

**EXHIBIT F**

Filed

MAY 20 2004

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

TILLIE HARDWICK, et al.,

Plaintiffs

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Case Number C-79-1710-JF

ORDER DENYING THE MADERA  
COUNTY DEFENDANTS' MOTION  
FOR ENFORCEMENT OF  
JUDGMENT

On May 3, 2004, the Court heard oral argument on the Madera County Defendants' motion for enforcement of judgment. For the reasons discussed below, the motion will be denied.

**I BACKGROUND**

The present motion relates to litigation that commenced in 1979. There are significant disputes as the effect of a Stipulated Judgment entered by then-assigned District Judge Spencer Williams in 1987. Defendants Madera County Board of Supervisors, Madera County Tax

1 Assessor and Madera County Tax Collector (collectively "Madera County") assert that the  
2 judgment entered by Judge Williams in 1987 obligates the Picayune Rancheria of Chukchansi  
3 Indians ("the Picayune Rancheria" or "the Tribe") to pay *ad valorem* property taxes on certain  
4 parcels of land. The Tribe asserts that this Court lacks jurisdiction over it and that even assuming  
5 that the Court has jurisdiction, the Tribe is not obligated to pay the *ad valorem* property taxes  
6 sought by Madera County. Disposition of the instant motion necessarily requires the undersigned  
7 judge to interpret the stipulated judgment at issue. The relevant historical and procedural facts  
8 are as follows:

9 In the 1950s, the United States took steps to terminate the existence of a number of Indian  
10 tribes and abolish federal programs available to them as a result of their special status. Under the  
11 California Rancheria Act of 1958 ("Rancheria Act"), the United States purported to terminate the  
12 existence of forty-one California Indian tribes, distributing tribal property to individual tribe  
13 members ("distributees"). Upon distribution of tribal property, the tribes ceased to exist and the  
14 members of the former tribes were stripped of their status as Indians. Tribal lands, which had  
15 been held in trust and exempted from state taxation and regulatory laws, were transformed into  
16 parcels held in fee simple by the distributees. These lands thus became subject to state and local  
17 laws.

18 In 1979, individuals from thirty-four of the terminated tribes commenced the instant  
19 litigation. The individuals sought restoration of their status as Indians and entitlement to federal  
20 Indian benefits, as well as the right to reestablish their tribes as formal government entities. The  
21 litigation was certified as a class action.

22 In 1983, the litigation was settled with respect to the members of seventeen former tribes,  
23 including the Picayune Rancheria. Judge Williams entered a "Stipulation For Entry Of  
24 Judgment" ("1983 Stipulated Judgment") providing among other things that "[t]he status of the  
25 named individual plaintiffs and other class members of the seventeen rancherias named and  
26 described in paragraph 1 as Indians under the laws of the United States shall be restored and  
27 confirmed." This judgment further provided that "[t]he Secretary of the Interior shall recognize  
28 the Indian Tribes, Bands, Communities or groups of the seventeen rancherias listed in paragraph

1 1 as Indian entities with the same status as they possessed prior to distribution of the assets of  
2 these Rancherias under the California Rancheria Act, and said Tribes, Bands, Communities and  
3 groups shall be included on the Bureau of Indian Affairs' Federal Register list of recognized  
4 tribal entities pursuant to 25 C.F.R., Section 83.6(b)." The 1983 Stipulated Judgment also  
5 provided a mechanism by which individuals holding former tribal lands could reconvey the lands  
6 to the United States to be held in trust.

7 Several tribes took immediate action to reestablish their tribal governments and formally  
8 intervene in the instant litigation. The Picayune Rancheria was not one of the intervening tribes  
9 and in fact took several years to reorganize its tribal government. Its first formal meeting for this  
10 purpose was held in August 1986. There were serious internal disputes over control of the Tribe.  
11 Two factions submitted separate Tribal Constitutions for BIA approval, both of which were  
12 rejected for failure to obtain General Council approval. The Tribe as a whole finally adopted a  
13 Tribal Constitution on November 7, 1988.

