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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CHEMEHUEVI INDIAN TRIBE, on its own behalf and on behalf of its members *parens patriae*, CHELSEA LYNN BUNIM, TOMMIE ROBERT OCHOA, JASMINE SANSOUCIE, and NAOMI LOPEZ,

Plaintiffs,

v.

JOHN McMAHON, in his official capacity as Sheriff of San Bernardino County, RONALD SINDELAR, in his official capacity as Deputy Sheriff for San Bernardino County, MICHAEL RAMOS, in his official capacity as the District Attorney of San Bernardino County, JEAN RENE BASLE, in his official capacity as County Counsel for San Bernardino County, and MILES KOWALSKI, in his official capacity as Deputy County Counsel for San Bernardino County,

Defendants.

Case No. 5:15-cv-01538-DMG-FFM

PLAINTIFFS' MARCH 2, 2016 SUPPLEMENTAL BRIEF

Date: March 11, 2016
Time: 3:00 p.m.
Courtroom 7—2nd Floor
Before the Honorable Dolly M. Gee

In Defendants' Supplemental Brief in Response to Court's February 5, 2016 Order ("Supplemental Brief"), Defendants argue, "The Chemehuevi Indian Reservation was not lawfully established until the BLM issued the Trust Patent establishing the boundaries of the reservation [in 2010]." Supplemental Brief, p. 3. This argument was not raised in any of Defendants' previous filings. Defendants' argument is unsupported by any serious discussion of the applicable law or the relevant facts.

Defendants' contention, that, in order to establish an Indian reservation, a trust patent for the reservation must be issued, is in conflict with voluminous and long-standing Supreme Court precedent.

> In order to create a reservation it is not necessary that there should be a formal cession or a formal act setting apart a particular tract. It is enough that from what has been done there results a certain defined tract appropriated to certain purposes. Here the Indian occupation was confined by the treaty to a certain specified tract. That became, in effect, an Indian reservation.

Minnesota v. Hitchcock, 185 U.S. 373, 390 (1901).

> [I]n our judgment, nothing can more appropriately be deemed "Indian country," within the meaning of those provisions of the Revised Statutes that relate to the regulation of the Indians and the government of the Indian country, than a tract of land that, being a part of the public domain, is lawfully set apart as an Indian reservation.

Donnelly v. United States, 228 U.S. 243 (1913).

> In the present case, the original reservation was Indian country simply because it had been validly set apart for the use of the Indians as such, under the superintendence of the Government.

United States v. *Pelican*, 232 U.S. 442 (1914). *See Spalding* v. *Chandler*, 160 U.S. 394, 403-404 (1896); *United States v. Sandoval*, 231 U.S. 28 (1913); *United States v. McGowan*, 302 U.S. 535 (1938); *United States v. John*, 437 U.S. 634, 648-649 (1978); *Mattz v. Arnett*, 412 U.S. 481 (1973); *Oklahoma Tax Comm'n v. Sac & Fox Nation,* 508

U.S. 114, 125 (1993); *United States v. Azure*, 801 F.2d 336, 338-339 (8th Cir. 1986); *Sac & Fox Tribe v. Licklider*, 576 F.2d 145 (8th Cir. 1978); *United States v. White*, 508 F.2d 453, 456-57 (8th Cir. 1974). Thus, the relevant court decisions provide no basis for concluding that the issuance of a patent is necessary for the establishment of an Indian reservation.

As Plaintiffs have repeatedly stated, the issue in this case is not the ownership of land, but jurisdiction over land located within the boundaries of the Tribe's Reservation. The land within the boundaries of the Tribe's Reservation is "Indian Country." "[T]he term 'Indian country'…means…all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation…." 18 U.S.C. § 1151. In interpreting Section 1151, the Supreme Court has stated: "'[T]he intent of Congress, as elucidated by [court] decisions, was to designate as Indian country all lands set aside by whatever means for the residence of tribal Indians under federal protection, together with trust and restricted Indian allotments.'" *Oklahoma Tax Comm'n*, 508 U.S. at 125. The Court went on: "Congress has defined Indian country broadly to include formal and informal reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States." *Id*. at 123. Congress also specified that fee patented lands and rights of way within reservations are Indian country. 1-3 COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 3.04[c][i].

The only legal authority that Defendants cite in support of their argument is an out of context quote from *Pechanga Band of Mission Indians v. Kacor Realty, Inc.*, 680 F.2d 71, 74 (9th Cir. 1982): "[T]he Secretary had to issue a patent to the land in order to include it in the reservation." Despite the initial appeal of this dictum, the *Pechanga* case has no relevance to the current dispute.

The *Pechanga* decision did not address the issue of what is required in order to establish an Indian reservation, in general, nor, in particular, whether a patent was required in order to complete the establishment of the Pechanga reservation. *Pechanga*

was a quiet title action in which the tribe claimed ownership of land that was not included within the boundaries of its reservation when it was established. *Pechanga* related to the ownership of land that, at the time of the final establishment of the Pechanga reservation, was in dispute and the subject of litigation. The issuance of a patent was relevant because, at the time of the establishment of the Pechanga reservation, the Secretary intentionally excluded the disputed land from the reservation pending the conclusion of the litigation.

