No. 17 _____

IN THE

Supreme Court of the United States

ROGER FRENCH,

Petitioner,

v.

HONORABLE KARLA STARR, HONORABLE ROBERT N. CLINTON, AND HONORABLE ROBERT MOELLER, in their capacities as judges of the CRIT Tribal Appellate Court; HONORABLE LAWRENCE C. KING, in his capacity as the Chief and Presiding Judge of the Colorado River Indian Tribes Tribal Court; Dennis PATCH, in his official capacity as CRIT Tribal Council Chairman; and HERMAN "TJ" LAFFOON in his official capacity as a member of the CRIT Tribal Council,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether federal Indian Law allows a federal court to disregard congressional statutes in a finding of tribal jurisdiction over a nonmember.

Whether consideration of land status is required in the affirmation of tribal jurisdiction over a nonmember.

Whether federal Indian Law allows utilization of estoppel to determine land status in a finding of tribal jurisdiction over a nonmember.

Whether an Indian Tribe can have the inherent authority to exclude on land that has not been determined to be within the boundaries of their Reservation.

Whether a determination of tribal jurisdiction over a nonmember can be found without a consideration of a *Montana* analysis.

In the determination of tribal jurisdiction over a nonmember, whether regulatory authority over the activity at issue must be considered.

Whether a federal court should consider a state's competing interest in the determination of tribal jurisdiction over a nonmember.

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The unreported Memorandum Opinion of the court of appeals is set forth in the Appendix at 1a–3a. The district court's Order granting Defendants' Joint Motion for Summary Judgment and denying Plaintiff's Motion for Summary Judgment is set forth in the Appendix at 4a–28a.

STATEMENT OF JURISDICTION

The court of appeals entered its judgment on June 1, 2017. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. Art. IV, § 3, cl. 2 [Property Clause]

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory of other Property belonging to the United States….

U.S. Const. Art. I, § 8, cl.3 [Commerce Clause]

> The Congress shall have the Power to regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes.

U.S. Const. Amend. V [Takings Clause]

> …nor shall private property be taken for public use, without just compensation.

U.S. Const. Amend. XIV [Due Process and Equal

Protection]

> …nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Act of April 30, 1964, 78 Stat. 188 (Section 5) (App. 29a–32a)

I. STATEMENT OF THE CASE

A. Introduction

Two hundred miles east of Los Angeles lies an isolated and long forgotten 20 mile strip of land north of the City of Blythe, nestled like a snake along the Colorado River's California side. This strip of land has been occupied for almost a century by a somewhat diverse group of U.S. citizens who are suffering under the unfettered and unrestricted power of the tribal government of the Colorado River Indian Tribes. This tribe, known as CRIT, prides itself on its label as "renegade" as it cedes power to no one, including the states of California and Arizona. These residents have resisted the power of CRIT through forming an entity called the West Bank Homeowner's Association. Its president is Petitioner. In retaliation for their activities, CRIT chose to impose its unfettered power by confiscating and taking Petitioner's home without just compensation, applied retroactively tribal statutes and penalties in violation of Petitioner's constitutional rights, and has done so where Congress has explicitly stated that CRIT has no power to operate over and on the land in question.

The tale of this Petitioner, Roger French, is unlike any this Court has ever seen. The wrongs visited upon Petitioner and other U.S. citizens is one of the most shameful and longstanding examples of the United States abandoning its non–Indian citizens. That it has destroyed Petitioner is not the end of this saga. That the present rulings of the federal courts, if left unchanged, will threaten even

more U.S. citizens and let continue the legal abomination that exists on the West Bank of the Colorado River is something this Petition seeks to remedy. That these matters must necessarily be left to a non–attorney representing himself does not diminish the harm sought to be remedied, nor the justness of this cause. Rather, it simply reflects the financial harm already suffered by the residents at the hands of CRIT which renders Petitioner now incapable of affording counsel to represent him. Accordingly, any excesses of frustration reflected in this petition are respectfully sought to be excused in advance. The fact is, the long history of horror this petitioner seeks to remedy is not an easy tale to tell. Nonetheless, Petitioner does so in the strong belief that only in America would a country's highest court choose to hear the righteous plea of one of its citizens made under these circumstances.

From the rulings of the lower courts, it would appear that this case is merely about an Indian tribe's assertions of authority over an individual who refused to enter into a tribal lease and pay rent for land that he had previously leased for over a decade under a Permit issued by the U.S. Dept of Interior. Indeed, the tribal and federal courts wish to reduce this matter to such a simple discourse.

But the reality is that this case is about CRIT attempting to legitimize control over an entire disputed area through an improper use of its tribal court system to assert jurisdiction. In so doing, CRIT seeks to perpetuate a falsehood that the courts have determined that the "Western Boundary lands" are indeed tribal trust land and that the boundary

dispute was resolved decades ago. This case is also about CRIT's attempt to stifle efforts by anyone challenging its claims, including the elimination of the West Bank Homeowners Association (WBHA). And what better way for CRIT to intimidate WBHA members than to use its court system to both confiscate the home of the organization's president while simultaneously imposing huge damage awards against him? What better way to coerce the families of 200 permittees to sign new leases that include tribal jurisdiction? And if the residents don't consent to tribal jurisdiction and CRIT's sovereign immunity, CRIT simply forces them from their homes, even though many have been on the land for three and sometimes four generations, long before the United States government even suggested that their homes might be on Indian land.

But it is no matter to CRIT, as they have shown nothing but hostility and contempt for West Bank residents since the infamous 1969 Secretarial Order, which purported to expand the Reservation by moving a portion of the western boundary into the state of California. CRIT's hostility was clearly demonstrated by the 2011 ejection of the Blythe Boat Club which had claims to their property back to 1947 (*Colorado River Indian Tribes v. Blythe Boat Club*), of Red Rooster where CRIT burned down 27 mobile homes in that 2000 eviction, of Paradise Point where CRIT destroyed the electrical service to 22 homes in 2001 (*Turley v. Eddy*, Fed. Appx. 934, 2003 WL 21675511 (9th Cir. July 16, 2003)), of Ron Jones in 2010 where CRIT confiscated his boat and later his mobile home (*West Bank Homeowners Association v. County of Riverside, Riverside County Sheriff's*

Department: Sheriff Stanley Sniff), and of Robert Johnson who built them a beautiful multi–million dollar resort only to find himself now without a business and in financial ruin (*Water Wheel Recreational Area, Inc. v. La Rance*, 642 F.3d 802 (9th Cir. 2011)).

To help the community in the struggle with CRIT, Petitioner took a position on the board of directors of the West Bank Homeowners Association in 2001, and later assumed the role of President in 2003. It was a daunting task, but Petitioner felt that saving the homes of hundreds of families was a just and worthy cause, knowing full well the risk and difficulties that might lie ahead.[1]

The Court may wish to note that the West Bank Homeowners Association was previously involved in *Arizona v. California*, 530 U.S. 392 (2000), initially with an unsuccessful Motion to Intervene in 1994 (*Memorandum Opinion and Order No. 17 (Mar. 29, 1995)*), and in 2000 with a Brief *Amicus Curiae* objecting to the proposed Stipulation and Agreement (Section II E) which left the boundary dispute unresolved:

> The proposed stipulation (1) violates the Act of Congress dated April 30, 1964, Public Law 88–302, 78 Stat. 188, that specifically

[1] French's house was destroyed by a "mysterious" fire on August 8, 2014, after being taken by CRIT and occupied by a tribal member. The fire also burned down the garage on the adjacent property destroying 3 boats, 2 of which belonged to French. Loss of garage and contents estimated at $230,000. CRIT refused to allow an independent investigation of the fire.

prohibits the Secretary of Interior from exercising any authority on behalf of the Reservation in the disputed area until a final boundary determination is made; (2) does not satisfy the requirements of the Court's earlier rulings throughout the entire series of the *Arizona v. California* cases; (3) is not in compliance with the Court's unambiguous Order reopening an earlier decree; and (4) will close this matter without a boundary determination resulting in a myriad of unconscionable consequences.[2]

The members of the Association have a substantial interest in this matter. As occupants of the disputed area, their experience with the Tribes has proven they have little if no rights whatsoever against a sovereign nation even when there has been no final boundary determination in favor of the Tribes as specifically required by Congress before tribal authority can exist. 78 Stat. 188, Sec. 5. Realistically, any rights they may have can only be protected if they are independently wealthy, have the intestinal fortitude to get involved in litigation against two sovereign nations and live long enough to see a conclusion.[3]

B. Context of this Case

To understand the context of this case, we

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[2] Brief *Amicus Curiae* of the West Bank Homeowners Association, P.4, *Arizona v. California*, 530 U.S. 392 (2000)

[3] *Id.* at P.2-3.

need to examine the history of the primary federal cases involving CRIT and disputed area residents. Those cases are *Turley v. Eddy*, and *Water Wheel*, making the current case, *French v. Starr*, the third in this trilogy.

Turley v. Eddy began with a standoff at Paradise Point on November 19, 2001, when CRIT tribal police with federal agents from the Bureau of Indian Affairs confronted 22 West Bank families with demands to surrender their homes immediately. The BIA threatened the residents with arrest and 5 year prison sentences, and arrest of any sheriff who "got in the way". They even had a helicopter circling overhead, apparently trying to add a little intimidation to the scene. The sheriff's deputies quickly retreated, but the brave residents stood their ground and demanded to see a court order.

That court order ultimately came from the Ninth Circuit on July 16, 2003.[4] There the appellate court ruled that CRIT was a necessary and indispensible party citing the boundary dispute, and dismissed the case on sovereign immunity based upon Fed. R. Civ. P. 19 ("Rule 19"). Today all that is left of those 22 homes are the concrete pads where they once stood, and the memories within those whose homes were taken.

The next test of tribal jurisdiction over a nonmember disputed area resident was *Water Wheel*. Water Wheel challenged the status of the land before the tribal courts, but waived that

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[4] *Turley v. Eddy*, Fed. Appx. 934, 2003 WL 21675511 (9th Cir. July 16, 2003).

challenge before the district court when threatened with the application of Rule 19:

> Many of the arguments asserted by Plaintiffs relate to the status of the land leased by Water Wheel. Plaintiffs argue, for example, that the land has never become CRIT tribal land by a valid act of Congress, that the lease is therefore void, and, alternately, that the lease is only with the United States government and not the tribe. Quite inconsistently, Plaintiffs also assert that they are not challenging the Indian title or reservation status of the land. As the Court noted in its order of March 25, 2009, "Plaintiffs asserted during the telephone conference, as they have in the past, that they will *not* be asking this Court to address the Indian title or reservation status of the land in question." Dkt. #49 (emphasis added); *see also* Dkt. #58. Plaintiffs' merits brief confirms that "Plaintiffs are not here contesting the reservation status of the land[.]" Dkt. #50 at 15. The Court will hold Plaintiffs to this position.[5]
>
> Plaintiffs take this position for good reason. If the Court were to address the status of the leased land, both CRIT and the United States might well be indispensable parties. Because CRIT enjoys sovereign immunity and cannot be sued in this Court absent CRIT consent (which has not been given) or an act of Congress (which has not been cited by the parties), such a claim likely would require

[5] *Water Wheel*, 2009 WL 3089216 at 2.