14 In 1987, while the Tribe was reorganizing its government, questions arose as to the  
15 boundaries of the Picayune and North Fork Rancherias, both located in Madera County, and as to  
16 tax consequences flowing from the termination and later restoration of these two tribes. Judge  
17 Williams entered a "Stipulation For Entry Of Judgment (Madera County)" ("1987 Stipulated  
18 Judgment") addressing these issues. The 1987 Stipulated Judgment specifically identified the  
19 Picayune Rancheria as a named plaintiff, although as discussed above the Tribe had not yet  
20 reorganized its tribal government and had not intervened in the action. The 1987 Stipulated  
21 Judgment confirmed the boundaries of the Picayune and North Fork Rancherias and stated that:  
22 the Picayune and North Fork Rancherias had not been lawfully terminated; the Picayune and  
23 North Fork Rancherias would be treated as any other federally recognized Indian Reservation; all  
24 real property taxes paid to Madera County on "Indian Parcels" for the tax years 1979 and  
25 thereafter would be refunded; and Madera County would not collect any future property taxes on  
26 "Indian Parcels" within the boundaries of the Picayune and North Fork Rancherias *except* that  
27 after December 31, 1988, Madera County would have limited power to collect *ad valorem*  
28 property taxes on "Indian Parcels" as to which no election to return to trust status had been made.

1 The term "Indian Parcel" was defined as follows:

2 all those parcels of real property or interests in said parcels within the boundaries  
3 of the North Fork and Picayune Rancherias currently owned by Indians entitled to  
4 return said parcels or interests thereof to the United States of America in  
accordance with the Judgment of the United States District Court, Northern  
District of California, in the above-entitled case.

5 The term "Indians" was defined as "any Indian who owns any interest in a North Fork or  
6 Picayune Rancheria parcel."

7 These provisions appear to have been designed to provide an equitable remedy with  
8 respect to the tax consequences of the Rancheria Act. Taxes paid on what once were tribal lands  
9 were refunded, and holders of those lands were given a grace period within which to return the  
10 lands to trust status (in which case no future tax consequences would arise). Indian Parcels  
11 subject to these provisions and not returned to trust status by the end of 1988 would be subject to  
12 *ad valorem* property taxes.

13 At the time the 1987 Stipulated Judgment was entered, there were seven parcels of land  
14 within the boundaries of the Picayune Rancheria. One was held by an Indian, Maryan Ramirez,  
15 who already had returned the parcel to trust status. The other six parcels were owned in fee by  
16 non-Indian individuals. The Tribe, seeking to reestablish its reservation lands, began purchasing  
17 these six parcels approximately eight years later in 1995, and acquired the last of them in 2002.  
18 The Tribe holds all six later-acquired parcels in fee simple, but in March 2003 it submitted an  
19 application to have the six parcels returned to trust status. In June 2003 the Tribe completed  
20 construction of a resort and casino facilities on the property. Based upon these completed  
21 improvements, Madera County performed a reassessment of the property and concluded that the  
22 Tribe now has an estimated annual *ad valorem* property tax liability of approximately \$4.1  
23 million. The Tribe disputed this estimate and took the position that there is no tax liability.  
24 Madera County subsequently brought the instant motion for enforcement of judgment.

## 25 II. DISCUSSION

### 26 A. Jurisdiction

27 There is no question that the Court has continuing jurisdiction to resolve disputes arising  
28 from the stipulated judgments. The 1983 Stipulated Judgment expressly retained jurisdiction for

1 “a period of two years from entry of judgment or for such longer time as may be shown to be  
2 necessary on a duly-noticed motion by any party.” However, the Tribe asserts that it has  
3 sovereign immunity with respect to any action of Madera County and that it has not intervened in  
4 the instant litigation or taken any other action sufficient to waive its sovereign immunity.  
5 Madera County asserts that the Tribe waived its sovereign immunity by participating in the  
6 litigation and consenting to the 1987 Stipulated Judgment.

