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNIS ROBINSON; SPENCER
ROBINSON, JR.; RICKIE ROBINSON;
CYNTHIA ROBINSON; VICKIE
ROBINSON,

No. Cv. S-04-0734 RRB KJM

Memorandum of Opinion
and Order

Plaintiffs,

v.

UNITED STATES OF AMERICA, as
trustee for the Indians of the
Mooretown Rancheria, aka MAIDU
INDIANS OF CALIFORNIA;
DEPARTMENT OF THE INTERIOR
[BUREAN OF INDIAN AFFAIRS]; and
DOES 1 through 50, inclusive,

Defendants. /

Plaintiffs Dennis Robinson, Spencer Robinson, Jr., Cynthia
Robinson, and Vickie Robinson allege that the United States
interfered with their easement for road and utility purposes.
Defendants move to dismiss for lack of jurisdiction or, in the
alternative, seek summary judgment on all claims. For the

1 following reasons, the court GRANTS the motion to dismiss for
2 lack of subject matter jurisdiction.

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4 I.

5 In the mid-1970s, Spencer Robinson, Sr., Clint Miller and
6 their respective spouses purchased 620 acres of land in Butte
7 County, with the intent to jointly develop the land. Robinson
8 Decl. ¶ 3. In 1978, Robinson and Miller built a twenty-foot
9 wide, two-lane road designated "Alverda Drive." Id. On
10 September 26, 1979, the owners entered into a "Road Maintenance
11 Agreement," stating that the parties agreed to: (1) bear the
12 expenses of maintaining the subject roadway and drainage
13 facilities; (2) "bring actions in any court of competent
14 jurisdiction in the County Butte to enforce collection of any
15 monies due from any owner as their proportionate share of the
16 reasonable maintenance or repair of said works;" and (3) be
17 bound by the decision of the owners of a majority of the subject
18 parcels when deciding whether repair or maintenance work is
19 necessary. Rim Decl. Ex. 1. The agreement "is to be construed
20 as running with the land, and it is further understood and
21 agreed that this agreement shall inure to and bind the
22 successors in interest of the parcels owned by all the parties
23 hereto." Id.

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25 On September 19, 1980, the Millers gifted a portion of the
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27 property to the Robinson and included in the deed a sixty-foot
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1 wide "non-exclusive right-of-way for the road and public
2 utilities" over the remaining share of the property. Pls.'
3 Request for Judicial Notice Ex. 3. The right-of-way included
4 the twenty-foot wide portion of the property used for Alverda
5 Drive. Id. Another grant deed from the Millers to the
6 Robinsons, containing the same easement, was recorded on
7 November 7, 1980. Id. Ex. 4.

9 Through subsequent property transactions, the Maidu Indians
10 of California (hereafter, "Mooretown Rancheria"), purchased
11 three parcels of land previously owned by the Millers and
12 adjacent to land currently owned by the Rancheria. Id. Exs. 5-9,
13 12. Mooretown Rancheria then transferred the three parcels to
14 the United States, to hold in trust. Id. Exs. 5-9, 12. The
15 Robinson family retained ownership in approximately 360 acres of
16 land east of the Rancheria property and has continuously used
17 Alverda Drive to access their property.

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20 In late 2000, Mooretown Rancheria began building a
21 permanent casino on one of the parcels purchased from the
22 Millers. Shortly thereafter, the Robinsons complained that the
23 Rancheria was placing illegal encroachments in the easement.
24 The parties discussed the complaints but were unable to reach a
25 resolution. On April 12, 2004, the Robinsons filed this suit
26 complaining of the following easement encroachments: (1) water
27 valves and power facilities; (2) a walkway; (3) a wrought iron
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1 fence; (4) a bullnose curb; (5) a fire hydrant; (6) an unshored
2 slope, causing subsidence; and (7) "alligating" on the edges
3 of the road. Based on these encroachments, the Robinsons assert
4 eight claims against the United States and unnamed federal
5 employees: (1) damage of lateral support and subsidence, Cal.
6 Civ. Code § 832; (2) common law damage to subjacent support; (3)
7 common law strict liability property damage; (4) common law
8 negligent property damage; (5) the continuing nuisance of
9 property damage, Cal. Civ. Code § 3479; (6) the continuing
10 nuisance of encroachment, id.; (7) the continuing nuisance of
11 obstruction of the road to plaintiffs' property, id.; and (8)
12 injunctive relief based upon the previously claimed continuing
13 nuisances. For relief, the Robinsons seek: (1) a preliminary
14 and permanent injunction requiring removal of the current
15 encroachments and barring any further encroachment; (2) an order
16 requiring the building, rebuilding, or restoration of a
17 retaining wall to remedy the effects of subsidence caused by
18 defendants' conduct; and (3) damages.