> dismissal of this action.[6]
>
> For the purposes of this decision, the Court assumes that the property occupied by Water Wheel under the lease is CRIT trust land.... The Court therefore will proceed with the assumption that Water Wheel occupies reservation land.[7]
>
> Given this assumption, the Court will not address the land–status and lease–validity arguments in Plaintiffs' merits brief. Dkt. #50 at 11–13, 21–37.[8]

Thus the *Water Wheel* decision was based upon an assumption that the land is CRIT tribal trust land, and that the status of the land would not be considered in the determination of tribal jurisdiction over Water Wheel, a nonmember entity.

C. Current Matter Procedural History

Petitioner filed litigation in the U.S. District Court for the District of Arizona on October 22, 2013, seeking declaratory and injunctive relief over whether the Colorado River Indian Tribe's tribal court has jurisdiction over him in a supposed "eviction" action. Federal courts have the authority to determine whether a tribal court has exceeded the lawful limits of its jurisdiction. *National Farmers Union Ins. Co. v. Crow Tribe*, 471 U.S. 845, 853 (1985). Legal questions are reviewed de novo. *AT&T*

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[6] *Id.* at n.3.
[7] *Id.* at 2.
[8] *Id.* at n.4.

Corp v. Coeur d'Alene Tribe, 295 F.3d 899, 904 (9th Cir. 2002). Factual findings made by tribal courts are reviewed for clear error. *FMC v. Shoshone–Bannock Tribes*, 905 F.2d 1311, 1313 (9th Cir. 1990).

At issue was Petitioner's occupancy of a lease on federal land claimed by CRIT to be within the Colorado River Indian Reservation. However, the Permit at issue is actually on land that the courts have determined to be within a disputed area defined by the Act of April 30, 1964, Public Law 88–302, 78 Stat. 188, (hereinafter the 1964 Act (App. 29a–32a)) where the reservation boundary has never been "finally determined". Respondents are the tribal appellate court judges, the tribal court judge, the CRIT tribal council chairman, and the CRIT tribal councilmember responsible for tribal realty. CRIT tribal council members are before the court in their official capacity only.

Petitioner has challenged tribal jurisdiction as a non–tribal member, providing clear evidence that the boundary dispute has not been resolved and as a result, a congressional statute, the 1964 Act, specifically precludes CRIT jurisdiction over him.

In spite of arguments to the contrary by both CRIT and the United States, the District Court correctly found that the nature and location of the Colorado River Indian Reservation western boundary is still disputed and that "*no court has finally determined the western boundary of the Reservation*", [French's] "*lot may or may not be within the boundaries of the Reservation*", and "*the location of the Reservation's boundary remains*

unresolved". (App. 8a, 26a)

The district court framed the jurisdictional question as follows:

> … the case now before the Court is that, unlike in *Water Wheel*, Plaintiff here does not concede – nor is it clear – that the lot CRIT leased to him is within the boundaries of the Reservation. The essence of Plaintiff's argument is that CRIT may not exercise the inherent authority to exclude non–members from its lands, which leads to its Tribal Court jurisdiction over this case, when the question of whether the lot at issue is within the Reservation remains unresolved. And the Court agrees that such an exercise of a tribe's inherent authority may exceed that contemplated in *Water Wheel* …. (App. 15a–16a)

The district court concluded:

> Because Plaintiff is estopped under the terms of the Permit and his conduct from asserting that the lot he leased from CRIT was not within the Reservation, the Tribal Court had adjudicative jurisdiction over CRIT's action to evict Plaintiff from the lot and related damages… under *Water Wheel*. (App. 27a)

Although the district court claimed that Petitioner asserted that the lot was "not within the Reservation", it conceded that Petitioner never actually challenged CRIT's title to the lot. But California did challenge CRIT's title and therefore

the court decided that Petitioner's citation to a boundary dispute was effectively a challenge to CRIT's title. The court explained itself thusly:

> In response, much of Plaintiff's argument is premised on a fine distinction Plaintiff asks the Court to make. Plaintiff states that he is not asking the Court to find that **he** is challenging CRIT's title to the lot–which, Plaintiff states, would be required for estoppel to apply–but rather to recognize that California did so in the past by disputing CRIT's title to the western boundary lands…..This distinction is of no avail in Plaintiff's present challenge to the Tribal Court's jurisdiction. [Emphasis in original] (App. 19a)

Apparently the court decided that this "fine distinction" allowed it the liberty of twisting Petitioners citation of a boundary dispute into an assertion that "the lot he leased from CRIT was not within the Reservation", even though Petitioner never made such claim. Petitioner instead only claimed that there is a boundary dispute which triggers the 1964 Act. From Petitioner's Opening Brief before the district court:

> French…asserts that the tribal court has no jurisdiction over him as a non–tribal member, providing clear evidence that the boundary dispute has not been resolved and as a result, a congressional statute, PL88–302, (Act of April 30, 1964, Public Law 88–302, 78 Stat. 188) specifically precludes CRIT jurisdiction

> over him.
>
> Federal law established by a Congressional statute, PL88–302, denies authority to the Secretary of the Interior to approve leases within the disputed area until a final determination of the reservation western boundary finds these lands included within the reservation. Therefore, until the boundary has been finally determined in CRIT's favor, CRIT cannot possibly have inherent authority or the power of exclusion over nonmembers in accordance with federal law.

The district court acknowledged CRIT may have had no right to lease the lot under the 1964 Act, but quickly dismissed its relevance by applying estoppel to suspend any further jurisdictional analysis:

> While…[Petitioner's] basis of the action in Tribal Court – may have been premised on the assertion that the lot was located on disputed lands that CRIT had no right to lease under the 1964 Act, his challenge to the Tribal Court's jurisdiction is premised on an assertion that the lot was not on Reservation land. (Pl.'s Mot. at 15.) Because that assertion is contrary to what Plaintiff explicitly agreed to when he entered into the Permit, this Court may apply the doctrine of estoppel to preclude Plaintiff's opposition to the Tribal Court's jurisdiction. (App. 19a)

The district court also explained that the *Montana* exceptions do not apply. *Montana v.*

United States, 450 U.S. 544 (1981). "Although the Court recognizes that "[t]ribal jurisdiction cases are not easily encapsulated, nor do they lend themselves to simplified analysis," the Court does not view the present case as one that fits into an analysis under the *Montana* exceptions." (App. 15a)

Within the appellate court's 2 page memorandum (App 2a–3a), the lower court's ruling and reasoning were affirmed with "French argues CRIT lacked jurisdiction… because [his] lot is not part of the Colorado River Indian Reservation", concluding that "CRIT properly exercised jurisdiction over an unlawful detainer action for breach of lease by a non–tribal member within the Western Boundary lands." (App. 3a)

The appellate court's memorandum was silent on the 1964 Act, completely ignoring Petitioner's arguments on the jurisdictional issues. The memorandum was also silent on the misapplication of a *Water Wheel* analysis, the suspension of federal Indian law, the inapplicability of estoppel in the jurisdictional analysis, the denial of Petitioner's constitutional rights under the Fifth and Fourteenth Amendments, the taking of Petitioner's home and realty improvements without compensation, the denial of Petitioner's due process rights, the reconsideration of accepting California's *amicus* brief, the abrogation of California's rights, and any consideration of the tribal court's lack of personal jurisdiction.

II. REASONS FOR GRANTING THE CASE

A. Plenary power of Congress at Issue

There is no doubt that Congress has plenary power over Indian sovereignty. From WILLIAM C. CANBY, JR., AMERICAN INDIAN LAW IN A NUTSHELL, 6th ed. 97 (2015) [hereinafter CANBY'S INDIAN LAW]:

> Although there may be argument over the extent to which the courts may properly limit tribal sovereignty, there has never been any doubt that Congress is legally free to do so. *Talton v. Mayes*, 163 U.S. 376, 384 (1896); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978). Congress's power over Indian affairs is plenary. *United States v. Lara*, 541 U.S. 193, 200–02 (2004); *United States v. Jicarilla Apache Nation*, 131 S. Ct. 2313, 2323–24 (2011).

The *Water Wheel* ruling itself recognized Congressional authority over tribal regulatory jurisdiction:

> *Bourland*, 508 U.S. at 689 (noting that in opening up the Cheyenne Sioux Tribe's tribal lands for public use, **Congress "eliminated the Tribe's power to exclude** non–Indians from these lands, and with that the incidental regulatory jurisdiction formerly enjoyed by the Tribe"); *id.* at 691 n.11. [Emphasis added] *Water Wheel,* 642 F.3d. at 811–12.

Yet in spite of *Water Wheel*'s recognition of Congressional authority, the appeals court refused to acknowledge Petitioner's primary argument that the 1964 Act prevents tribal jurisdiction. The district court inferred that the statute was irrelevant because Petitioner cited a disputed boundary, even

though the court itself acknowledged that a boundary dispute exists. Apparently it is the courts' opinion that estoppel can be utilized to strike Congressional authority limiting tribal sovereignty.

The courts' refusal to address the 1964 Act in the context of Congress's plenary power cannot be reconciled within case law cited above by CANBY'S INDIAN LAW, or by *Water Wheel* itself. The courts' refusal to consider Congressional authority here has also decided an important federal question in a way that conflicts with relevant decisions of this Court per Supreme Court Rule 10(c). If this Court were to allow such sidestepping of Congress's plenary power, the result would yield chaos in future matters involving asserted tribal jurisdiction over nonmembers, and more broadly, mark the termination of the rule of law within the courts.

