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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

AGUA CALIENTE BAND OF CAHUILLA INDIANS,

Plaintiff,

v.

RIVERSIDE COUNTY, LARRY W. WARD, in his official capacity as Riverside County Assessor, PAUL ANGULO, in his official capacity as Riverside County Auditor-Controller, and DON KENT, in his official capacity as Treasurer Tax Collector,

Defendants; and

DESERT WATER AGENCY,

Defendant-Intervenor.

Case No. 5:14-cv-00007-DMG-DTB
Judge: Hon. Dolly M. Gee

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS (Fed. R. Civ. P. 12(c))

Hearing Date: August 29, 2014
Time: 9:30 a.m.
Crtrm: 7

[Filed with:
1. Notice of Motion and Motion;
2. [Proposed] Order.]

Trial Date: TBD
Action Filed: January 2, 2014

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INTRODUCTION

The Agua Caliente Band of Cahuilla Indians ("Tribe") has brought an action against Riverside County ("County"), in which Desert Water Agency ("DWA") has intervened as a defendant, alleging that federal law preempts the County's possessory interest tax as applied to non-Indian lessees on the Tribe's reservation. The County and DWA file this motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, seeking dismissal of the Tribe's action against the County on the grounds that the Tribe's action against the County is barred by the doctrines of res judicata, collateral estoppel and stare decisis. This motion seeks dismissal only of the Tribe's action against the County, and not the Tribe's action against DWA.

In a prior action brought by the Tribe against the County asserting the same claim that the Tribe asserts here, the Ninth Circuit held that federal law does not preempt the County's possessory interest tax as applied to non-Indian lessees on the Tribe's reservation. *Agua Caliente Band of Mission Indians v. Riverside County*, 442 F.2d 1184 (9th Cir. 1971). Subsequently, in an action brought by another Indian tribe against another county in California, the Ninth Circuit reaffirmed its *Agua Caliente* decision and held that federal law does not preempt county possessory interest taxes as applied to non-Indian lessees on an Indian reservation. *Fort Mojave Tribe v. San Bernardino County*, 543 F.2d 1253 (9th Cir. 1976). Recently, the Ninth Circuit, following its decisions in *Agua Caliente* and *Fort Mojave*, reaffirmed that federal law does not preempt county possessory interest taxes as applied to non-Indian lessees on an Indian reservation. *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*, 724 F.3d 1153, 1158 & n. 7 (9th Cir. 2013). Additionally, the California Court of Appeal, in an action brought by a non-Indian lessee on the Tribe's reservation against Riverside County, held that federal law did not preempt the County's

possessory interest tax as applied to the lessee. *Palm Springs Spa, Inc. v. County of Riverside*, 18 Cal.App.3d 372 (1971).

Thus, the law concerning the issue raised in the Tribe's action is fully settled, at least in the Ninth Circuit: federal law does not preempt a county's possessory interest tax as applied to non-Indian lessees on an Indian reservation. Since the Ninth Circuit resolved this issue in the County's favor in the Tribe's earlier action in *Agua Caliente*, the Tribe's instant action is barred by the doctrines of res judicata and collateral estoppel. Since the Ninth Circuit reached the same conclusion in *Fort Mojave* and *Chehalis*, which involved actions brought by other Indian tribes against other counties, and since the California Court of Appeal reached the same conclusion in *Palm Springs Spa*, the Tribe's action is also barred by the doctrine of stare decisis. For these reasons, this court should grant the defendants' motion for judgment on the pleadings.

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STATEMENT OF THE CASE

The Tribe's complaint alleges that federal law preempts the County's possessory interest tax[1] as applied to non-Indian lessees on the Tribe's reservation. Compl. For Dec. and Inj. Relief ("Compl.") (Doc. 1). The complaint alleges that federal regulation of leased lands on Indian reservations is so "comprehensive" that there is "no room" for the application of state or local taxes on such leased lands. Comp. ¶¶ 34, 35. This "comprehensive" federal regulatory scheme, the complaint alleges, is reflected in a recent regulation adopted by the U.S. Bureau of Indian Affairs ("BIA"), which provides that "[s]ubject only to applicable Federal law," a

[1] As the Ninth Circuit has stated, California law defines a "possessory interest" as "[p]ossession of, claim to, or right to the possession of land or improvements," and "[t]axable improvements on tax-exempt land." Cal. Rev. & Tax Code § 107(a), -(b); *Agua Caliente Band of Mission Indians v. Riverside County,* 442 F.2d 1184, 1185 n. 2 (9th Cir. 1971).