> The Pechanga Band's present reservation was established pursuant to the 1891 Act…The Secretary of the Interior, however, decided to issue a patent only to the uncontested parcels and await a judicial determination on whether Mouren had a valid right to the land at issue. Because the Government dropped its suits against Mouren prior to any decision on the merits, the Secretary never issued a patent to the Band for the land. The Secretary thus did not take the final step required under the Act to include the land in the reservation.

Pechanga, 680 F.2d at 74.

Thus, the *Pechanga* case addressed the effect of the Secretary's decision not to issue a patent to the tribe for a parcel, because the ownership of the land was, at the time, subject to quiet title litigation. Furthermore, the issue actually decided by the *Pechanga* court in that case was whether the Secretary could change a boundary established by an executive order. The *Pechanga* case, therefore, does not stand for the proposition that the issuance of a trust patent is necessary for the establishment of a reservation. It is also notable that no court has ever cited *Pechanga* as legal precedent.

The forgoing discussion leaves no room for the argument that the issuance of the Trust Patent was necessary for the establishment of the Reservation or that the Reservation was not established until the Trust Patent was issued in 2010. The Trust Patent is a deed. It identifies what land is held in trust for the Tribe by the United States. It addresses the *ownership* of the land, not the establishment of the Reservation or the boundaries of the Reservation.

The Reservation was created by the 1853 Act, which set aside from settlement and entry by whites all land in the occupation or possession of an Indian tribe, including the Chemehuevi. That reservation of land for the Chemehuevi Indian Tribe and the specific identification of boundaries of the land so set aside for the Tribe was reconfirmed through the Secretary's 1907 Order, which was issued pursuant to the Mission Indian Relief Act ("MIRA"). The Secretary's specific authority to establish the boundaries of the Reservation was later reconfirmed in the Amendments to the MIRA.

The absurdity of the Defendants' position is clear from the history of the Tribe and its Reservation. There are myriad examples of the federal government's recognition of the existence of the Tribe and the Reservation going back to the first decades of the 20th Century, but two particularly obvious aspects of the Reservation and the Tribe's activities as the tribal entity with jurisdiction over the Reservation put to rest any notion that the Trust Patent established the Reservation. That recognition is not expressed in esoteric texts available only to tribal members or the illuminati in the BIA. It is clear from the physical reality of the Reservation.

The first is Lake Havasu. In order to create Lake Havasu, the federal government, without altering the boundaries of the Tribe's Reservation, granted to the United States "all the right, title, and interest of the Indians in and to the tribal and allotted lands of…the Chemehuevi Reservation in California as may be designated by the Secretary of the Interior." Act for the Acquisition of Indian Lands for the Parker Dam and Reservoir Project, and for Other Purposes, 54 Stat. 744 (1940), Section 1 ("Parker Dam Act"). Clearly, if the Reservation was not established until the issuance of the Patent in 2010, there would have been no need to grant all right, title, and interest in Chemehuevi Reservation land through the Parker Dam Act.

A second, undeniable physical manifestation of the Reservation's pre-2010 existence is the Havasu Landing Casino, a class III gaming facility operated by the Tribe on the Reservation pursuant to the Tribe's Class III Gaming Compact with the State of California. In order to operate a class III gaming facility in conformity with the

Indian Gaming Regulatory Act ("IGRA"), the land upon which the facility is located must be "Indian lands." 25 U.S.C. § 2710(d)(1)["Class III gaming activities shall be lawful on Indian lands only if such activities are…authorized by an ordinance or resolution that…is adopted by the governing body of the Indian tribe having jurisdiction over such lands…."]. The IGRA definition of "Indian lands" includes "all lands within the limits of any Indian reservation." 25 U.S.C. § 2703 (4)(A). It is self-evident that, if the Reservation was not established until 2010, the National Indian Gaming Commission would not have permitted the Tribe to engage in Class III gaming since 1999 because the conduct of such gaming would have been in direct violation of the IGRA.

CONCLUSION

The claims set forth in the Complaint in this case relate exclusively to the question of whether County law enforcement officials have jurisdiction to issue citations within the boundaries of the Chemehuevi Indian Reservation. The issues raised by the Complaint are narrow and specific. In yet another effort to distract the Court from the straightforward legal issues raised in the Complaint, Defendants are attacking the very existence of the Tribe and its Reservation. There is no reason to allow Defendants to lead these proceedings down one rabbit hole after another. For the purposes of the current motion, the Court simply needs to recognize that Section 36 is within the boundaries of the Tribe' Reservation and, on that basis, find that Section 36 is Indian country. If Section 36 is Indian country, the Country Officials have already conceded they have no authority to enforce against the Indians the provisions of the Vehicle code at issue in this case.

Dated: March 2, 2016

Respectfully Submitted,

RAPPORT AND MARSTON

By: */s/ Lester J. Marston*
LESTER J. MARSTON, ESQ.
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I am employed in the County of Mendocino, State of California. I am over the age of 18 years and not a party to the within action; my business address is that of Rapport & Marston, 405 West Perkins Street, Ukiah, CA 95482.

I hereby certify that I electronically filed the foregoing with the Clerk of the United States District Court for the Central District of California by using the CM/ECF system on March 2, 2016.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct; executed on March 2, 2016, at Ukiah, California.

/s/ Brissa De La Herran
Brissa De La Herran