B. Consideration of Land Status is Required

In a determination of tribal jurisdiction over a nonmember, the required consideration of land status was addressed in *Strate v. A–1 Contractors*, 250 U.S. 438, 454 (1997) and described in COHEN'S HANDBOOK OF FEDERAL INDIAN LAW §4.02[3][c] at 237 (Nell Jessup Newton eds., (2012)) [hereinafter, COHEN'S HANDBOOK]:

> *Strate*'s determination that, for purposes of a *Montana* analysis, the state highway at issue was sufficiently analogous to non–Indian fee lands suggested nonetheless that **the status of the land would remain a crucial threshold consideration**. [Emphasis added]

Likewise the district court itself recognized the significance of land status citing *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 658 n.12 (2001):

> [T]ribal jurisdiction is, of course, cabined by geography: The jurisdiction of tribal courts does not extend beyond tribal boundaries. (App. 16a)

The significance of land status was brought to the forefront in *Nevada v. Hicks*, 533 U.S. 346 (2001). From SARAH KRAKOFF, TRIBAL CIVIL JUDICIAL JURISDICTION OVER NONMEMBERS: A PRACTICAL GUIDE FOR JUDGES, July 15, 2010, Colorado L. Rev., Vol. 81, 2010 at 26 [hereinafter KRAKOFF'S GUIDE]:

> *Hicks* addressed the one question still left open by *Montana* (and avoided by *Strate*): does *Montana* apply to all nonmember activity, irrespective of land status? In other words, does the *Montana* presumption that tribes lack jurisdiction over nonmembers apply to activity on tribal trust land? Justice Scalia, writing for the majority, rejected Hicks' argument that the Tribe had the authority to regulate the state officers' behavior because the alleged violations occurred at Hicks's home, located on trust land within the Tribe's reservation.[9] Rather, Justice Scalia concluded that **"[t]he ownership status of land . . . is only**

[9] *See Hicks*, 533 U.S. at 359–60. The *Hicks* opinion described the land as "tribe owned." See id. at 357 ,359. But the land was actually an individual trust allotment owned by Floyd Hicks. See *State v. Hicks*, 196 F.3d 1020, 1022 (9th Cir. 1999), overruled by *Nevada v. Hicks*, 533 U.S. 353 (2001).

one factor to consider in determining whether regulation of the activities of nonmembers is "necessary to protect tribal self–government or to control internal relations.""[10] [Emphasis added]

Justice Souter's concurring opinion, however, articulated that *Montana* applies to trust land as well: "*Montana* applied this presumption against tribal jurisdiction to nonmember conduct on fee land within a reservation; I would also apply it where, as here, a nonmember acts on tribal or trust land"…

…Kennedy and Thomas joined Souter's concurrence, and Justice O'Connor, joined by Stevens and Breyer wrote separately to concur as well. While Justice O'Connor largely disagreed with the majority analysis, she emphasized that "the majority is quite right that *Montana* should govern our analysis of a tribe's civil jurisdiction over nonmembers, **both on and off tribal land**."[11] A majority of Justices (the Souter three and O'Connor three) thus **seemed to adopt the view that *Montana* applies to all exercises of tribal jurisdiction over nonmembers irrespective of land status**, and that land status may nonetheless play an important role in whether either of the two *Montana* exceptions is met.

One way to view land status after *Hicks* is to assume that Justice Scalia's approach

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[10] *See id.*.

[11] *Id.* at 388.

> prevails, in which case **land status is a factor to weigh** in an overall balancing test that determines whether the tribal exercise of jurisdiction over nonmembers is "necessary to protect tribal self–government or to control internal relations."[12]

Although the *Montana* analysis presented above in *Hicks* appears to challenge the Ninth Circuit's *Water Wheel* reasoning of *Montana* inapplicable, Petitioner only presents these excerpts to illustrate that the ownership status of the land is a factor that must be considered in determining whether regulation of the activity of a nonmember is necessary to protect tribal self–government or to control internal relations. Here the courts have not only refused to examine the ownership status of the land as required, they have estopped Petitioner from presenting the ownership status of the land.

Petitioner argued the requirement to consider land status to the appellate court with "…overriding all of Appellees' estoppel arguments is the reality that federal Indian law requires inquiry into the status of land for the determination of tribal adjudicatory jurisdiction. Therefore the federal court itself must make determinations on whether the land in question is on the Reservation and whether the land is tribal land on the Reservation. And it is that reality that renders Appellees' estoppel arguments irrelevant in this matter."

Here, instead of examining ownership status

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[12] *See Hicks*, 533 U.S. at 360.

as required, the courts claimed that Petitioner was estopped from challenging ownership status and therefore by default, the land was treated as tribal trust land. But Petitioner's arguments on land status are independent of and irrelevant to the court's responsibility to consider land status as established by the Supreme Court. The refusal of the courts to consider land status is clearly in conflict with *Hicks*, as well as *Strate* and *Atkinson,* all of which are relevant decisions of this Court per Supreme Court Rule 10(c).

C. Can Estoppel Determine Land Status?

Through the application of estoppel to maneuver around the requirement to consider land status in accordance with *Montana*, *Strate*, *Hicks, Atkinson*, and *Plains Commerce*, the courts here have devised a means to treat the land as tribal trust land. This sophistry then leads to the courts' finding that CRIT has the inherent authority to exclude using *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 144–45, 102 S.Ct. 894, 71 L.Ed.2d 21 (1981) "recognizing a tribe's inherent authority to exclude non–Indians from tribal land, without applying *Montana". Water Wheel* 642 F.3d at 810.

The district court supports its application of estoppel in determining tribal jurisdiction with:

> ..the Tribal Court properly applied the doctrine of estoppel to find its own jurisdiction in the underlying action, even though the lot may or may not be within the boundaries of the Reservation. The equitable considerations raised in this dispute—most

> notably, the policy of promoting tribal self–government and the development of tribal courts, *see Iowa Mut. Ins. Co.*, 480 U.S. at 16–17, the recognition of a tribe's inherent authority to exclude, *see Water Wheel*, 642 F.3d at 812–13, and the recognition of the government's role as trustee of reservation land on behalf of the tribes, *see Ruby*, 588 F.2d at 704–05—weigh in favor of the Tribal Court's application of the doctrine of estoppel to determine its jurisdiction in this matter. (App. 26a)

Petitioner requests this Court's consideration of how any court could reasonably find that CRIT has the inherent authority to exclude on land that "may not be within the boundaries of the Reservation". Here, the courts' leap of faith treatment of the land as de facto tribal trust land without examination is questionable at a minimum, and certainly outside the rulings within the *Montana* progeny.

Another leap of faith taken by the courts here is that somehow estoppel in an eviction matter can also be applied to justify jurisdiction. The courts have apparently lost sight of the necessity of jurisdiction being established as a threshold issue prior to any court's authority to consider eviction. So without establishing jurisdiction beforehand, judicial consideration of an unlawful detainer action is not only barred, here it is beyond the scope of federal review of tribal jurisdiction over a nonmember. From CANBY'S INDIAN LAW at 254:

> …the federal court will review de novo the federal question of the tribe's jurisdiction, being "guided" but not controlled by the tribal court's views. It will review the tribe's jurisdictional factual findings only for clear error. Prescott v. Little Six, Inc., 387 F.3d 753 (8th Cir.2004); FMC v. Shoshone–Bannock Tribes, 905 F.2d 1311 (9th Cir.1990). If the federal court decides that the tribal court had jurisdiction, it will not relitigate the tribal decisions on the merits.

In the application of estoppel, the courts here have cited *Goode v. Gaines*, 145 U.S. 141, 152 (1892) (estoppel does not depend on validity of landlord's title); *Richardson v. Van Dolah*, 429 F.2d 912 (9th Cir. 1970) (App.3a); *Williams v. Morris* 95 U.S. 444,448 (1877); Quon v. Sanguinetti, 135 P.2d 880, 881 (Ariz. 1943); Cal. Evid. Code § 624; A.R.S. § 33–324. (App.18a) But all of these cases and state statutes involve landlord/tenant issues, not the federal question of tribal court jurisdiction. Also, the appeals court citation above begs the question: where "estoppel does not depend on validity of landlord's title", are we to infer that the jurisdiction of a tribal court over a nonmember also does not depend upon the validity of a tribe's claim of tribal land? Clearly, estoppel applied within a tribal court's unlawful detainer action is of no significance to a tribal jurisdiction analysis per federal Indian law.

Petitioner asserts furthermore that CRIT cannot be considered "landlord" in the application of estoppel because his Permit was issued by the Secretary of the Interior, not CRIT. Therefore since

the Permit demonstrates that CRIT is not the "landlord", the courts' estoppel citations are again irrelevant and misapplied.

Finally, although the district court's estoppel analysis relied heavily upon *Iowa Mutual Ins. Co. v. LaPlante* 480 U.S. 9 (1987), *Water Wheel*'s utilization of *Iowa Mutual* for its jurisdictional reasoning[13] conflicts with the Supreme Court as described within *Strate v. A–1 Contractors*, 520 U.S. 438 (1997). From KRAKOFF'S GUIDE at 23:

> Language in *Iowa Mutual* that "[c]ivil jurisdiction over [nonmember] activities presumptively lies in the tribal courts,"[14] "scarcely supports the view that the *Montana* rule does not bear on tribal–court adjudicatory authority in cases involving nonmember defendants."[15] Rather, *Iowa Mutual*'s statement "stands for nothing more than the unremarkable proposition that, where tribes possess authority to regulate the activities of nonmembers, "[c]ivil jurisdiction over [disputes arising out of] such activities presumptively lies in the tribal courts.""[16] Rather than a presumption favoring tribal court jurisdiction over nonmembers, *Strate* held that the governing rule is a **presumption against such jurisdiction unless one of the two**

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[13] *See Water Wheel*, 642 F.3d. at 812.

[14] *See* text at notes 138–39, *infra*, quoting *Iowa Mutual*, 480 U.S. at 18.

[15] *Strate*, 250 U.S. at 451–52.

[16] *Id.* at 453 (quoting *Iowa Mutual*; bracketed alteration by *Strate*).

***Montana* exceptions exist…** [Emphasis added]

In summary: a) the courts erred by failing to address the federal question of tribal jurisdiction and instead reached beyond federal review by examining the tribal courts' decision on an unlawful detainer action, b) the courts misapplied estoppel by treating CRIT as a "landlord", and c) the courts' utilization of estoppel based upon *Iowa Mutual* is in direct conflict with *Strate*'s confirmation of the applicability of the *Montana* rule. Without question, the invocation of estoppel to find tribal trust land and ultimately tribal jurisdiction over a nonmember has decided an important federal question in a way that conflicts with *Montana*, *Strate*, *Hicks, Atkinson*, and *Plains Commerce,* all relevant decisions of this Court per Supreme Court Rule 10(c).

D. A *Montana* Analysis Must Be Considered

In the *Water Wheel* analysis, the Ninth Circuit explained that the lower court applied *Montana* unnecessarily[17], and found tribal jurisdiction separately relying upon *Merrion v. Jicarilla Apache Tribe*, having proceeded on the basis that the land in question was tribal trust land, Congress had imposed no limits to CRIT's regulatory jurisdiction, there were no state interests involved (i.e. *Hicks*), and CRIT had the inherent authority to exclude. However, *Water Wheel* did apply a *Montana* analysis in its findings that both *Montana* exceptions were satisfied to further support its reasoning, separate from *Merrion*:

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[17] *Water Wheel*, 642 F.3d 802 (2011) n.4.

> …the commercial dealings between the tribe and Johnson involved the use of tribal land, one of the tribe's most valuable assets. Thus, **if *Montana* applied** to the breach of contract claim, **either exception would provide regulatory jurisdiction over Johnson**.[18] [Emphasis added]

The Ninth Circuit's inclusion of a *Montana* analysis within *Water Wheel*, even though determined to be unnecessary, is consistent with its analysis citing *Strate*, 520 U.S. at 455: "*Montana* is "the pathmarking case concerning tribal civil authority over nonmembers."".[19] The significance of *Montana* is further developed within CANBY'S INDIAN LAW in analysis related to *Plains Commerce Bank v. Long Family Land and Cattle Co.*, 554 U.S. 316 (2008):[20]

> The Court reiterated *Montana's* "rule" that the "inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." Id. at 328 (quoting *Montana*, 450 U.S. at 565). This rule was said to be "particularly strong" when the nonmember's activity occurred on non–Indian–owned fee land, **clearly implying that the rule also applies, if more weakly, on Indian–owned land**. [Emphasis added]

By contrast in this matter, neither court considered a *Montana* analysis whatsoever, instead

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[18] *Water Wheel*, 642 F.3d 802 (2011) at 818–19.