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"leasehold or possessory interest" on Indian leased lands is not subject to "any fee, tax, assessment, levy or other charge imposed by any State or political subdivision of a State." 25 C.F.R. § 162.017(c); Compl. ¶¶ 25, 34-37. The complaint alleges that the County's possessory interest tax "impermissibly interferes with the sovereign right of the Tribe to govern itself and its reservation," Compl. ¶ 31, and that the County's continued application of its tax "will continue . . . to inflict upon the Tribe injuries for which there can be no full monetary compensation." Compl. ¶ 32. In its Prayer for Relief, the complaint requests a "declaration" that the County's assessment and collection of its tax "is a violation of federal law and the Tribe's sovereign authority," and an injunction prohibiting the County from continuing to assess and collect its possessory interest tax from the lessees. Compl. p. 9.

The County and DWA have filed answers raising several affirmative defenses, including that the Tribe's complaint has failed to state a claim upon which relief may be granted and that the Tribe's action is barred by the doctrines of res judicata and collateral estoppel. Amended Answer of Riverside County, *et al.*, at pp. 4-5 (Doc. 16); Defendant-Intervenor Desert Water Agency's Answer in Intervention, at p. 6 (Doc. 17).

ARGUMENT

I. THE TRIBE'S ACTION AGAINST RIVERSIDE COUNTY IS BARRED BY THE DOCTRINES OF RES JUDICATA AND COLLATERAL ESTOPPEL.

A. The Res Judicata and Collateral Estoppel Doctrines

The doctrine of res judicata bars a party or its privy from asserting a cause of action against a defendant that was finally adjudicated on the merits in an earlier action against the defendant. *United States v. Mendoza*, 464 U.S. 154, 159, 104

S.Ct. 568, 78 L.Ed.2d 379 (1984); *Montana v. United States*, 440 U.S. 147, 153, 99 S.Ct. 970, 59 L.Ed.2d 210 (1979); *Nevada v. United States*, 463 U.S. 110, 129-130, 103 S.Ct. 2906, 77 L.Ed.2d 509 (1983). "The rule [of res judicata] provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." *Commissioner of Revenue v. Sunnen*, 333 U.S. 591, 597, 68 S.Ct. 715, 92 L.Ed.2d 898 (1948) (citations and internal quotation marks omitted). Res judicata "rests upon considerations of economy of judicial time and public policy favoring the establishment of certainty in legal relations." *Id*. at 597.

Res judicata applies if there is (1) an identity of claims, (2) a final judgment on the merits, and (3) privity between the parties. *Stratosphere Litigation L.L.C. v. Grand Casinos, Inc.*, 298 F.3d 1137, 1142 n. 3 (9th Cir. 2002); *Turtle Island Restoration Network v. U.S. Dep't of State*, 673 F.3d 914, 917 (9th Cir. 2012). The relevant factors in determining whether there is an "identity of claims" are "(1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence in presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts. The last of these criteria is the most important." *Turtle Island*, 673 F.3d at 917-918, *citing Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201-1202 (9th Cir. 1982). "Whether two suits arise out of the same transactional nucleus depends upon whether they are related to the same set of facts and whether they could conveniently be tried together." *Turtle Island*, 673 F.3d at 918, *citing ProShipLine, Inc. v. Aspen Infrastructures, Ltd.*, 609 F.3d 960, 968 (9th Cir. 2010). Res judicata is sometimes referred to as "claim preclusion." *Burlington Northern Santa Fe R.R. Co. v. Assiniboine and Sioux Tribes*, 323 F.3d 767, 770

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(9th Cir. 2003).

The doctrine of collateral estoppel provides that—once a court has decided an issue of fact or law necessary to its judgment—the decision is conclusive in a subsequent action based on a different cause of action involving the same parties to the prior litigation. *Mendoza*, 464 U.S. at 158; *Montana*, 440 U.S. at 153. "[W]here the second action between the same parties is upon a different cause or demand, the principle of res judicata is applied more narrowly. In this situation, the judgment in the prior action operates as an estoppel, not as to matters which might have been litigated and determined, but only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered." *Sunnen*, 333 U.S. at 597-598. The relevant factors in determining whether collateral estoppel applies are whether "(1) the issue at stake was identical in both proceedings; (2) the issue was actually litigated and decided in the prior proceedings; (3) there was a full and fair opportunity to litigate the issue; and (4) the issue was necessary to decide the merits." *Montana,* 440 U.S. at 153-154; *Clark v. Bear Stearns & Co., Inc.*, 966 F.2d 1318, 1321 (9th Cir. 1992).[2] Collateral estoppel, like res judicata, serves to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." *Mendoza,* 464 U.S. at 158, *quoting Allen v. McCurry*, 449 U.S. 90, 94, 104 S.Ct. 411, 66 L.Ed.2d 308 (1980). Collateral estoppel is sometimes referred to as "issue preclusion." *Burlington Northern*, 323 F.2d at 771.

