IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Roger French,

Plaintiff,

v.

Karla Starr, *et al.*,

Defendants.

No. CV-13-02153-PHX-JJT

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 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.).

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[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.)

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).

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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

[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

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 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

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Court in anything other than conclusory fashion. (*See* Am. Compl. ¶¶ 45-47; Pl.'s Mot. at 17.)

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] The essence of Plaintiff's argument is that CRIT may not

[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.*, 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

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 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

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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.

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.

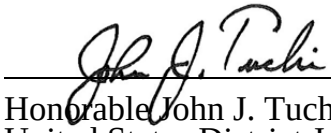
IT IS FURTHER ORDERED that Defendants' Request for Judicial Notice in Support of Defendants' Motion for Summary Judgment (Doc. 58) is granted, and

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.



Honorable John J. Tuchi
United States District Judge