[19] *Water Wheel* at 809.

[20] CANBY'S INDIAN LAW at 86.

relying entirely upon *Water Wheel*, but ignoring the *Montana* component of the *Water Wheel* reasoning and decision. More importantly, the courts here flatly limited the applicability of a *Montana* analysis to non–tribal land, in direct conflict with *Plains Commerce*, citing *Water Wheel:*

> …the Court of Appeals concluded that *Montana* did not apply to the case, because *Montana* addressed a tribe's exercise of jurisdiction over non-members on non–Indian fee lands within a reservation, and Water Wheel was a dispute over activities of non–members on CRIT's land within its Reservation. *Id.* at 809-10. (App 15a)

Thus the district court concluded:

> No party argues that the lot is non–CRIT land but within the Reservation–an instance in which an analysis under the *Montana* exceptions would be appropriate. Accordingly, the Court declines to enter into a *Montana* analysis here. (App. 16a)

The lower court even seems to admit that neither of the *Montana* exceptions applies to Petitioner with "the Court does not view the present case as one that fits into an analysis under the *Montana* exceptions". (App. 15a)

We are thus left with two questions: 1) Can a *Water Wheel* finding of tribal jurisdiction over nonmembers be applied without the *Montana* progeny considered, and 2) Does the law allow a finding of tribal jurisdiction over a nonmember

where none of the conditions of the two *Montana* exceptions exist?

The Ninth Circuit in *Water Wheel* reasoned that "*Montana* limited the tribe's ability to exercise its power to exclude **only as applied to the regulation** of non–Indians **on non–Indian land, not tribal land**"[21]. And "Since deciding *Montana*, the Supreme Court has applied those exceptions almost exclusively to questions of jurisdiction arising on non–Indian land or its equivalent. The exception is *Hicks*… where land ownership… was not dispositive when weighed against the state's considerable interest".[22] But the Supreme Court's *Montana* analysis within *Hicks* concluded that "[t]he ownership status of land . . . is only one factor to consider in determining whether regulation of the activities of nonmembers is "necessary to protect tribal self–government or to control internal relations."" [23], giving rise to the same implication as *Plains Commerce* that the *Montana* rule also applies to Indian owned land. Therefore, the Ninth Circuit's reasoning of the limitation of *Montana* to non–tribal land is in conflict with both *Plains Commerce* and *Hicks*. [Emphasis added].

But regardless of whether regulatory authority based upon a tribe's power to exclude on tribal land renders a *Montana* analysis unnecessary, the courts here have ignored the Supreme Court's *Montana* criteria in *Hicks* by refusing to consider the "ownership status of land" as a factor and *Plains*

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[21] *Water Wheel* at 810.
[22] *Id.* at 809.
[23] *See Hicks*, 533 U.S. at 359–60.

Commerce where the *Montana* rule applies to both tribal and non–tribal land.

Without doubt, the courts here have decided an important federal question, tribal jurisdiction over a nonmember, in a way that conflicts with *Montana* and its progeny, especially *Plains Commerce* and *Hicks,* relevant decisions of this Court per Supreme Court Rule 10(c). Allowing such a decision to set precedent would not only be an assault on federal Indian law under *Montana* and its progeny, it would establish nothing short of anarchy within the courts for similar disputes involving asserted tribal jurisdiction over nonmembers. It would also bring further immeasurable harm to West Bank residents.

E. Land is Alienated under *Montana*

Petitioner asserts that a consideration of land status could only find that the 1964 Act has clearly abrogated tribal sovereignty for the disputed area, if it indeed ever existed, resulting in the alienation of the land under *Montana*, and offered analysis from WINTER KING et al., *BRIDGING THE DIVIDE* : WATER WHEEL'S *NEW TRIBAL JURISDICTION PARADIGM,* 47 GONZ., L. REV. 745–46 (2011–2012) [hereinafter, WINTER KING'S BRIDGING THE DIVIDE]:

> In the 1990s, the Supreme Court honed in on a key distinction between *Montana* and *Merrion* – namely, the nature of the land at issue—to find that the removal of certain lands from exclusive tribal control carries with it an implicit divestiture of tribal civil jurisdiction. A prime example of this movement is *South*

> *Dakota v. Bourland,* 508 U.S. 679 (1993). *Bourland* held that any treaty rights of the Cheyenne River Sioux Tribe to regulate non–Indian hunting and fishing were abrogated when treaty lands were taken to create a reservoir under certain federal statutes. *Id.* at 697 ("**These statutes clearly abrogated the Tribe's 'absolute and undisturbed use and occupation' of these tribal lands,** and thereby deprived the Tribe of the power to license non–Indian use of the lands." (citation omitted)). The Court left for the lower court to determine whether either *Montana* exception applied, but nonetheless applied a strong presumption that loss of tribal title divests tribal regulatory power. *Id.* at 692–93. [Emphasis added]

Here, like *Bourland, a* congressional statute, the 1964 Act, has indeed removed "certain lands from exclusive tribal control" which "carries with it an implicit divestiture of tribal civil jurisdiction" as explained in WINTER KING'S BRIDGING THE DIVIDE.

Further support of the requirement to consider alienated land is found in *Strate* as described in CANBY'S INDIAN LAW at 165:

> *Strate* held that a tribe, by reason of its domestic dependent status, could not exercise civil jurisdiction over a tort suit between nonmembers arising from an accident on a state highway right–of–way, where the **tribe had no gatekeeping authority**, was the equivalent of non–Indian fee land, and that tribes had no jurisdiction over nonmember

activities on such land under *Montana*.

Since the 1964 Act prohibits the Secretary of Interior from approving leases within the disputed area, CRIT has no gatekeeping authority. Therefore, the district court erred in its dismissal of a *Montana* analysis because it refused to consider *Strate*'s findings that where a tribe lacks "gatekeeping authority", the land is rendered at most alienated land, and the significance of *Bourland*'s findings that a Congressional statute abrogating a Tribe's 'absolute and undisturbed use and occupation' effectively strips Indian title. Here, the lower courts either could not, or would not, determine whether the land in question is within the boundaries of the CRIT reservation. Therefore, consideration of federal Indian law pertaining to alienated lands in accordance with the *Montana* progeny is required, as a minimum. The *Water Wheel* court itself recognized the importance of considering alienated land:

> *Burlington N.R. Co. v. Red Wolf*, 196 F.3d 1059, 1062–63 (9th Cir. 1999) ("The threshold question in this appeal is whether *Montana*'s main rule applies, that is, whether the property rights at issue are such that the land may be deemed "alienated" to non–Indians.").[24]

Yet in spite of *Water Wheel*'s recognition of the threshold question of land "alienated" under *Montana*, the courts here chose to ignore the question by invalidating *Montana*. Such reasoning

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[24] *Water Wheel* , 642 F.3d at 812.

by the courts is clearly in conflict with *Bourland* and *Strate*, both relevant decisions of this Court per Supreme Court Rule 10(c). Petitioner asks the obvious question: can tribal trust land be assumed by the courts where the reservation boundary has not been determined and where the 1964 Act not only strips the Secretary's leasing authority, but has rendered the land at most alienated in accordance with *Strate* and *Bourland*?

F. Regulatory Jurisdiction Must be Considered

Neither court addressed regulatory jurisdiction, nor even inferred it as a necessary requirement to conclude tribal jurisdiction over Petitioner. Instead the courts referred to *Water Wheel* as controlling. But, *Water Wheel* devoted much discussion on the question of regulatory jurisdiction:

> We examine the extent of an Indian tribe's civil authority over non–Indians acting on tribal land within the reservation. We hold that under the circumstances presented here, where there are no sufficient competing state interests at play, *Nevada v. Hicks*, 533 U.S. 353, 359–60 (2001), **the tribe has regulatory jurisdiction** through its inherent authority to exclude, independent from the power recognized in *Montana v. United States*, 450 U.S. 544 (1981).[25]
>
> To exercise its inherent civil authority over a defendant, a tribal court must have both

[25] *Water Wheel*, 642 F.3d at 804–05.

> subject matter jurisdiction – **consisting of regulatory** and adjudicative jurisdiction – and personal jurisdiction.[26]
>
> [5] We see no evidence of congressional intent to limit the CRIT's **regulatory jurisdiction** in this instance….[27]

Water Wheel obviously recognized that regulatory jurisdiction is a threshold issue for a finding of tribal jurisdiction over a nonmember, and Congress has plenary power over a tribe's power to regulate. Therefore, Petitioner asserts that the courts were required to follow *Water Wheel*'s guidance and federal Indian law on the necessary finding of regulatory jurisdiction. Had the courts correctly applied such an examination, they would have had to consider the 1964 Act triggered by "the location of the Reservation's boundary remains unresolved"[28], which differentiates this matter from *Water Wheel*, and clearly negates tribal regulatory authority over leasing, the activity at issue. The courts would also have had to consider that absent regulatory authority, CRIT does not have the authority to exclude ("regulatory authority goes hand in hand with the power to exclude"). *South Dakota v. Bourland*, 508 U.S. 679, 691 n. 11 (1993). Therefore the courts' failure to examine and confirm regulatory authority has resulted in a decision that is in conflict with the entire *Montana progeny, Bourland* in particular, thus deciding an important federal question in a way that conflicts with relevant

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[26] *Water Wheel*, 642 F.3d at 809.
[27] *Id.*at 813.
[28] (App. 26a).

decisions of this Court per Supreme Court Rule 10(c).

Petitioner asserts that allowing inferior courts to forgo their responsibility to examine a tribe's ability to regulate the activity of nonmembers as a threshold issue for tribal jurisdiction would lead to inconsistent and inappropriate results, and here further harm to West Bank residents.

G. California's Interests Must Be Considered

The Ninth Circuit in *Water Wheel* recognized precedent established in *Nevada v. Hicks*, 533 U.S. 353 (2001), where a state's interest may impose an exception to a Tribe's inherent power to exclude:

> In *Hicks*, the Court held that **where a state has a competing interest** in executing a warrant for an off–reservation crime, the tribe's **power of exclusion is not enough on its own to assert regulatory jurisdiction** over state officers and *Montana* thus applies.[29] [Emphasis added].

Here, the filing of the *Amicus Curiae* by the State of California in the district court demonstrates that the state indeed has a competing interest in this matter. (App. 27a) As presented within the State's Brief, California's interests include:

> California has an interest in the presence or absence of its jurisdiction over the disputed area, and the effect that that jurisdiction may have on the State and its residents…. Also, if

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[29] *Water Wheel*, 642 F.3d at 813.