[2] As the Ninth Circuit recently stated, "[i]ssue preclusion . . . applies when '(1) the issue necessarily decided in the previous proceeding is identical to the one which is sought to be relitigated; (2) the first proceeding ended with a final judgment on the merits; and (3) the party against whom [issue preclusion] is asserted was a party or in privity with a party at the first proceeding.'" *Oveniran v. Holder*, 2012 U.S. App. Lexis 9116, *11-12 (9th Cir. May 3, 2012), *citing Hydranautics v. FilmTec Corp.*, 204 F.3d 880, 885 (9th Cir. 2000).

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B. Applicability of Res Judicata and Collateral Estoppel Doctrines In Instant Action

In *Agua Caliente Band of Mission Indians v. Riverside County*, 442 F.2d 1184 (9th Cir. 1971), the Tribe brought an action against Riverside County alleging that federal law preempts the County's possessory interest tax as applied to non-Indian lessees on the Tribe's reservation. The Ninth Circuit rejected the Tribe's argument on the merits, and held that the County's possessory interest tax was not preempted by federal law. The Ninth Circuit cited the Supreme Court's decision in *United States v. City of Detroit*, 355 U.S. 466, 78 S.Ct. 474, 2 L.Ed.2d 424 (1958), which, the court stated, had held "that a tax similar to the California Possessory Interest tax could be levied upon a lessee holding land under a lease from the federal government even though the burden of the tax fell directly on the United States." *Agua Caliente*, 442 F.2d at 1186.3 The court stated that "[a] substantial amount of evidence was received bearing upon the economic effects of the tax upon

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[3] The Ninth Circuit stated:

> If it was not clear before, it is clear since United States v. City of Detroit, *supra*, that the imposition of an increased financial burden on the Government does not, by itself, vitiate a state tax and that the tax imposed upon the use of property is something distinct from a tax imposed upon the property itself. We conclude from this that the tax here is properly imposed unless it can be said that the legislation dealing with Indians and Indian lands demonstrates a congressional purpose to forbid the imposition of it. [¶] Here, as in United States v. City of Detroit, *supra*, there is no statute which expressly forbids the imposition of a state use tax. … If, as was said in United States v. City of Detroit, *supra*, a tax upon the use of property is not a tax upon the property itself, then there is nothing in these statutes which expressly forbids the tax here imposed.

Agua Caliente, 442 F.2d at 1186-1187 (internal quotation marks and citation omitted).

the Indian," and that it would "conclude from it [the evidence] what [the court] would include without it, that is, . . . that the tax has an adverse economic effect on him [the Indian]." *Id*. The court also stated, however, that:

> The California tax on possessory interests does not purport to tax the land as such, but rather taxes the "full cash value" of the lessee's interest in it. Upon default in payment of the tax the Indian lessor is not liable for payment of it and the Indian's title to the land is not encumbered.

Id. (footnote omitted). The court also stated that "California has made no attempt to seize and sell the interest of the lessees in any of the property involved in the action," and thus it was unnecessary to consider the legal consequences of any such action by California. *Id.* at 1187 n. 16.

The doctrine of res judicata bars the Tribe from asserting that federal law preempts the County's possessory interest tax as applied to non-Indian lessees on the Tribe's reservation, because the Tribe asserted the same claim against the County in the *Agua Caliente* case and the Ninth Circuit rejected the Tribe's claim on the merits and held that the County's tax was not preempted. The factors relevant to application of the res judicata doctrine apply here, because there is (1) an "identity of claims," (2) a final judgment on the merits, and (3) privity between the parties. *See Stratosphere Litigation L.L.C. v. Grand Casinos, Inc.*, 298 F.3d 1137, 1142 n. 3 (9th Cir. 2002); *Turtle Island Restoration Network v. U.S. Dep't of State*, 673 F.3d 914, 917 (9th Cir 2012). An "identity of claims" exists here because (1) the County's rights established in the prior judgment would be impaired if the Tribe is allowed to assert its claim here; (2) substantially the same evidence would be presented in the instant action as in the prior action; (3) the Tribe's instant action would involve infringement of the County's right upheld in the former

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action; and (4) the Tribe's instant action arises out of the "same transactional nucleus of facts" as in the former action. *See Turtle Island*, 673 F.3d at 917-918; *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201-1202 (9th Cir. 1982). The res judicata doctrine bars the Tribe from getting two bites at the same apple.[4]