7 Indian tribes possess the common-law immunity from suit traditionally enjoyed by  
8 sovereign powers. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). This immunity can  
9 be waived, but such waiver must be unequivocally expressed. *Id.* This Court therefore must  
10 decide whether the Tribe has waived its sovereign immunity here.

11 The Tribe could not have been a party in 1979 when the action was commenced, because  
12 it had been terminated and thus did not exist. The parties dispute when the Tribe came back into  
13 existence. Madera County asserts that the Tribe existed immediately following the 1983  
14 Stipulated Judgment, which provided that the Tribe would be reinstated and put on the federal  
15 register of tribal entities. The Tribe asserts that it did not come back into existence until 1988  
16 when it formally reorganized.

17 An Indian community constitutes a tribe if either (1) it is recognized as an Indian tribe by  
18 the federal government or (2) it is “a body of Indians of the same or a similar race, united in a  
19 community under one leadership or government, and inhabiting a particular though sometimes  
20 ill-defined territory.” *Native Village of Tyonek v. Puckett*, 957 F.2d 631, 635 (9th Cir. 1992)  
21 (quoting *Montoya v. United States*, 180 U.S. 261, 266 (1901)). The Picayune Rancheria was  
22 recognized as an Indian tribe by the federal government as of 1983. Accordingly, the Court  
23 concludes that the Tribe came back into existence in 1983.

24 This conclusion does not answer the question of whether the Tribe waived its sovereign  
25 immunity by participating in the instant litigation once its existence was reestablished. Madera  
26 County points to the fact that the Tribe is identified as a party plaintiff in the 1987 Stipulated  
27 Judgment. There can be no question that if the Tribe participated in the litigation and actually  
28 agreed to the 1987 Stipulated Judgment, its sovereign immunity would be waived. *See United*

1 *States v. Oregon*, 657 F.2d 1009, 1015 (9th Cir. 1981). However, it is not at all clear from the  
2 record that the Tribe actually was a party plaintiff in this action. It is undisputed that the Tribe  
3 did not formally intervene in the action. It also is undisputed that, due in part to political  
4 infighting, the Tribe's internal government was not established until 1988. While the existence  
5 of a formal tribal government is not necessary for legal capacity, the fact that the Tribe's internal  
6 government was not established until after the 1987 Stipulated Judgment was entered raises the  
7 following question: who acted on behalf of the Tribe at the time the 1987 Stipulated Judgment  
8 was negotiated and did that person have authority to bind the Tribe?

9 The record is silent as to this question, and Madera County's counsel was unable to  
10 provide a definitive answer during the hearing, stating only that someone must have bound the  
11 Tribe because the Picayune Rancheria was named as a party plaintiff in the 1987 Stipulated  
12 Judgment. However, the fact that the Picayune Rancheria was named as a plaintiff could be the  
13 result of any number of circumstances. Someone indeed may have purported to represent the  
14 Tribe during the negotiations that led to the 1987 Stipulated Judgment. The inclusion of the  
15 Picayune Rancheria could have been erroneous. Or, as argued by counsel for the Tribe at the  
16 hearing, the reference to the Picayune Rancheria could have been a reference to the lands at issue  
17 and not to the Tribe as a political entity.<sup>1</sup> As is noted above, Indian tribes are entitled to  
18 sovereign immunity unless unequivocal waiver is demonstrated. Madera County has failed to  
19 demonstrate with any degree of certainty that such waiver occurred. Accordingly, the Court  
20 concludes that the Tribe's sovereign immunity remains intact.

21 Madera County argues that the Tribe should not be permitted to reap the benefits of the  
22 1987 Stipulated Judgment and then claim sovereign immunity when asked to fulfil its obligations  
23 thereunder. The benefits to the Tribe are somewhat doubtful. The Court understands Madera  
24 County to be arguing that the 1987 Stipulated Judgment gave the County the right to tax all non-

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27 <sup>1</sup> Although the North Fork and Picayune Rancherias are named as party plaintiffs in the  
28 1987 Stipulated Judgment, that document explicitly defines "North Fork and Picayune  
Rancherias" to mean "all lands within the exterior boundaries of the North Fork and Picayune  
Rancherias as described in paragraph 2B.1"

1 trust tribal lands held at the time of the Judgment *and acquired anytime thereafter, into*  
2 *perpetuity*. In other words, the County argues that it acquired the right to impose taxes - here, in  
3 excess of \$4 million per year - on tribal lands it otherwise would not have been able to touch.  
4 Under these circumstances, the Court cannot agree with Madera County that the equities favor  
5 enforcement of the 1987 Stipulated Judgment against the Tribe.