> CRIT has jurisdiction over the disputed area, its exercise of claims to water from the Colorado may profoundly affect California. Finally, on behalf of the non–Indian residents in the disputed area, California has an interest in their access to the State judicial system to resolve disputes, such as the one before this Court here, involving Plaintiff French.

Yet the district court not only ignored the State of California's interests by denying its Motion for Leave to File Brief, it erred by ignoring the State's competing interests in the application of the *Hicks* test, yet another example of a conflict with a relevant decision of this Court per Supreme Court Rule 10(c).

Although the primary question before this Court is tribal jurisdiction over a non–Indian, the State of California has correctly and admirably brought forth the larger issues in this case. And unfortunately, instead of giving California the same respect as the U.S. Dept. of Justice (DoJ), the district court judge simply discarded as "moot" the rights of California citizens. (App. 28a) But rather than being bullied by the DoJ, California stood up for its citizens in their water rights, and access to California's court system in lieu of a foreign court where constitutional rights are forfeited and the pretext of impartiality is about as believable as Baghdad Bob. California also sought to assert the rights of its citizenry to participate in decisions regarding environmental issues and Indian gaming facilities. And even though the district court saw fit to reject California's

motion, California's *amicus* brief speaks volumes to the real impact of the courts' decision, matters that should not be cast aside as "moot", and issues that are far superior to the simple eviction matter advanced by the courts.

Perhaps the largest issue stemming from California's *amicus* brief and the courts' continued recognition of the Reservation boundary dispute is the legality of the two hundred odd leases and permits that have been approved by the Secretary of the Interior since the confirmation of the boundary dispute in *Arizona v. California*, 460 U.S. 605 (1983), *Arizona v. California*, 530 U.S. 392 (2000), and *Turley v. Eddy*.[30] The 1964 Act is clear that the Secretary had no authority to approve any of those leases[31], yet the Secretary continues to do so even after the courts have repeatedly confirmed that the boundary dispute has not been resolved.

If the lower courts' refusal to consider California's *amicus* brief is allowed by this Court, the establishment of CRIT's jurisdiction over the disputed area will be further solidified within this trilogy of cases, and the treatment of the land will be as tribal trust land, regardless of the recognized boundary dispute, the 1964 Act, *Arizona v. California*, 460 U.S. 605 (1983), *Arizona v. California*, 530 U.S. 392 (2000), *Turley v. Eddy, and French v. Starr* (to date). One result of ignoring California's interests will be the continued harm to West Bank residents by the state's impotence in

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[30] *Turley v. Eddy*, Fed. Appx. 934, 2003 WL 21675511 (9th Cir. July 16, 2003).

[31] *See* (App. 31a–32a).

oversight of local law enforcement in protecting private property against this openly hostile domestic dependant sovereign. Another result will be the continued forfeiture of residents' constitutional rights under tribal jurisdiction.

III. CONCLUSION

Petitioner begs this Court to end the suffering of the good people of the disputed area at the hands of the unfettered and unrestricted power of the Colorado River Indian Tribes, recognize the residents' constitutional rights including the Fifth and Fourteenth Amendments, and confirm that the rule of law must be applied here. To that end, and reasons stated above, Petitioner respectfully urges this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX

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APPENDIX A

United States Court of Appeals for the Ninth Circuit

No. 15-15470
D.C. No. 2:13-cv-02153-JJT

ROGER FRENCH,

Plaintiff-Appellant,

v.

KARLA STARR, in her capacity as a Judge of the CRIT Tribal Appellate Court; ROBERT N. CLINTON, in his capacity as a Judge of the CRIT Tribal Appellate Court; ROBERT MOELLER, in his capacity as a Judge of the CRIT Tribal Appellate Court; LAWRENCE C. KING, in his capacity as the Chief and Presiding Judge of the Colorado River Indian Tribes Tribal Court; HERMAN "TJ" LAFFOON, official capacity as member of the CRIT Tribal Council; SYLVIA HOMER, Acting Chairwoman of the Colorado River Indian Tribes,

Defendants-Appellees.

Appeal from the United States District Court for the District of Arizona

John Joseph Tuchi, District Judge, Presiding

Submitted May 16, 2017*
San Francisco, California

Before: W. FLETCHER and TALLMAN, Circuit Judges, and HUCK,** District Judge

MEMORANDUM***

Plaintiff Roger French appeals the district court's grant of summary judgment in favor of Defendants, who are members of the Tribal Court and Tribal Council of the Colorado River Indian Tribes ("CRIT"). We have jurisdiction under 28 U.S.C. § 1291 and we affirm.[1]

French argues CRIT lacked jurisdiction to adjudicate eviction proceedings relating to his leasehold ("the Permit") on the California side of the Colorado River (the "Western Boundary lands") because French's lot is not part of the Colorado River Indian Reservation. Both the Permit and the assignment of that Permit to French described the lot in question as within the Colorado River Indian Reservation. French paid rent pursuant to the Permit, first to the Bureau of Indian Affairs for the

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* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

** The Honorable Paul C. Huck, United States District Judge for the U.S. District Court for Southern Florida, sitting by designation.

*** This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[1] We deny Defendant-Appellees' motion for judicial notice [Dkt. #11] and Plaintiff-Appellant's motions for judicial notice [Dkt. #27 and #30].

benefit of CRIT and then directly to CRIT, from 1983 through 1993. French is therefore estopped from contesting CRIT's title. *See Richardson v. Van Dolah*, 429 F.2d 912, 917 (9th Cir. 1970), *Goode v. Gaines*, 145 U.S. 141, 152 (1892) (estoppel does not depend on validity of landlord's title), *William v. Morris*, 95 U.S. 444, 455 (1877) (when tenant gains possession, tenant is estopped from denying title of landlord).

Once French's challenge to CRIT's title is resolved, this case is squarely controlled by *Water Wheel Camp Recreational Area, Inc. v. La Rance*, 642 F.3d 802 (9th Cir. 2011) (CRIT properly exercised jurisdiction over an unlawful detainer action for breach of lease by a non-tribal member within the Western Boundary lands).

AFFIRMED.

Dkt. Entry: 41-1

Filed: Jun 01, 2017

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Case No. CV-13-02153-PHX-JJT
Dated: February 12, 2015

Title: Roger French v Karla Starr, *et al.*

ORDER

At issue are Defendants' Joint Motion for Summary Judgment (Docs. 54, 55, 56, 57), to which Plaintiff filed a Response (Docs. 61, 68) and Defendants filed a Reply (Doc. 66); and Plaintiff's Motion for Summary Judgment (Docs. 62, 63, 64, 65), to which Defendants filed a Response (Docs. 66, 67) and Plaintiff filed a Reply (Doc. 75). In conjunction with these Motions, the Court has considered the Brief of the United States as *Amicus Curiae* in Support of Defendants' Motion for Summary Judgment (Doc. 72) and Plaintiff's Reply Brief in Opposition to United States *Amicus Curiae* (Doc. 76). In this Order, the Court also resolves Defendants' Request for Judicial Notice in Support of Defendants' Motion for Summary Judgment (Doc. 58), Plaintiff's Request for Judicial Notice in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment (Doc. 60), and the State of California's Motion for Leave to File Brief as *Amicus Curiae* in Support of Plaintiff (Docs. 80, 81), to which Defendants filed a Response (Doc. 83). Because the parties' briefs were more than adequate to address the issues raised in the parties' motions, the Court declined to hear oral

argument on the motions. See LRCiv 7.2(f).

I. BACKGROUND

The following facts are undisputed: In an Act dated March 3, 1865, Congress designated a portion of the western Arizona Territory to be the Colorado River Indian Reservation, and the Reservation expanded to its current configuration, which includes land in California, pursuant to Executive Orders in 1873, 1874, 1876 and 1915. The Colorado River Indian Tribes (CRIT) reside on the Reservation. In subsequent water rights litigation, the state of California took the position that a portion of the western boundary of the Reservation was the Colorado River itself, which had moved eastward since the Reservation was established, and the United States took the position that the same portion of the Reservation boundary was based upon the location of the river at the time the relevant Executive Order was signed, in 1876, such that the Reservation included land on the California side of the river. In a 1964 Act, Congress authorized the Secretary of the Interior to lease tribal land but, recognizing the dispute over the western boundary of the Reservation, exempted the disputed lands from the Secretary's leasing authority. However, Congress further provided that leasing authority extended to the disputed lands "when and if determined to be within the Reservation."

On January 17, 1969, Edward Weinberg, Solicitor of the Department of Interior, published a decision in which he found that the western boundary of the Reservation was defined by an 1879

survey (the "Benson survey") and was a fixed boundary, not one that moved with the river, such that the disputed lands were part of the Reservation. (Docs. 55, 56, 57, Defs.' Joint Separate Statement of Facts in Supp. of Summ. J. (DSOF) ¶¶ 10-16, Ex. J.) On the same day, Stewart Udall, Secretary of the Interior, entered an Order addressed to the Director of the Bureau of Land Management (BLM) that, in relevant part, adopted the finding of the Solicitor and stated that the disputed lands were within the Reservation. (DSOF ¶¶ 17-18, Ex. J.) A year later, Walter Hickel, the new Secretary of the Interior, affirmed to CRIT that "Secretary Udall's order was a final, official and unqualified declaration that the 'Benson Line' was the proper location of the western boundary of the Reservation" in the relevant portion of the Reservation. (DSOF ¶ 22, Ex. J.) Once the Secretary made a determination that the disputed lands were part of the Reservation, the Secretary began to act with the authority to lease the disputed lands, now called the "western boundary lands," on behalf of CRIT under the 1964 Act. (DSOF ¶ 23.) For certain parcels of the western boundary lands, the United States prosecuted quiet title and ejectment actions, including an action in which the District Court for the Central District of California ultimately ordered the removal of L. John and Margaret Rymer and their belongings from a 30 acre parcel of the western boundary lands on October 6, 1971. (DSOF Ex. J at 12-13.)

In 1979, Donald and Shirley Neatrour entered into a year-to-year lease ("Permit") with the Secretary acting on behalf of CRIT to occupy and

use a lot within the former Rymer parcel in the western boundary lands, and the Bureau of Indian Affairs (BIA) approved the Permit on November 23, 1979. (DSOF ¶ 29, Ex. DD at 3; Ex. L at 4-17.) The Permit explicitly identified the Secretary on behalf of CRIT as the Permitter and the Neatrours as the Permittees, stated that the lot was located "within the Colorado River Indian Reservation," and recited numerous conditions, including that "the right to terminate this permit in the event of breach shall not be construed as a waiver by the Tribes of any rights to secure compliance with the terms of this permit." (DSOF Ex. L at 4-5, 10.) In 1983, the Neatrours assigned their interest in the Permit to Plaintiff Roger French, who agreed to "fulfill all obligations, conditions, and stipulations" contained in the Permit. (DSOF Ex. L at 18.)