The doctrine of collateral estoppel also applies and bars the Tribe from asserting the same factual claims that were asserted and rejected in the Ninth Circuit's decision in *Agua Caliente*, and in particular the factual claim that the County's possessory interest tax, as defined under California law, *see* note 1, *supra*, is preempted as applied to non-Indian lessees on the Tribe's reservation. The factors relevant to application of the collateral estoppel doctrine apply here, because (1) the identical issue is at stake in the former and current actions; (2) the issue was actually litigated and decided in the prior action; (3) the Tribe had a full and fair opportunity to litigate the issue in the prior action; and (4) the issue was necessary to decide the merits. *See Montana v. United States*, 440 U.S. 147, 153-154 (1979);

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[4] As a general rule, a change in statutory or case law does not preclude application of the res judicata doctrine, even for erroneous judgments. Moore's Federal Practice-Civil, Vol. 18, §§ 131.21 n.12, 131.30(1)(b) (2014); *United States v. Stonehill*, 660 F.3d 415, 444 (9th Cir. 2011) (noting "deep-rooted policy in favor of the repose of judgments entered during past terms"); *United States v. Throckmorton*, 98 U.S. 61, 68-69, 25 L.Ed. 93 (1878). The federal courts have noted in certain tax cases that it is "the well-settled principle that res judicata does not allow dispensation for intervening changes in the law." *Haag v. Shulman*, 683 F.3d 26, 32 n.2 (1st Cir. 2012) (holding that a change in tax policies due to an overruled treasury regulation did not justify reopening a case based on an extended limitations period for filing claims), *citing Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398, 101 S.Ct. 2424, 69 L.Ed.2d 103 (1981). As the Supreme Court has stated, "the res judicata consequences of a final, unappealed judgment on the merits" are not "altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case." *Moitie*, 452 U.S. at 398 (plaintiff in prior action was barred from relitigating same claim even though co-plaintiffs had successfully appealed judgment); *see also Clifton v. Attorney General*, 997 F.2d 660, 663 (9th Cir. 1993) (res judicata effect of prior judgment granting prisoner a right to annual parole hearings was not affected by new statute permitting parole hearings every two years).

Clark v. Bear Stearns & Co., Inc., 966 F.2d 1318, 1321 (9th Cir. 1992).

The Tribe apparently contends that Supreme Court and Ninth Circuit decisions involving the liability of taxpayers preclude application of the res judicata and collateral estoppel doctrines here. The primary decision, the Tribe apparently contends, is the Supreme Court decision in *Commissioner of Internal Revenue v. Sunnen*, 333 U.S. 591, 598-560 (1948), which the Tribe states was followed by the Ninth Circuit in *Burlington Northern Santa Fe R.R. Co.*, 323 F.3d 767, 769 (9th Cir. 2003), and *Hawaiian Telephone Co. v. Public Utilities Comm'n*, 827 F.2d 1264, 1273-1274 (9th Cir. 1987). In *Sunnen*, the Supreme Court stated that res judicata bars the taxpayer from re-litigating the issue of his tax liability involving the same claim for "the same tax year," but does not bar re-litigation of his liability involving a similar or unlike claim "relating to a different tax year." *Sunnen*, 333 U.S. at 598; *see Burlington Northern*, 323 F.3d at 771. The Court stated that in the latter situation—*i.e.*, cases involving a similar or unlike claim "relating to a different tax year"—collateral estoppel bars the taxpayer from re-litigating his liability involving "those matters in the second proceeding that were actually presented and determined in the first suit." *Sunnen*, 333 U.S. at 598. Collateral estoppel does not apply, however, the Court stated, if there has been "a subsequent modification of the significant facts or a change or development in the controlling legal principles [that] may make that determination obsolete or erroneous, at least for future purposes." *Sunnen*, 333 U.S. at 599; *see Burlington Northern*, 323 F.3d at 770-771.[5]

[5] *Sunnen*'s holding relating to the "separable facts doctrine"—*i.e.*, the principle that relevant facts could be separable even though similar or identical, thus creating a collateral estoppel exception—has long been called into question. *Carter v. United States*, 973 F.2d 1479, 1483 n.1 (9th Cir. 1992) (noting the Supreme Court "repudiated the separable facts doctrine in general, [but] has also suggested that the doctrine may remain applicable to some extent in the income tax context"). The Ninth Circuit has stated that the Supreme Court subsequently "limited the application of *Sunnen* to cases where there has been a significant 'change in the

