

EXHIBIT G

**ORIGINAL
FILED**

DEC - 7 2006

**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**NOT FOR CITATION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 (PVT)
**ORDER DENYING THE TRIBE'S
MOTION FOR ENFORCEMENT OF
JUDGMENT**
[re: doc. no. 297]

Non-party Picayune Rancheria of Chukchansi Indians ("the Picayune Rancheria" or "the Tribe") moves for enforcement of the Stipulated Judgment entered in this action in 1987. The motion is opposed by Defendant County of Madera ("Madera County"). The Court has considered the briefing of the Tribe and of Madera County, as well as the oral arguments presented at the hearing on December 1, 2006. For the reasons discussed below, the motion will be denied.

I BACKGROUND

This is the second time that the Tribe and Madera County have appeared before this Court to litigate the effect of the 1987 Stipulated Judgment entered in this action by then-assigned

1 District Judge Spencer Williams. The relevant historical and procedural facts are as follows:

2 **1987 Stipulated Judgment**

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

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

16 In 1983, the litigation was settled with respect to the members of seventeen former tribes,
17 including the Picayune Rancheria. Judge Williams entered a "Stipulation For Entry Of
18 Judgment" ("1983 Stipulated Judgment") providing among other things that "[t]he status of the
19 named individual plaintiffs and other class members of the seventeen rancherias named and
20 described in paragraph 1 as Indians under the laws of the United States shall be restored and
21 confirmed." This judgment further provided that "[t]he Secretary of the Interior shall recognize
22 the Indian Tribes, Bands, Communities or groups of the seventeen rancherias listed in paragraph
23 1 as Indian entities with the same status as they possessed prior to distribution of the assets of
24 these Rancherias under the California Rancheria Act, and said Tribes, Bands, Communities and
25 groups shall be included on the Bureau of Indian Affairs' Federal Register list of recognized
26 tribal entities pursuant to 25 C.F.R., Section 83.6(b)." The 1983 Stipulated Judgment also
27 provided a mechanism by which individuals holding former tribal lands could reconvey the lands
28 to the United States to be held in trust.

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

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

24 all those parcels of real property or interests in said parcels within the boundaries
25 of the North Fork and Picayune Rancherias currently owned by Indians entitled to
26 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.

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

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

7 **Prior *Ad Valorem* Taxes Dispute**

8 At the time the 1987 Stipulated Judgment was entered, there were seven parcels of land
9 within the boundaries of the Picayune Rancheria. One was held by an Indian, Maryan Ramirez,
10 who already had returned the parcel to trust status. The other six parcels were owned in fee by
11 non-Indian individuals. The Tribe, seeking to reestablish its reservation lands, began purchasing
12 these six parcels approximately eight years later in 1995, and acquired the last of them in 2002.
13 The Tribe holds all six later-acquired parcels in fee simple.¹ In June 2003 the Tribe completed
14 construction of a resort and casino facilities on the property ("the Resort"). Based upon these
15 completed improvements, Madera County performed a reassessment of the property and
16 concluded that the Tribe had an estimated annual *ad valorem* property tax liability of
17 approximately \$4.1 million. The Tribe disputed this estimate and took the position that there was
18 no tax liability.

19 Madera County brought a motion in this Court for enforcement of judgment. The Court
20 denied Madera County's motion on May 20, 2004, based in part upon the Court's conclusion that
21 the Tribe was not bound by the 1987 Stipulated Judgment. In particular, the Court concluded
22 that because the Tribe had not yet reorganized at the time the 1987 Stipulated Judgment was
23 entered; that as a result the Tribe could not have been a party to this action or to the 1987
24 Stipulated Judgment; and that the Tribe thus had not waived its sovereign immunity. The Court
25 concluded further that even if the Tribe were bound by the 1987 Stipulated Judgment, that
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27 ¹ It appears that the Tribe submitted an application to have the six parcels returned to trust
28 status in March 2003; the record is unclear as to the status of this request, but it does not appear
that the land has been returned to trust.

1 judgment did not authorize the imposition of the *ad valorem* taxes at issue. The Court denied
2 Madera County's motion for reconsideration on October 13, 2004.

3 Madera County did not appeal the Court's decision, but instead filed an *in rem* action in
4 Madera County Superior Court on October 25, 2004. The action seeks declaratory relief as to the
5 taxability of the land owned in fee by the Tribe. Litigation of the state action was delayed several
6 times while the Tribe and Madera County attempted to reach a settlement. Those efforts failed,
7 and the Tribe's motion to quash or dismiss the *in rem* complaint was heard on October 6, 2006
8 and on December 1, 2006. The record does not indicate the status of that motion. However, the
9 parties clarified at the hearing that the *in rem* action is limited to Madera County's ability to tax
10 the Tribe's land, and does not encompass the County's ability to impose state environmental or
11 other regulatory laws with respect to the Tribe's land.