Meanwhile, in the late 1970s, a number of tribes, including CRIT, intervened in the ongoing adjudication of the rights to the water of the Colorado River. *Arizona v. California*, 460 U.S. 605, 612 (1983). In the context of allocating appurtenant water rights, issues again arose as to the western boundary of the Reservation and the Secretary's authority to determine the boundary. *Id.* at 630-31, 634-40. The Supreme Court concluded that, with respect to its prior water rights decree, the western boundary of the Reservation had not yet been "finally determined," although the Court declined to intimate anything "as to the Secretary's power or authority to take the actions that he did or as to the soundness of his determinations on the merits" since the time the Court had entered the prior water rights decree. *Id.*

at 637-38. While the Supreme Court encouraged the expeditious adjudication of the boundary issues in a simultaneous separate action in the District Court for the Southern District of California, *id.* at 639, no court has finally determined the western boundary of the Reservation or decided whether the Secretary exceeded his authority in determining the boundary. Because the parties eventually reached an agreement as to CRIT's water allotment, the Supreme Court again declined to address title to the western boundary lands in its most recent decision in the Colorado River water rights adjudication. *See Arizona v. California*, 530 U.S. 392, 418-19 (2000).

Back on the lot Plaintiff leased from CRIT, Plaintiff paid his rent from 1983, when he obtained the Permit, to 1993, and he renewed the Permit annually in that period. Plaintiff states that he learned of the "challenge to the boundary by the State of California" in the early 1990s and reasoned that CRIT had recently increased his rent because of the "impending Supreme Court ruling against them," so he decided to stop paying rent and instead give money to a legal fund. (Doc. 6, Am. Compl. ¶ 24 (verified by Plaintiff, appearing pro se).) He paid only partial rent in 1994 and 1995 and stopped paying completely after that. In August 1996, BIA sent Plaintiff a letter notifying him that he had forfeited his Permit by failing to timely pay rent and giving him until September 12, 1996, to vacate the property and return it to CRIT. However, Plaintiff remained on the lot without paying rent for about 14 more years.

In August 2010, Plaintiff suddenly sent BIA a

rent payment equal to the annual amount he used to owe in 1994. BIA rejected the payment and notified Plaintiff that, by continuing to occupy the lot, he was trespassing. BIA then sent Plaintiff a notice to quit the property by October 18, 2010, but Plaintiff remained on the lot. On October 20, 2010, CRIT filed an action against Plaintiff for eviction and damages in Tribal Court. After the parties filed extensive briefing, the Tribal Court granted summary judgment in favor of CRIT on September 23, 2011, and found as part of its ruling that it had jurisdiction over the matter because CRIT and Plaintiff had a consensual relationship, the lot was within the Reservation, and Plaintiff was estopped from claiming that the lot was not within the Reservation. (DSOF Ex. W.) Plaintiff appealed the matter to the Tribal Court of Appeals, claiming that the lot was not within the Reservation and that the Tribal Court lacked jurisdiction over the matter and had violated his due process rights. On July 30, 2013, after briefing and oral argument, the Tribal Court of Appeals affirmed the Tribal Court's grant of summary judgment, finding that it had jurisdiction, but reducing the money damages the Tribal Court had awarded to CRIT. (DSOF Ex. DD.)

Plaintiff, who proceeds *pro se* in this matter, filed the present lawsuit on October 22, 2013. (Doc. 1.) In the Amended Complaint, the operative pleading, Plaintiff names six individual Defendants: the Hon. Karla Starr, the Hon. Robert N. Clinton, and the Hon. Robert Moeller,[1] Judges of

[1] The Hon. Robert Moeller passed away on August 9, 2014. The parties have informed the Court that they will substitute in Judge Moeller's successor once identified. (Doc. 66 at 3 n.1.)

the Tribal Court of Appeals; the Hon. Lawrence C. King, Chief and Presiding Judge of the Tribal Court; Wayne Patch, Sr., CRIT Tribal Council Chairman; and Herman "TJ" Laffoon, in his official capacity as member of the CRIT Tribal Council. (Am. Compl. at 1-2.) Plaintiff raises two claims against all Defendants, asserting he is entitled to relief in the form of (1) a declaratory judgment that the Tribal Court has no jurisdiction over him "related to the Permit (lease) of lands in the Disputed Area," and (2) a permanent injunction against Defendants "from taking any action to further the Tribe's prosecution of [Plaintiff] in the Tribal Court Action and any other civil litigation in the CRIT Tribal Court." (Am. Compl. ¶¶ 48-53.) The Court now resolves Defendants' Consolidated Motion for Summary Judgment, (Doc. 54, Defs.' Mot.), and Plaintiff's Cross-Motion for Summary Judgment, (Doc. 62, Pl.'s Mot.).

II. ANALYSIS

A. Legal Standards

1. Summary Judgment

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is appropriate when: (1) the movant shows that there is no genuine dispute as to any material fact; and (2) after viewing the evidence most favorably to the non-moving party, the movant is entitled to prevail as a matter of law. Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Eisenberg v. Ins. Co. of N. Am.*, 815 F.2d 1285, 1288-89 (9th Cir. 1987). Under this standard, "[o]nly disputes over facts that might affect

the outcome of the suit under governing [substantive] law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A "genuine issue" of material fact arises only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

In considering a motion for summary judgment, the court must regard as true the non-moving party's evidence, if it is supported by affidavits or other evidentiary material. *Celotex*, 477 U.S. at 324; *Eisenberg*, 815 F.2d at 1289. However, the non-moving party may not merely rest on its pleadings; it must produce some significant probative evidence tending to contradict the moving party's allegations, thereby creating a material question of fact. Anderson, 477 U.S. at 256-57 (holding that the plaintiff must present affirmative evidence in order to defeat a properly supported motion for summary judgment); *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 289 (1968).

"A summary judgment motion cannot be defeated by relying solely on conclusory allegations unsupported by factual data." Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). "Summary judgment must be entered 'against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'" *United States v. Carter*, 906 F.2d 1375, 1376 (9th Cir. 1990) (quoting *Celotex*, 477 U.S. at 322).

2. Quasi-Appellate Review of Tribal Court

Jurisdiction

In reviewing a tribal court decision regarding tribal court jurisdiction, the Court applies a deferential, clearly erroneous standard to factual questions and a *de novo* standard to questions of federal law. *FMC v. Shoshone-Bannock Tribes*, 905 F.2d 1311, 1313 (9th Cir. 1990). Federal courts must show "some deference to a tribal court's determination of its own jurisdiction," *id.*, and be mindful that "the federal policy of promoting tribal self-government encompasses the development of the entire tribal court system, including appellate courts," *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16-17 (1987).

B. Tribal Court Jurisdiction Over Eviction Action

Indian tribes are "qualified to exercise many of the powers and prerogatives of self-government," but "the 'sovereignty that the Indian tribes retain is of a unique and limited character.'" *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 327 (2008) (quoting *United States v. Wheeler*, 435 U.S. 313, 322-23 (1978)). Within the scope of that sovereignty, "tribes retain sovereign interests in activities that occur on land owned and controlled by the tribe." *Nevada v. Hicks*, 533 U.S. 353, 392 (2001) (O'Connor, J., concurring in part and concurring in the judgment). For example, "tribes retain power to legislate and to tax activities on the reservation, including certain activities by nonmembers." *Plains Commerce Bank*, 554 U.S. at 327 (citation omitted). As a matter of inherent authority, a tribe "may also exclude

outsiders from entering tribal land." *Id.* at 327-28. With regard to tribal courts, a tribe's adjudicative authority does not exceed its legislative and regulatory authority. *Id.* at 330; *Strate v. A-1 Contractors*, 520 U.S. 438, 453 (1997).

The sole question before the Court in this case is whether the Tribal Court had jurisdiction over the action brought by CRIT to evict Plaintiff from the lot he leased from CRIT and for money damages for, among other things, unpaid rent.[2] Defendants argue principally that the Tribal Court of Appeals correctly concluded that the Tribal Court had jurisdiction under *Water Wheel Recreational Area, Inc. v. LaRance*, 642 F.3d 802 (9th Cir. 2011), because the lot Plaintiff leased was located on Reservation land and, in any event, Plaintiff is estopped by contract and conduct from asserting otherwise. (Defs.' Mot. at 5-15.) Plaintiff argues that the Tribal Court misapplied *Water Wheel* because a dispute exists as to the boundary of the Reservation and the lot Plaintiff leased from CRIT lies within the disputed lands. (Pl.'s Mot. at 15-16.)

1. *Water Wheel*

In *Water Wheel*, a case similarly situated to the present one, plaintiffs entered into a lease with

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[2] To the extent that Plaintiff asserts that he was not afforded due process of law, that claim is wrapped up in the question of whether the Tribal Court had jurisdiction over the action; Plaintiff has not alleged separate deprivations of his due process rights to this Court in anything other than conclusory fashion. (*See* Am. Compl. ¶¶ 45-47; Pl.'s Mot. at 17.)

CRIT for a parcel of land within the Reservation on the California side of the Colorado River (and not far from the lot at issue in the present case). 642 F.3d at 805. When the lease expired in 2007, plaintiffs continued to occupy and use the parcel without paying rent to CRIT. *Id.* After plaintiffs refused to vacate, CRIT brought an action in Tribal Court to evict plaintiffs and for damages. *Id.* at 806. The Tribal Court found it had jurisdiction over the matter and, after a trial, entered judgment in favor of CRIT. *Id.* The Tribal Court of Appeals affirmed, concluding the Tribal Court had jurisdiction both through its sovereign authority and under *Montana v. United States*, 450 U.S. 544 (1981), which provides that a tribe may have adjudicative jurisdiction over the activities of a non-member on non-Indian fee lands within a reservation if the non-member either entered into a consensual relationship with the tribe (the "first *Montana* exception") or the non-member's conduct "'threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe'" (the "second *Montana* exception"). *Water Wheel*, 642 F.3d at 806, 809 (citing and quoting *Montana*, 450 U.S. at 565-66).

Upon plaintiffs' quasi-appeal of the Tribal Court's jurisdiction, this Court concluded that the Tribal Court had jurisdiction over the action against the corporate plaintiff, but not the individual plaintiff, under the first Montana exception. Id. at 807. The Court declined to consider whether the Tribal Court also had jurisdiction pursuant to its inherent authority to exclude non-

members from its lands. *Id.*

The Ninth Circuit Court of Appeals reversed the District Court's decision in two important aspects. First, the Court of Appeals concluded that *Montana* did not apply to the case, because *Montana* addressed a tribe's exercise of jurisdiction over non-members on non-Indian fee lands within a reservation, and Water Wheel was a dispute over activities of non-members on CRIT's land within its Reservation. *Id.* at 809-10. Second, the Court of Appeals concluded that, under *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982), and its progeny, the Tribal Court of Appeals was correct in finding it had regulatory jurisdiction pursuant to its inherent authority to exclude, because the parcel of land at issue was CRIT's land within its Reservation and Congress imposed no limits to CRIT's regulatory jurisdiction. *Water Wheel*, 642 F.3d at 810-13. While the Court of Appeals recognized "it is an open question as to whether a tribe's adjudicative jurisdiction is equal to its regulatory jurisdiction," the Court of Appeals found CRIT's Tribal Court had jurisdiction over CRIT's action to evict plaintiffs from Reservation land and for unpaid rent. *Id.* at 816.