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The tax liability cases cited by the Tribe are inapposite for two main reasons. First, the question raised in the Tribe's action against the County is whether federal law preempts the County's possessory interest tax as applied to non-Indian lessees, and not the tax liability of the non-Indian lessees themselves. The Tribe's Complaint contains two counts, both of which assert federal preemption claims and neither of which mentions the tax liability of the lessees. The first count is entitled "Federal Preemption," Compl. p. 7; the count alleges that federal law preempts the County's possessory interest tax as applied to non-Indian lessees on the Tribe's reservation, Compl. ¶¶ 34, 35, and that "strong federal and tribal interests . . . outweigh any state or local interests in assessing and collecting" the possessory interest tax. Compl. ¶ 36. The second count is entitled "Injury to Sovereign Interests," Compl. p. 8; the count alleges that the Tribe, as a "sovereign Indian tribe with jurisdiction over its reservation," has an inherent and federally-recognized, Constitutionally-based right to makes its own laws and be ruled by them," Compl. ¶ 41; that the County's tax "decrease[s] the lease value of the Reservation trust lands and limit[s] the Tribe's ability to exercise its inherent, sovereign rights to enact, levy, and collect tribal taxes on the possessory interests in question," Compl. ¶ 42; and that this in turn "limits the Tribe's ability to raise revenues" for its own purposes," Compl. ¶43.

Thus, the Tribe's Complaint alleges that the County's tax harms the Tribe's sovereign interests and is preempted by federal law, but does not allege that the County's tax harms lessees by requiring them to pay a tax that they are not liable for paying. This case is unlike a typical taxpayer liability case, such as *Sunnen*, where the taxpayer was liable for "royalty payments growing out of the license contracts which were not involved in the earlier action," and where "what is

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legal climate'" and that other courts have stated the doctrine is no longer good law. *Peck v. Commissioner*, 904 F.2d 525, 527 (9th Cir. 1990) (compiling cases and citing *Montana v. United States*, 440 U.S. 147 (1979)).

decided as to one contract is not conclusive as to any other contract which is not then in issue . . . ." *Sunnen*, 333 U.S. at 601. Here, the Tribe's complaint raises broad issues of federal preemption and tribal sovereignty rather than taxpayer liability, Compl. ¶¶ 34, 36, 41, and therefore the tax liability cases cited by the Tribe are inapposite.[6]

Second, even assuming *arguendo* that the tax liability cases cited by the Tribe preclude application of the res judicata doctrine, the Tribe's action is still barred by the doctrine of collateral estoppel. As noted above, the Supreme Court in *Sunnen* held that collateral estoppel bars the taxpayer from re-litigating the issue of his tax liability in a "different tax year" as to matters that were "actually presented and determined in the first suit," *Sunnen*, 333 U.S. at 598, except that collateral estoppel does not apply if there has been "a subsequent modification of the

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[6] The Tribe's opposition to DWA's motion to intervene further demonstrates that the Tribe is asserting a federal preemption claim rather than a taxpayer non-liability claim. The Tribe asserted:

> The Tribe challenges the legality of a specific California state tax assessed by Riverside County ("County") on possessory interests held by lessees of Indian trust lands within the Tribe's Reservation. . . . Determining the validity of state and local taxes in Indian Country requires a balancing of federal, state, and tribal interests. Factors relevant to this balancing test include, inter alia, the comprehensiveness of federal regulation of the taxed activity or transaction, the entity that bears the legal and economic burden of the tax, the purpose of the tax, and the nexus between the tax and governmental functions or services provided by the taxing entity to the taxpayer. This test is very fact-intensive and specific, requiring a particularized inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law.

Tribe's Opposition to DWA Motion to Intervene 1:18-20, 2:17-28 (Feb. 28, 2014) (Doc 25).

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significant facts or a change or development in the controlling legal principles [that] may make that determination obsolete or erroneous, at least for future purposes." *Id*. at 599. Here, the same issue was "actually presented and determined in the first suit," and there has been no "subsequent modification of the significant facts or a change or development in the controlling legal principles" that would render the Ninth Circuit's decision in the first suit "obsolete or erroneous." On the contrary, as will be explained more fully below, the Ninth Circuit has issued two decisions subsequently to *Agua Caliente* that reaffirm *Agua Caliente* and hold that federal law does not preempt county possessory interest taxes as applied to non-Indian lessees on Indian reservations. *Fort Mojave Tribe v. San Bernardino County,* 543 F.2d 1253 (9th Cir. 1976); *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization,* 724 F.3d 1153, 1158 & n. 7 (9th Cir. 2013). Similarly, the California Court of Appeal held—in an action brought by a non-Indian lessee on the Tribe's reservation against Riverside County—that federal law does not preempt the County's possessory interest tax applied to the lessee. *Palm Springs Spa, Inc. v. County of Riverside*, 18 Cal.App.3d 372 (1971). Therefore, even if *arguendo* the Tribe's preemption claim is not barred by res judicata, the claim is barred by collateral estoppel, because the Ninth Circuit in *Agua Caliente* adjudicated the same issues of law and fact that the Tribe raises here. Since the Ninth Circuit reaffirmed *Agua Caliente* in *Fort Mojave* and *Chehalis*, there has been no "subsequent modification of the significant facts or a change or development in the controlling legal principles" that would render the Ninth Circuit's decision in *Agua Caliente* "obsolete or erroneous."