6 **B. Interpretation Of The 1987 Stipulated Judgment**

7 Even if the Court were to conclude that the Tribe waived its sovereign immunity, the  
8 Court would not find the *ad valorem* property tax provisions of the 1987 Stipulated Judgment to  
9 be applicable as argued by Madera County. The provisions apply to Indian Parcels, which were  
10 defined in the stipulated judgment as parcels within the boundaries of the North Fork and  
11 Picayune Rancherias "currently owned by Indians entitled to return said parcels or interests  
12 thereof to the United States of America." The Tribe argues that "currently owned" means *owned*  
13 *at the time of the 1987 Stipulated Judgment*. Madera County argues that the "currently owned"  
14 language does not restrict the definition of Indian Parcel in this manner, and that the *ad valorem*  
15 provision apply to property acquired by the Tribe even years after the 1987 Stipulated Judgment  
16 was entered.

17 Madera County's interpretation is inconsistent with the primary purpose of the 1987  
18 Stipulated Judgment, which appears to have been to redress the harm caused by the Rancheria  
19 Act. The Judgment explicitly states that "this Court has authority as a court of equity to remedy  
20 the effects of the premature and unlawful termination of the North Fork and Picayune Rancherias  
21 and the Plaintiffs to the extent that it can do so without adversely affecting the interests of third  
22 party purchasers for value of Rancheria Parcels." Accordingly, the Judgment provided that the  
23 North Fork and Picayune Rancherias never were lawfully terminated and restored the original  
24 boundaries of the North Fork and Picayune Rancherias. The Judgment further provided that  
25 taxes paid on what once were tribal lands would be refunded, and that holders of those lands  
26 would be given a grace period within which to return the lands to trust status, in which case no  
27 future tax consequences would arise. Indian Parcels subject to these provisions and not returned  
28 to trust status by the end of 1988 would be subject to *ad valorem* property taxes. Nothing in this



1 language expresses an intent to give the County the right to tax later-acquired tribal lands it  
2 otherwise would be unable to tax.

3 Madera County's interpretation also contradicts the plain language of the Judgment. A  
4 straightforward reading of the language indicates that the *ad valorem* provision applies only to  
5 parcels "currently owned" by Indians at the time of the Judgment. An interpretation that reads  
6 the phrase "currently owned" to mean "currently owned or acquired any time thereafter" is  
7 strained at best.

8 Madera County argues that if the "currently owned" language is read to restrict the  
9 definition of Indian parcels to non-trust parcels owned by Indians at the time of the 1987  
10 Stipulated Judgment, the definition would be rendered a nullity because there were no such  
11 parcels within the boundaries of the Picayune Rancheria. As noted previously, at the time the  
12 Judgment was entered, only one parcel within the Picayune Rancheria was owned by an Indian,  
13 and that parcel already had been returned to trust. However, Madera County's argument ignores  
14 the fact that the Judgment addresses both the North Fork and the Picayune Rancherias. The  
15 Tribe offered evidence that there *were* non-trust parcels owned by Indians within the North Fork  
16 Rancheria at the time the Judgment was entered.<sup>2</sup> Accordingly, the County's nullity argument is  
17 not supported by the record.

18 **III. ORDER**

19 The motion for enforcement of judgment is DENIED.

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22  
23 DATED: \_\_\_\_\_

5/19/07

24   
25 JEREMY FOGEL  
26 United States District Judge  
27  
28

<sup>2</sup> Those parcels were returned to trust status before the December 1988 deadline.

1 Copies of Order served on:

2

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