The twist in the case now before the Court is that, unlike in Water Wheel, Plaintiff here does not concede—nor is it clear—that the lot CRIT leased to him is within the boundaries of the Reservation.[3]

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[3] Although the Court recognizes that "[t]ribal jurisdiction cases are not easily encapsulated, nor do they lend themselves to simplified analysis," the Court does not view the present case as one that fits into an analysis under the Montana exceptions. See *Philip Morris USA, Inc. v. King Mountain Tobacco Co., Inc.*,

The essence of Plaintiff's argument is that CRIT may not exercise the inherent authority to exclude non-members from its lands, which leads to its Tribal Court jurisdiction over this case, when the question of whether the lot at issue is within the Reservation remains unresolved. And the Court agrees that such an exercise of a tribe's inherent authority may exceed that contemplated in *Water Wheel* and its predecessor, *Merrion*.

But Defendants argue that this Plaintiff may not properly make this argument because he acknowledged, both through entering into the lease and his conduct, that the lot was within the boundaries of the Reservation. (Defs.' Mot. at 7-9.) Defendants contend that the Tribal Court properly relied on state and federal law, which uniformly provides that a tenant is estopped from

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569 F.3d 932, 937 (9th Cir. 2009). The distinctive aspect of this case is that the lot Plaintiff leased from CRIT is on land that may or may not be within the boundaries of the Reservation. If the Court considers that the lot is CRIT's land within the Reservation, *Water Wheel* applies. See 642 F.3d at 810 (explaining the extent of *Montana*'s application to tribal court jurisdiction cases and concluding that *Montana* did not apply to *Water Wheel*). If, as Plaintiff urges, the Court considers that the lot is not within the Reservation, *Philip Morris* provides that CRIT's Tribal Court would lack jurisdiction. 569 F.3d at 938 ("[T]ribal jurisdiction is, of course, cabined by geography: The jurisdiction of tribal courts does not extend beyond tribal boundaries.") (citing *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 658 n.12 (2001)). No party argues that the lot is non-CRIT land but within the Reservation—an instance in which an analysis under the *Montana* exceptions would be appropriate. Accordingly, the Court declines to enter into a *Montana* analysis here.

contesting a landlord's title in a suit for unpaid rent. (Defs.' Mot. at 7-9.) In response, Plaintiff's principal argument is that he is not asking the Court to find that he is contesting CRIT's title to the lot he leased, which would be required for estoppel to apply, but rather to recognize that California did so in the past. (Pl.'s Mot. at 8-9.)

2. Estoppel

As recognized above, the Court must show "some deference to a tribal court's determination of its own jurisdiction," *FMC*, 905 F.2d at 1313, and be mindful that "the federal policy of promoting tribal self-government encompasses the development of the entire tribal court system, including appellate courts," *Iowa Mut. Ins. Co.* 480 U.S. at 16-17. In finding it had jurisdiction, the Tribal Court of Appeals relied on its conclusions in an earlier case, *Colorado River Indian Tribes v. Blythe Boat Club*, Case No. 11-0002 (CRIT Ct. App. Mar. 20, 2012), which applied both CRIT Property Code § 1-311(i) and the common law doctrine of estoppel to conclude that Plaintiff is estopped from challenging CRIT's ownership of the lot he leased both through the terms of the Permit and his conduct in annually renewing the Permit and paying rent. *Colorado River Indian Tribes v. French*, Case No. 12-0001, at 6-9 (CRIT Ct. App. Jul. 30, 2013) (located in docket at DSOF Ex. DD). CRIT Property Code § 1-311(i) precludes a tenant of CRIT from denying or challenging CRIT's ownership of a leased property in an eviction proceeding. *Id.* at 8-9. Moreover, CRIT Law and Order Code § 110 permits the Tribal Courts to be

guided by appropriate federal or state law in the event that a controversy arises that is not covered by CRIT's traditional customs and usages, and the Tribal Court of Appeals thus looked to the federal, California and Arizona common law doctrine of estoppel to resolve the question of its jurisdiction over Plaintiff's case. *Id.* To fill any potential gaps in the law, tribal courts may "borrow from the law of other tribes, states, and the federal government." F. Cohen, *Handbook of Fed. Indian Law* § 4.05(1), 269 (2012); *see also Plains Commerce Bank*, 554 U.S. at 351 n.3 (2008) (Ginsberg, J., dissenting) (recognizing practice).

Defendants ask this Court to apply the general principle, which the Ninth Circuit Court of Appeals referred to in *Richardson v. Van Dolah*, that "a tenant in peaceful possession is estopped to question the title of his landlord," a principle that is "designed to prevent a tenant from defending a suit for rent by challenging his landlord's right to put him in possession." 429 F.2d 912, 917 (9th Cir. 1970) (citing *Hancock Oil Co. of Calif. v. Independent Dist. Co.*, 150 P.2d 463 (Cal. 1944)); *see also Williams v. Morris*, 95 U.S. 444, 448 (1877) (noting "a tenant cannot dispute the title of his landlord"); *Quon v. Sanguinetti*, 135 P.2d 880, 881 (Ariz. 1943) (recognizing that a tenant is estopped from challenging the landlord's title as a defense to eviction as both a "universal law" and a statutory rule); Cal. Evid. Code § 624 ("A tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation."); A.R.S. § 33-324 ("When a person enters into possession of real property under a lease, he may not, while

in possession, deny the title of his landlord in an action brought upon the lease by the landlord.") While a court "can refuse to apply the [estoppel doctrine] when equity-policy considerations so demand," *United States v. Ruby*, 588 F.2d 697, 704 (9th Cir. 1978), Defendants argue that the equity-policy considerations here weigh in their favor.

In response, much of Plaintiff's argument is premised on a fine distinction Plaintiff asks the Court to make. Plaintiff states that he is not asking the Court to find that he is challenging CRIT's title to the lot—which, Plaintiff states, would be required for estoppel to apply—but rather to recognize that California did so in the past by disputing CRIT's title to the western boundary lands. (Pl.'s Mot. at 8-9; Pl.'s Reply at 2-3.) This distinction is of no avail in Plaintiff's present challenge to the Tribal Court's jurisdiction. While Plaintiff's refusal to pay CRIT rent for the lot he occupied—the basis of the action in Tribal Court—may have been premised on the assertion that the lot was located on disputed lands that CRIT had no right to lease under the 1964 Act, his challenge to the Tribal Court's jurisdiction is premised on an assertion that the lot was not on Reservation land. (Pl.'s Mot. at 15.) Because that assertion is contrary to what Plaintiff explicitly agreed to when he entered into the Permit, this Court may apply the doctrine of estoppel to preclude Plaintiff's opposition to the Tribal Court's jurisdiction. *Wendt v. Smith*, No. EDCV 02-1361-VAP(SGL), 2003 WL 21750676, at *5 (C.D. Cal. Jan. 30, 2003) (concluding that, while plaintiffs "couch their challenge as one on the

jurisdiction of the Tribal Court" by contending "that a defect in the tribe's title destroys the Tribal Court's authority to exercise jurisdiction over the land," plaintiffs' true intent was to defend "a suit for rent by challenging [their] landlord's right to put [them] in possession," which is barred by the doctrine of estoppel) (citing *Richardson*, 429 F.2d at 917).

Several decisions have examined the application of estoppel in circumstances somewhat similar to those before the Court. In *Weeks v. Goltra*, the court applied the doctrine of estoppel by contract to a challenge by a plaintiff who leased boats from the United States. 7 F.2d 838, 839, 844 (8th Cir. 1925). In 1918, the United States had ordered the manufacture of a fleet of towboats and barges to transport iron and coal on the upper Mississippi River to facilitate the production of war munitions. *Id.* at 839. The boats were near completion when World War I ended and they were no longer needed for munitions production, so the Secretary of War decided to lease them to plaintiff. *Id.* The terms of the lease expressly provided that the boats were the property of the United States. *Id.* When the United States terminated the lease for an alleged failure of plaintiff to perform, plaintiff challenged the United States' title to the boats. *Id.* at 844, 849 (opinion by Pollock, Dist. J., and concurrence by Symes, Dist. J.). The court concluded that, because the language of the lease identifying the lessor United States as the owner of the boats was "plain, direct, and unequivocal" and "incapable of misunderstanding," plaintiff as lessee of the boats was estopped from contending to

the contrary. *Id.* at 844.

In *United States v. McIntosh*, the court applied the doctrine of estoppel by conduct to a challenge by landowners to the United States' taking of parcels of land in Quantico, Virginia for the establishment of a Marine Corps Post. 2 F. Supp. 244, 246 (E.D. Va. 1932). Two of the landowners had accepted full payment from the United States for the lands, and a third group of landowners had accepted partial payment and the right to sue for just compensation, but failed to sue within the statute of limitations period. *Id.* at 254. The court concluded that, even if the United States had not properly acquired title in fee simple to the lands pursuant to Presidential proclamation, and "even if there had been any irregularity in the steps taken for the acquisition of said property," the landowners are "clearly estopped by their conduct to deny that the government has good title to the lands." *Id.* at 249, 253-54. The landowners had acquiesced to the government's ownership of the lands by accepting payment, and estoppel against the third group of landowners was "made even more complete by their continued acquiescence and laches over a period of about 12 years." *Id.* at 254. The court commented that "it would be difficult to state a more complete case for the application of the law of estoppel." *Id.*

Here, estoppel arises both by contract—from the clear terms of the Permit that Plaintiff entered into with the Secretary of the Interior acting on behalf of CRIT—and by conduct—by Plaintiff maintaining the Permit and paying rent to the BIA

for ten years. No factual dispute exists as to the Neatrours' execution of the Permit explicitly stating that the lot was located "within the Colorado River Indian Reservation" or the subsequent assignment of the Permit to Plaintiff. (*See* DSOF Ex. L at 4-5, 18.) And no factual dispute exists as to Plaintiff's annual renewal of the Permit from 1983 to 1993 or his payment of rent to the BIA for the "use and benefit of the Secretary of the Interior acting on behalf of CRIT" during that period. (*See* DSOF Ex. L at 4-5.) The Court thus concludes that the doctrines of estoppel by contract and estoppel by conduct are applicable here. *See Weeks*, 7 F.2d at 844; *McIntosh*, 2 F. Supp. at 249.