In sum, the Tribe's action against the County is barred by the doctrines of res judicata and collateral estoppel under the Ninth Circuit's decision in *Agua Caliente*, as reaffirmed in *Fort Mojave* and *Chehalis*.

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II. THE TRIBE'S ACTION AGAINST RIVERSIDE COUNTY IS BARRED BY THE DOCTRINE OF STARE DECISIS.

The Tribe's action against the County is also barred by the doctrine of stare decisis, which holds that the courts generally adhere to their precedents. Stare decisis applies because, first, the Ninth Circuit held in *Agua Caliente* that federal law does not preempt county possessory interest taxes as applied to non-Indians on an Indian reservation, and, second, the Ninth Circuit and the California Court of Appeal have subsequently issued decisions reaching the same conclusion.

Stare decisis "'is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'" *Michigan v. Bay Mills Indian Community*, __U.S. __, 134 S.Ct. 2204, 188 L.Ed.2d 1071, 2014 U.S. Lexis 3596, *28-29 (2014), *quoting Payne v. Tennessee*, 501 U.S. 808, 827, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991). Although "not an inexorable command," *Payne*, 501 U.S. at 828, stare decisis is the "foundation stone of the rule of law," necessary to ensure that legal rules develop "in a principled and intelligible fashion." *Bay Mills*, 2014 U.S. Lexis 3596, *29, *quoting Vasquez v. Hillery*, 474 US. 254, 265, 106 S.Ct. 617, 88 L.Ed.2d 598 (1986). "Adherence to precedent is, in the usual case, a cardinal and guiding principle of adjudication," *California v. Federal Energy Regulatory Comm'n*, 495 U.S. 490, 499, 110 S.Ct. 2024, 109 L.Ed.2d 474 (1990), and "any departure" from this principle "demands special justification." *Arizona v. Rumsey*, 467 U.S. 203, 212, 104 S.Ct. 2305, 81 L.Ed.2d 164 (1984). "Considerations of stare decisis have special force in the field of statutory interpretation, for here, unlike in the context of constitutional interpretation, the legislative power is implicated, and Congress remains free to alter what we have done." *Patterson v. McLean Credit Union*, 491 U.S. 164, 172-173, 109 S.Ct. 2363, 105 L.Ed.2d 132 (1989). If the res judicata and

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collateral estoppel doctrines do not apply and "consistency in decision is considered just and desirable, reliance may be placed upon the ordinary rule of stare decisis." *Sunnen*, 333 U.S. at 601.

A. The *Agua Caliente* Decision

As explained above, the Ninth Circuit held, in an action brought by the Tribe against Riverside County, that federal law does not preempt the County's possessory interest tax as applied to lessees on the Tribe's reservation. *Agua Caliente Band of Mission Indians v. Riverside County*, 442 F.2d 1184, 1186 (9th Cir. 1971). Thus, the Tribe's claim against Riverside County is barred by stare decisis, regardless of whether it is barred by res judicata and collateral estoppel.

B. The *Fort Mojave* Decision

In *Fort Mojave Tribe v. San Bernardino County*, 543 F.2d 1253 (9th Cir. 1976), the Fort Mojave Tribe brought an action against San Bernardino County alleging that the county's possessory interest tax was preempted by federal law as applied to non-Indian lessees on the tribe's reservation. The Ninth Circuit, following its earlier decision in *Agua Caliente*, held that the county's tax was not preempted. Describing the analytical framework, the court stated:

> The Supreme Court recently has outlined the general framework by which Indian jurisdiction and taxation cases are to be analyzed. In *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164, 36 L.Ed.2d 129, 93 S.Ct. 1257 (1973), the Court states that "the trend has been away from the idea of inherent Indian sovereignty as a bar to state jurisdiction and towards reliance on federal preemption."

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> Although the Indian sovereignty doctrine is still relevant, "because it provides a backdrop against which the applicable treaties and statutes must be read," it is no longer the proper focus of analysis. *McClanahan*, *supra* at 172. Instead we must carefully analyze the applicable federal statutes to determine whether the state action has been preempted. If not, the state statute need only satisfy the test laid down in *Williams v. Lee*, 358 U.S. 217, 3 L.Ed.2d 251, 79 S.Ct. 269 (1958), *viz.* that it not infringe on the rights of reservation Indians to make their own laws and be ruled by them.