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22 On April 15, 2005, defendants filed this motion to dismiss
23 or, in the alternative, for summary judgment. Defendants argue
24 that: (1) the court lacks subject matter jurisdiction due to
25 sovereign immunity; (2) the Robinsons fail to state a claim
26 under California law against the United States; and (3)
27 Mooretown Rancheria is a necessary and indispensable party that
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1 cannot be joined because of tribal sovereign immunity.

2 Following a hearing and additional briefing, the parties
3 requested a stay of the case. On January 30, 2006, the court
4 granted the motion. Following the expiration of the stay, the
5 court now decides the previously filed and argued motion.
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7 II.

8 Defendants move to dismiss the Robinsons' claims under
9 Federal Rule of Civil Procedure 12(b)(1), arguing that the court
10 lacks subject matter jurisdiction to hear the action. The party
11 seeking to invoke the jurisdiction of the court carries the
12 burden of putting forth facts establishing jurisdiction. Scott
13 v. Breeland, 792 F.2d 925, 926 (9th Cir. 1986). Unlike other
14 Rule 12 motions, no presumption of truthfulness attaches to
15 plaintiffs' allegations when deciding whether jurisdiction
16 exists. Augustine v. United States, 704 F.2d 1074, 1077 (9th
17 Cir. 1983).
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20 The United States cannot be sued unless it has clearly
21 waived sovereign immunity for the particular claims faced.
22 United States v. White Mountain Apache Tribe, 537 U.S. 465, 472
23 (2003). Waivers of sovereign immunity are construed in favor of
24 the United States unless Congress suggests a contrary intent.
25 United States v. Nordic Village, Inc., 503 U.S. 30, 34 (1992).
26 A plaintiff must show an unequivocal waiver of immunity to
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1 pursue its claims against the government.¹ Baker v. United
2 States, 817 F.2d 560, 562 (9th Cir. 1987). Defendants argue
3 that neither the Quiet Title Act nor the Federal Tort Claims Act
4 is sufficient to confer jurisdiction over the Robinsons' claims.
5 The statutes are discussed individually below.
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7 A. The Quiet Title Act

8 The Quiet Title Act, 28 U.S.C. § 2409a, provides the
9 exclusive means by which a plaintiff may sue the United States
10 concerning title to real property. Block v. North Dakota, 461
11 U.S. 273, 286 (1983). "[T]wo conditions must exist before a
12 district court can exercise jurisdiction over an action under
13 the Quiet Title Act: 1) the United States must claim an interest
14 in the property at issue; and 2) there must be a disputed title
15 to real property between interests of the plaintiff and the
16 United States." Leisnoi Inc. v. United States, 267 F.3d 1019,
17 1023 (9th Cir. 2001). The "Indian Land Exception" to the Quiet
18 Title Act states that the Act's waiver of sovereign immunity
19 "does not apply to trust or restricted Indian Lands." 28 U.S.C.
20 § 2409a(a). To invoke the exception, the government need only
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25 ¹ The "Road Maintenance Agreement," binding upon the parties
26 as successors-in-interest, specifies Butte County as the forum
27 for the resolution of disputes. Rim Decl. Ex. 1. However, it
28 does not contain language expressly or unequivocally waiving
sovereign immunity for the government or the Rancheria. The
Robinsons do not demonstrate that sovereign immunity has been
waived by the property agreements to which the government is now
a party. See Nordic Village, Inc., 503 U.S. at 34.

1 put forth a "colorable claim" that the lands are held in trust
2 for an Indian tribe. Wildman v. United States, 827 F.2d 1306,
3 1309 (9th Cir. 1987).