12 **Instant Dispute**

13 The Tribe recently decided to expand the Resort to add greater amenities, such as an
14 additional 204 hotel rooms, a weight room and spa facility, additional parking facilities, and
15 improved waste water treatment plant, a warehouse storage facility and a children's area. Prior to
16 beginning this expansion, the Tribe prepared an issued an Environmental Evaluation ("EE")
17 pursuant to the Tribal-State Compact between the Tribe and the State of California ("the
18 Compact"). The Tribe also held public hearings and provided Madera County with an
19 opportunity to provide input. The Tribe then responded to the input of the public and of Madera
20 County, which response included an analysis of environmental impacts that required mitigation
21 under the Compact.

22 On September 1, 2006, the Tribe received a letter from Rayburn Leach of Madera
23 County's planning department and David Prentice of Madera County's office of county counsel.
24 The letter asserted for the first time that the California Environmental Quality Act ("CEQA")
25 governed the Resort expansion and advised that no permits would be issued without an
26 appropriate Environmental Impact Report under CEQA. The letter advised further that the
27 decision could be appealed to the Board of Supervisors and that any construction activities
28 without a permit would result in a stop work order. With respect to the fact that Madera County

1 had never raised CEQA requirements in connection with the construction of the original Resort
2 facilities, the letter stated that "CEQA should have governed." The Tribe asserts that in addition
3 to the September 1 letter, Madera County has threatened to "red tag" the expansion project,
4 meaning that the County will take adverse action against any contractor working on the project.

5 The Tribe brought the instant motion to enforce judgment, asserting that it is an intended
6 third party beneficiary of the 1987 Stipulated Judgment. Madera County argues that the Tribe is
7 not an intended third party beneficiary and lacks standing to move for enforcement of the 1987
8 Stipulated Judgment, and that in any event the 1987 Stipulated Judgment does not preclude the
9 County from enforcing state health and safety laws on the Tribe's fee-owned land.

10 On November 21, 2006, after the Tribe filed the instant motion but before it was heard,
11 Madera County filed a second state court action in Madera County Superior Court seeking to
12 restrain the Tribe from proceeding with the expansion of the Resort. The Tribe immediately
13 removed that action to the Eastern District of California, where it remains pending.

14 II. DISCUSSION

15 As was discussed at length on the record at the hearing, the Court is not persuaded that a
16 motion to enforce judgment is the proper vehicle for the Tribe's arguments. The Court
17 specifically has held that the Tribe is *not* a party to the 1987 Stipulated Judgment. The Tribe
18 nonetheless asserts that it has standing to bring a motion to enforce judgment pursuant to Federal
19 Rule of Civil Procedure 71, which provides in relevant part that "[w]hen an order is made in
20 favor of a person who is not a party to the action, that person may enforce obedience to the order
21 by the same process as if a party." The Ninth Circuit has held expressly that "intended third-
22 party beneficiaries of consent decrees have standing to enforce those decrees." *Floyd v. Ortiz*,
23 300 F.3d 1223, 1226 (9th Cir. 2002).

24 It is not clear whether the Tribe is a third party beneficiary to the 1987 Stipulated
25 Judgment. However, even assuming without deciding that the Tribe *is* an third party beneficiary
26 of that judgment, the judgment does not address the issue raised by the Tribe's motion, namely
27 whether Madera County may enforce state environmental laws with respect to the Tribe's
28 expansion of its Resort. The Tribe's arguments on this point are grounded in part upon its

1 contention that the 1987 Stipulated Judgment conclusively establishes the lands at issue as
2 "Indian Country," but also are grounded in federal law, the Compact, the Memorandum of
3 Understanding between the Tribe and Madera County, and the County's alleged waiver of
4 jurisdiction over the Resort. These matters go far beyond the scope of the 1987 Stipulated
5 Judgment, and thus more properly should be addressed in a new action for declaratory relief.
6 Accordingly, the Court will deny the Tribe's motion for enforcement of judgment without
7 prejudice to the Tribe's filing of a declaratory relief action. In the event that the Tribe does file a
8 declaratory relief action, it shall file a notice of related case so that such declaratory relief action
9 may be related to the instant action.

10 **III. ORDER**

11 The motion for enforcement of judgment is DENIED.

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15 DATED: 12/6/06

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17 JEREMY FOGEL
18 United States District Judge
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1 Copies of Order served on:

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