Fort Mojave, 543 F.2d at 1255-1256.

Applying this analytic framework, the Ninth Circuit in *Fort Mojave* upheld the county's possessory interest tax, stating:

> While the imposition of a possessory interest tax on the leasehold interest will have an economic effect on the Indian lessors, and perhaps, although not certainly, will reduce the amount of rent they will be able to collect, the legal incidence of the tax clearly falls on the lessee. The lessor will never be personally liable for any delinquent taxes arising under this taxing statute. [Citations.] Under these circumstances, there cannot be a direct encumbrance on the lessor's reversionary interest.

Id. at 1256.

This conclusion, the Ninth Circuit stated, was "buttressed" by the Supreme Court's decision in *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 93 S.Ct. 1267, 36 L.Ed.2d 114 (1973), which had upheld a state tax on the gross receipts of a ski resort operated by an Indian tribe on land located outside the boundaries of the

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tribe's reservation, "because the [Supreme Court] would not imply tax exemptions absent clear statutory guidelines." *Fort Mojave*, 543 F.2d at 1256. The court stated that it would "follow that lead here and refuse to find that the [Indian Reorganization] Act created a tax exemption for non-Indian lessees of Indian land." *Id.* The Ninth Circuit then applied the test adopted by the Supreme Court in *Williams v. Lee*, 358 U.S. 217 (1958), to determine whether the county's tax "infringed on the right of reservation Indians to make their own laws and be ruled by them," *Fort Mojave*, 543 F.2d at 1257, and concluded that the county's tax did not have this effect. *Id.* at 1257-1258.

Thus, *Fort Mojave* held, as *Agua Caliente* had earlier held, that federal law does not preempt a county's possessory interest tax as applied to non-Indian lessees on an Indian reservation.

C. The *Chehalis* Decision

In *Confederated Tribes of the Chehalis Reservation v. Thurston Board of Equalization*, 724 F.3d 1153 (9th Cir. 2013), the Ninth Circuit recently reaffirmed its decisions in *Agua Caliente* and *Fort Mojave*, again holding that federal law does not preempt county possessory interest taxes as applied to non-Indian lessees on an Indian reservation.

In *Chehalis*, the Ninth Circuit held that a Washington county's property tax on "permanent improvements"—as applied to an Indian tribe's trust lands that the tribe was using to conduct a tribal enterprise—was preempted by a federal statute, 25 U.S.C. § 465. *Chehalis*, 724 F.3d at 1154. Section 465 authorizes the Secretary of the Interior to take lands into trust for the benefit of an Indian tribe, and provides that "such lands or rights shall be exempt from State and local taxation." 25 U.S.C. § 465. *Chehalis* held that the county's tax on "permanent improvements" was in reality a tax on tribal trust lands and thus preempted by section 465. *Chehalis*, 724

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F.3d at 1157-1158.[7]

More importantly here, *Chehalis*—citing the Ninth Circuit's decisions in *Agua Caliente* and *Fort Mojave*—held that section 465 does not preempt "possessory interest taxes on 'non-Indian lessees of property held in trust by the United States Government for reservation Indians' . . . ." *Chehalis*, 724 F.3d at 1158, *citing and quoting Fort Mojave*, 543 F.2d at 1255, *Agua Caliente*, 442 F.2d at 1186-1187. Quoting *Agua Caliente*, *Chehalis* stated that a "'[t]he California tax on possessory interests does not purport to tax the land as such,' which would be barred by § 465, 'but rather taxes the "full cash value" of the lessee's interest in it, which is not covered by § 465.'" *Id*. at 1158 n. 7, *quoting Agua Caliente*, 442 F.2d at 1186. Although *Chehalis* acknowledged that the distinction between a tax on "rights of possession," as in *Fort Mojave* and *Agua Caliente*, and a tax on "improvements," as in *Chehalis*, may appear "formalistic," the court stated that the distinction is nonetheless "critical" in determining the preemptive effect of section

[7] Specifically, the Washington county in *Chehalis* sought to apply its "permanent improvements" property tax to tribally-owned, off-reservation trust lands that the tribe had leased to a limited liability company in which the tribe held a controlling 51% interest, and which were being used to operate a hotel, water park and convention center for the tribe's benefit. *Chehalis*, 724 F.3d at 1154. The Ninth Circuit held that the county's tax was in reality a tax on the tribe's trust "lands," and thus was preempted by section 465. *Id*. at 1156-1158. The Ninth Circuit based its decision on the Supreme Court's decision in *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973). *Id.* In *Mescalero*, the Supreme Court considered the preemptive effect of section 465 on New Mexico's taxes as applied to a ski resort and ski lifts operated by an Indian tribe on trust lands that the tribe had leased from the federal government. The Court in *Mescalero* held that section 465 preempted New Mexico's use tax as applied to the ski lifts, because the ski lifts were "permanently attached" to the realty and thus the tax on the ski lifts was in reality a tax on tribal trust lands and was preempted by section 465. *Mescalero*, 411 U.S. at 157-158. The Court also held, however, that section 465 did not preempt New Mexico's gross receipts tax as applied to the ski resort itself, because section 465 preempts state and local taxes as applied to "lands and rights in land" of Indian tribes but not "income derived from its use." *Id.* at 155.