Plaintiff makes several arguments as to the validity of the Permit, which he frames as claims of improper title, mistake and illegality, based on his assertion that the Secretary did not have the authority under the 1964 Act to lease any lots in the disputed lands. (Pl.'s Mot. at 13-14.) In addition, because the Court's application of the doctrine of estoppel is a matter of the Court's discretion, *Ruby*, 588 F.2d at 704, implicit in Plaintiff's arguments is a request for the Court to exercise this discretion in Plaintiff's favor and decline to apply the doctrine of estoppel. (*See* Pl.'s Mot. at 13.) All of Plaintiff's challenges to the application of estoppel against him appear to be grounded in the same insinuation: that either the United States affirmatively engaged in misconduct in determining the Reservation boundary or that CRIT affirmatively engaged in misconduct in leasing a lot in the western boundary lands.

But Plaintiff produces no evidence to show that the United States engaged in the kind of misconduct that would sway the Court not to apply the doctrine of estoppel against Plaintiff. In fact, the evidence indicates that the Secretary intended to "determine" the boundary that was in dispute in the 1964 Act by entering the 1969 Order, such that any subsequent exercise of leasing authority in the western boundary lands was authorized under the terms of the 1964 Act. CRIT obtained extra assurance that the government believed the disputed lands were part of the Reservation by way of Secretary Hinkel's 1970 Order. There is no evidence that the Secretary or CRIT engaged in misconduct in the 1979 lease of the lot to the Neatrours, which was assigned to Plaintiff in 1983. In any event, a challenge to the validity of the Permit by Plaintiff now is extremely tardy. Accordingly, Plaintiff's present arguments as to the validity of 1979 Permit, which he renewed from 1983 to 1993, are without merit with respect to the Court's determination of whether Plaintiff is estopped from claiming that the lot is not within the boundaries of the Reservation.

Relatedly, Plaintiff also argues that the United States and CRIT have taken inconsistent positions regarding whether the western boundary of the Reservation is riparian and whether a boundary dispute still exists, and have at times declined to finally resolve the boundary dispute, implying that the United States and CRIT should themselves be estopped from denying the existence of the boundary dispute. (Pl.'s Mot. at

6-8 (citing *United States v. Aranson*, 696 F.2d 654 (9th Cir. 1983).) In *Ruby*, the Ninth Circuit Court of Appeals examined this question in a similar context. 588 F.2d at 699-701. In 1876, the United States hired a surveyor to determine the location of the Snake River in Idaho, and the resulting survey was used to prepare and certify the official plat of the area. *Id.* at 699. In 1891, the United States issued a patent to defendants' predecessors-in-interest for a lot, the east boundary of which was the meander line of the Snake River as identified on the official plat. *Id.* at 699-700. In 1922, the BLM concluded that the original survey was fraudulent and the Surveyor General of Idaho recommended that a proper survey be made, but the Department of Interior declined. *Id.* at 700. In 1957, after ordering a survey of the lands bordering the Snake River, the BLM concluded that the original survey was grossly erroneous and, when accounting for the actual location of the river, 14 to 16 thousand acres of land had been omitted in the original survey. *Id.* The United States brought an action to quiet title in the lands, and defendants counterclaimed that the original title to their land went to the actual bank of the Snake River, and not the meander line in the 1876 survey. *Id.* As part of their counterclaim, defendants argued that the United States should be estopped from claiming ownership rights in the disputed lands because it knew of the fraudulent survey as early as 1922 and the landowners relied on the United States' refusal to resurvey the river and adjoining lands. *Id.* at 701.

The Court of Appeals stated that, while the government is not ordinarily subject to the equitable

doctrine of estoppel, the doctrine may apply in instances in which the government engages in affirmative misconduct. *Id.* at 701-03. The Court concluded that the BLM's 1922 decision not to resurvey the river was an authorized administrative decision that certainly "did not constitute a misrepresentation, concealment, or other form of misconduct necessary to support an estoppel against the government." *Id.* at 704. The Court also noted that, in cases such as this, inherent equitable considerations in favor of the government on account of the government's role as constitutional trustee of the land on behalf of all of the people outweigh considerations in favor of the landowners' interests. *Id.* at 704-05. The Court affirmed the district court's decision quieting title in favor of the United States and declined to apply the doctrine of estoppel against the government with regard to its management of the lands. *Id.* at 705. Here, as in *Ruby*, there is no evidence that the United States or CRIT engaged in a "misrepresentation, concealment, or other form of misconduct necessary to support an estoppel against the government." *See id.* at 704.

Finding no impediment to this Court's application of the doctrine of estoppel against Plaintiff, the Court concludes that Plaintiff is precluded by the terms of the Permit and by his conduct from asserting to this Court in the instant federal action that the lot he leased from CRIT was not within the boundaries of the Reservation to resist a determination that the Tribal Court had jurisdiction over the action brought by CRIT to evict Plaintiff and for damages.

See Wendt, 2003 WL 21750676, at *5. The Court would also conclude that the Tribal Court properly applied the doctrine of estoppel to find its own jurisdiction in the underlying action, even though the lot may or may not be within the boundaries of the Reservation. The equitable considerations raised in this dispute—most notably, the policy of promoting tribal self-government and the development of tribal courts, *see Iowa Mut. Ins. Co.*, 480 U.S. at 16-17, the recognition of a tribe's inherent authority to exclude, *see Water Wheel*, 642 F.3d at 812-13, and the recognition of the government's role as trustee of reservation land on behalf of the tribes, *see Ruby*, 588 F.2d at 704-05—weigh in favor of the Tribal Court's application of the doctrine of estoppel to determine its jurisdiction in this matter.

3. Boundary Dispute

In concluding that this Plaintiff is estopped from asserting that the lot he leased from CRIT was not within the Reservation, the Court recognizes that the issue of the location of the Reservation's boundary remains unresolved. Defendants rightly point out that, in the absence of estoppel, Plaintiff would have to overcome other obstacles in challenging CRIT's title to the lot—none of which the Court need examine here—including whether the statute of limitations period has run on a challenge to the location of the Reservation's boundary, whether the Secretary's determination of the Reservation's boundary is subject to collateral attack, and whether the United States and CRIT are

indispensable parties to such a challenge under Federal Rule of Civil Procedure 19.

The State of California filed a Motion for Leave to File Brief as *Amicus Curiae* in Support of Plaintiff (Doc. 80) in this case. In the proposed Brief (Doc. 81) lodged with the Motion, California addresses issues related to the boundary dispute, and not the grounds on which the Court has decided this matter. Because the proposed Brief would not have helped the Court in resolving the case, the Court denies California's Motion for Leave to File Brief (Doc. 80) as moot.

III. CONCLUSION

Because Plaintiff is estopped under the terms of the Permit and his conduct from asserting that the lot he leased from CRIT was not within the Reservation, the Tribal Court had adjudicative jurisdiction over CRIT's action to evict Plaintiff from the lot and related damages, including unpaid rent, under *Water Wheel*.

IT IS THEREFORE ORDERED that Defendants' Joint Motion for Summary Judgment (Doc. 54) is granted, and Plaintiff's Motion for Summary Judgment (Doc. 62) is denied.

IT IS FURTHER ORDERED that Defendants' Request for Judicial Notice in Support of Defendants' Motion for Summary Judgment (Doc. 58) is granted, and Plaintiff's Request for Judicial Notice in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment (Doc. 60) is granted.

IT IS FURTHER ORDERED that the State of California's Motion for Leave to File Brief as *Amicus Curiae* in Support of Plaintiff (Doc. 80) is denied as moot.

IT IS FURTHER ORDERED that the Clerk of Court shall enter final judgment consistent with this Order and close this case.

Dated this 12th day of February, 2015.

/s/

Honorable John J. Tuchi
United States District Judge

APPENDIX C

Act of April 30, 1964, 78 Stat. 188

Public Law 88-302

AN ACT

To fix the beneficial ownership of the Colorado River Indian Reservation located in the States of Arizona and California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purpose of fixing the beneficial ownership of real property interests in the Colorado River Reservation now occupied by the Colorado River Indian Tribes, its members, and certain Indian colonists, all right, title, and interest of the United States in the unallotted lands of the Colorado River Reservation, including water rights and mineral rights therein, together with all improvements located thereon and appurtenant thereto, except improvements placed on the land by assignees or by Indian colonists, and except improvements furnished by the United States for administrative purposes (including irrigation facilities) or for the housing of Federal employees, are hereby declared to be tribal property held in trust by the United States for the use and benefit of the Colorado River Indian Tribes of the Colorado River Reservation.

SEC. 2. For the purpose of this Act:

(a) "Tribes" means the Colorado River Indian

Tribes of the Colorado River Reservation, with a constitution adopted pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461 et seq.), as said constitution now exists or may hereafter be amended, consisting of a band of the Mohave Indians, the band of Chemehuevi Indians affiliated therewith, and various Indians heretofore or hereafter adopted by the Colorado River Indian Tribes.

(b) "Colorado River Reservation" means the reservation for Indian use established by the Act of March 3, 1865 (13 Stat.559), as modified and further defined by the Executive orders of November 22, 1873, November 16, 1874, May 15, 1876, and November 55, 1915, all of which area shall be deemed to constitute said reservation.

SEC. 3. Any person of Indian blood, his spouse of Indian blood (excluding persons whose Indian blood is traceable solely to Indian tribes, bands, or groups not resident in or subject to the jurisdiction of the United States), and any dependent child of either or both of them, who is not a member of the tribes on the date of this Act, and who has settled on irrigated lands of the Colorado River Reservation through application for a settler's land permit and who is still holding such lands by virtue of the authority of a temporary land use permit issued by or under the authority of the tribes or the Federal Government, shall be deemed to be adopted by the tribes if within two years from the date of this Act he files with the tribal council a statement accepting membership in the tribes and renouncing membership in any other tribe, band, or group. Such statement may be filed

on behalf of a dependent child by either parent or by a person standing in loco parentis.

SEC. 4. This Act shall become effective upon the agreement of the tribes to abandon the claims now pending in docket numbered 185 and in docket numbered 283A before the Indian Claims Commission under the Act of August 13, 1946 (60 Stat. 1049), and the dismissal of said claims by the Indian Claims Commission. Nothing in the Act shall affect or be taken into consideration in the adjudication of, or with respect to, any other claims now pending by the tribes against the United States.

SEC. 5. The Act of June 11, 1960 (74 Stat. 199), as amended by the Act of September 5, 1962 (76 Stat. 428), is amended to read as follows:

"The Secretary of the Interior is authorized to approve leases of land on the Colorado River Indian Reservation, Arizona and California, for such uses and terms as are authorized by the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396a et seq.), and the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415 et seq.), including the same uses and terms as are permitted thereby on the Agua Caliente (Palm Springs), Dania, Navajo and Southern Ute Reservations: *Provided, however*, That the authorization herein granted to the Secretary of the Interior shall not extend to any lands lying west of the present course of the Colorado River and south of section 25 of township 2 south, range 23 east, San Bernardino base and meridian in California, and shall not be construed to affect the resolution of any controversy over the location of the boundary of the Colorado River Reservation: *Provided further*, That

any of the described lands in California shall be subject to the provisions of this Act when and if determined to be within the reservation."

Approved April 30, 1964