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5 Defendants argue that the Robinsons' claims fall within the
6 scope of the Quiet Title Act and that the suit is barred by the
7 Indian Land Exception. The Robinsons reply that the Quiet Title
8 Act applies only to suits "to adjudicate a disputed title," 28
9 U.S.C. 2409a(a), and that there is no disputed title in this
10 case. This argument fails. Allegations that the government has
11 interfered with an easement are sufficient to create a "disputed
12 title" for purposes of the Quiet Title Act. Claims related to
13 the existence of an easement, Schultz v. Dep't of Army, 886 F.2d
14 1157 (9th Cir. 1989), and the overburdening of an easement,
15 Narramore v. United States, 852 F.2d 485 (9th Cir. 1988), fall
16 within the scope of the Quiet Title Act. The Ninth Circuit has
17 not directly addressed whether allegations of easement
18 encroachments create a disputed title. Under California law,
19 however, there are numerous examples of quiet title actions
20 brought by dominant tenement holders seeking to end alleged
21 encroachment on an easement.² See, e.g., Van Klompenburg v.

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27 ² The Quiet Title Act is a federal statute and must be
28 interpreted in accordance with principles of federal law. "But
state law, if compatible with the purpose of [the statute in
question], may be resorted to in order to find the rule that
will best effectuate the federal policy." Textile Workers v.

1 Berghold, 126 Cal.App.4th 345, 350 (2005) (seeking to quiet
2 title by obtaining an injunction ordering the removal of gates
3 blocking plaintiff's easement); Pacific Gas & Elec. Co. v.
4 Hacienda Mobile Home Park, 45 Cal.App.3d 519, 529 (1975)
5 (seeking to quiet title by obtaining an injunction ordering
6 defendants to cease placing mobile homes on plaintiff's
7 easement). Therefore, the court finds that the alleged
8 encroachments on the Robinsons' easement creates a dispute as to
9 title.³ Because the disputed title is for Indian land held in
10 trust by the government, the Act's Indian Land Exception applies
11 and this court lacks jurisdiction to hear the Robinsons' claims.
12 28 U.S.C. 2409a(a).

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17 Lincoln Mills, 353 U.S. 448, 457 (1957). Here, California
18 property law does not conflict with federal law interpreting
19 Quiet Title Act. Moreover, by promoting a consistent standard
20 as to permissible encroachment upon easements, the application
21 of California law to this dispute serves the federal policy of
22 ensuring that "[t]he United States shall not be disturbed in
23 possession or control of any real property." 28 U.S.C. §
24 2409a(b).

25 ³ Holding the alleged encroachments to create a disputed
26 title is also consistent with the purpose of the Quiet Title
27 Act's Indian Land Exception. The Exception was created to
28 prevent third parties from interfering with the government's
discharge of its responsibilities to Indian tribes and their
lands held in trust. Metro. Water Dist. v. United States, 830
F.2d 139, 143-44 (9th Cir. 1987). If the court were to hold
that the encroachments did not create a disputed title, third
parties, such as the Robinsons, would be able to interfere with
the land trust relationship between the government and Indian
tribes by pleading around the Quiet Title Act.

1 B. The Federal Tort Claims Act

2 The Robinsons argue that because their claims are addressed
3 to the individual actions of government employees, rather than
4 the government's interest in the disputed easement, the Federal
5 Tort Claims Act provides jurisdiction. This argument fails due
6 to the exclusivity of the Quiet Title Act. Block, 461 U.S. at
7 286. "If we were to allow claimants to try the Federal
8 Government's title to land under an officer's-suit theory,⁴ the
9 Indian lands exception to the QTA would be rendered nugatory."
10 Id. at 285. The Robinsons' alleged FTCA claims rely upon
11 property documents to establish duties regarding the subject
12 easement. See Pls.' Request for Judicial Notice Ex. 3. A
13 determination as to whether federal employees violated the terms
14 of those documents would necessarily entail decisions as to the
15 scope of the easement. As discussed above, in making such
16 judgments, the court resolves matters of disputed title. The
17 decisions, therefore, are made under the Quiet Title Act and
18 jurisdiction is barred by the Indian Lands Exception. 28 U.S.C.

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25 ⁴ "In the typical officer's suit involving a title dispute,
26 the claimant would proceed against the federal officials charged
27 with supervision of the disputed area, rather than against the
28 United States. The suit would be in ejectment or, as here, for
an injunction or a writ of mandamus forbidding the defendant
officials from interfering with the claimant's property rights."
Block, 461 U.S. at 281.

1 2409a(a). The Robinsons' artful pleading does not create
2 jurisdiction. Block, 461 U.S. at 285.

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4 III.

5 For these reasons, the court GRANTS the motion to dismiss.

6 IT IS SO ORDERED.

7 ENTERED this 4th day of September, 2007.

8 S/RALPH R. BEISTLINE
9 United States District Judge

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