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465. *Chehalis*, 724 F.3d at 1158 n. 7. Thus, *Chehalis* expressly reaffirmed the holdings in *Agua Caliente* and *Fort Mojave* that federal law does not preempt a county possessory interest tax as applied to non-Indian lessees on an Indian reservation.

Significantly, *Chehalis* was decided *after* the BIA adopted its regulation that, according to the Tribe, forms part of the "comprehensive federal regulatory scheme" that preempts state and local taxes as applied on Indian leased lands. Compl. ¶¶ 25, 34-37.[8] The BIA regulation was adopted on December 5, 2012, and became effective on January 4, 2013. 77 Fed. Reg. 72440 (Dec. 5, 2012). *Chehalis* was decided subsequently, on July 30, 2013. The fact that *Chehalis* reaffirmed *Agua Caliente* and *Fort Mojave* even after the BIA adopted its regulation further demonstrates that *Agua Caliente* and *Fort Mojave* remain good law notwithstanding the regulation, and that there has not been "a subsequent modification of the significant facts or a change or development in the controlling legal principles [that] may make that determination obsolete or erroneous, at least for future purposes." *Commissioner of Revenue v. Sunnen*, 333 U.S. 591, 599 (1948); *Burlington Northern Santa Fe R.R. Co. v. Assiniboine and Sioux Tribes*, 323 F.3d 767, 770 (9th Cir. 2003).

D. The *Palm Springs Spa* Decision

In *Palm Springs Spa, Inc. v. County of Riverside*, 18 Cal.App.3d 372 (1971), the California Court of Appeal held, in an action brought by a lessee on the Tribe's reservation against Riverside County, that federal law did not preempt the County's

[8] As noted earlier, the BIA regulation provides that "[s]ubject only to applicable Federal law," a "leasehold or possessory interest" on Indian leased lands is not subject to "any fee, tax, assessment, levy or other charge imposed by any State or political subdivision of a State." 25 C.F.R. § 162.017(c).

possessory interest tax as applied to the lessee.

The *Palm Springs Spa* court specifically addressed the question that the Tribe raises here, that is, whether "Congress has preempted the field of regulating commercial transactions having an economic impact on the Agua Caliente Band of the Mission Indians." *Palm Springs Spa*, 18 Cal.App.3d at 378. The court said that this question "cannot be judged by reference to broad statements about the comprehensive nature of federal regulation of Indian affairs," but instead "must be answered by a judgment upon the facts of the particular case." *Id*. By examining "the facts of the particularized case," the court undertook the "particularized inquiry" into federal, state and tribal interests that the Supreme Court has applied in determining the applicability of state laws to non-Indians on Indian reservations. *E.g., White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142-143, 100 S.Ct. 2578, 65 L.Ed.2d 665 (1980); *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 176, 109 S.Ct. 1698, 104 L.Ed.2d 209 (1989); *Rice v. Rehner*, 463 U.S. 713, 720, 103 S.Ct. 3291, 77 L.Ed.2d 961 (1983). The California court concluded that "[i]t cannot be said that the taxation of the possessory interest of non-Indians on federal land held in trust for Indians is an area inherently requiring uniform national regulation," and that, on the contrary, "the United States Supreme Court has recognized the ability of local authorities to impose taxes of certain types on the activities of private persons conducted on Indian trust or other federal land." *Palm Springs Spa*, 18 Cal.App.3d at 378-379 (citations omitted).

In sum, three Ninth Circuit decisions—*Agua Caliente*, *Fort Mojave* and *Chehalis*—and a California Court of Appeal decision—*Palm Springs Spa*—conclusively hold that federal law does not preempt a county's possessory interest tax as applied to non-Indian lessees on an Indian reservation. Therefore, the Tribe's claim that federal law preempts the County's possessory interest tax as applied to non-Indian lessees on the Tribe's reservation is barred by stare decisis.

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CONCLUSION

For the foregoing reasons, it is respectfully requested that the defendants' motion for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure be granted, and that Riverside County be dismissed as a defendant in the action.

Dated: July 28, 2014

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