ORAL ARGUMENT HAS NOT BEEN SCHEDULED

No. 16-5082

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMADOR COUNTY, CALIFORNIA,

Plaintiff-Appellant

v.

UNITED STATES DEPARTMENT OF THE INTERIOR; SALLY JEWELL, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE INTERIOR; and LAWRENCE S. ROBERTS, IN HIS OFFICIAL CAPACITY AS ACTING ASSISTANT SECRETARY – INDIAN AFFAIRS

Defendants-Appellees.

On Appeal From the United States District Court for the District of Columbia in Case No. 05-00658, Barbara J. Rothstein, United States District Judge

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PLAINTIFF-APPELLANT'S REPLY BRIEF

Submitted By

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I. SUMMARY OF ARGUMENT

Subsequent to execution of the 1983 *Hardwick* Stipulated Judgment between the federal government and the *Hardwick* Class Plaintiffs executed to implement the California Rancheria Act of August 18, 1958 (Public Law 85-671), attached to Defendant's Brief at Addendum 30. Amador County and the Buena Vista Rancheria (herein known as "Rancheria" or "Tribe") entered into discussions seeking to resolve a dispute over substantial County real property taxes on the Rancheria land that were outstanding. The result of those discussions was execution of the 1987 *Hardwick* Stipulated Judgment in which the Rancheria's unpaid taxes owed to the County were addressed.

While the County did not have and could not have had any role in whether the Tribe regained federal status as a tribe, it did have a role in resolving the single issue on its agenda: the unpaid County taxes on the tribal land Underscoring this point is the fact that the only County officials at the table were the County Tax Collector, the County Assessor and their legal counsel, the Madera County Counsel.

The District Court below found that the provision in the County Stipulated Judgment that the County would "treat" the Rancheria as a Reservation went beyond tax issues and, indeed, preludes the County from challenging the Secretary

of the Interior's approval of gaming on the Rancheria as illegal under the strict requirements of the Indian Gaming Regulatory Act of 1988, 25 U.S.C. §2701, *et seq*. ("IGRA").

In response to that decision, it is well-established as a matter of law that the County cannot be bound by an agreement between the Secretary and the Tribe to which it was not a party. In addition, the County certainly did not waive its right to enforce its legal interest in insuring that Indian gaming conducted within the County does not violate IGRA's requirement that Indian gaming can only be conducted on land that qualifies under that law. .

Any reading of the 1987 *Hardwick* Stipulated Judgment fails to show the County's intent to be bound by any subsequent gaming determination – whether formal or informal – made by the federal defendants without County concurrence.

At the outset, the parties agree that the Buena Vista Rancheria land is not now, and has never been, in federal trust status. This fact defeats any argument by Defendants that the land satisfies the "trust land" portion of the requirement that the land cannot be used for Indian gaming unless it was in "trust or reservation status" as of October 17, 1988, as required by IGRA Section 20, 25 U.S.C. §2719, or otherwise qualified for one of several statutory exceptions which are not at issue in this litigation here. *See* 25 U.S.C. §2719(B)(1)(a)-(b).

Moreover, there is no evidence that the land has ever been formally declared through either legislative or Secretarial action to be "reservation" land beyond broad undocumented assertions by legal counsel that the Secretary has "considered" the land to be in reservation status without satisfying federal law controlling the Secretary's ability to do so. *See* 25 U.S.C. §467. This apparently is the extent of the any determination and decision as to reservation status, a vague and unprecedented action that does not satisfy legal requirements and precedent, and certain undermines any argument that the land satisfies the "reservation status" portion of the requirement that the land must have been in "trust or reservation status as of October 17, 1988."

Neither of the two *Hardwick* Stipulated Judgments could have "restored" reservation status to the Rancheria because the land was never in reservation status prior to enactment of the California Rancheria Act of August 18, 1958. That law terminated federal recognition for the California Rancheria tribes, but was reversed by the California Rancheria Act of August 11, 1964 (Public Law 88-419), attached to Defendant's Brief at Addendum 33. Moreover, the 1983 Stipulated Judgment followed the provisions of the 1964 Rancheria Act and provided that the Secretary of the Interior "shall recognize the Indian Tribes, Bands, Communities or groups of the seventeen Rancherias … as Indian entities with the same status they possessed

prior to distribution of the assets of those Rancherias …." California Rancheria Termination Act of August 18, 1958 at ¶ 4. The Rancheria has never been never lawfully designated as a reservation sufficient to satisfy the provisions of IGRA prior to October 17, 1988, meaning that gaming cannot be conducted on the Buena Vista Rancheria land, until and unless it qualifies for one of the several enumerated Section 20 exceptions defined at a 25 U.S.C. §2719(b)(1)(A)-(B). Accordingly, the Secretary's approval of a Gaming Compact cannot authorize gaming on land that (a) did not lawfully qualify for gaming on October 17, 1988, and (b) has not subsequently qualified for gaming pursuant to one of the Section 20 exceptions. The Rancheria does not qualify for gaming in either case.

II. ARGUMENT

A. Plaintiff's Disputed Facts Are Material and Properly Before This Court.

The Defendants assert that the County's Statement of Facts is "inadmissible, immaterial and not properly presented before this court" under the Doctrine of *Res Judicata* because they were previously adjudicated in the 1983 and 1987 Stipulated Judgments.

Defendants are incorrect. The County cannot be barred from presenting the Statement of Facts because it does not fall within the scope of *res judicata*:

> Applications of the doctrine of *res judicata* barring a claim require the satisfaction of three (3) requirements: (1) prior judgment was rendered by court of competent jurisdiction, (2) decision was final judgment on merits, and (3) same cause of action and same parties or their privies were involved in **both** cases. (Emphasis supplied) *Coates v. Kelly*, 957 F. Supp. 1080 (E.D. Ark. 1997).

Similarly, the doctrines of preclusion and judicial estoppel prevent a party from prevailing on an argument in an earlier matter and then relying on a contradictory argument to prevail in a subsequent matter. *See New Hampshire v. Maine*, 532 U.S. 742, 749, 121 S.Ct. 1808, 149 L.Ed.2d 968 (2001):

> In determining whether a party is judicially estopped from raising an argument, we examine three factors: (i) whether the party's positions in the two litigations are clearly inconsistent; (ii) whether the party successfully persuaded a court to accept its earlier position; and (iii) whether the party would derive an unfair advantage if not judicially estopped. *Id.* at 750-51, 121 S.Ct. 1808; *see also United States v. Christian*, 342 F.3d 744, 747 (7th Cir.2003). In addition, to qualify as a judicial admission, a statement also must be "deliberate, clear, and unambiguous." *Robinson v. McNeil Consumer Healthcare*, 615 F.3d 861, 872 (7th Cir.2010).

Defendants argue that both the 1983 and 1987 *Hardwick* Stipulated Judgments established that the Rancheria land "shall be *treated* by the United States of America and Amador County as any other federally recognized Indian Reservation … provisions the Secretary argues … establish the Rancheria qualifies

as 'Indian land'", *Amador County v. S.M.R. Jewell*, 170 F. Supp.3d 135, 140 (D.D.Cir. 2016). It is not disputed that the County was not a party to the 1983 *Hardwick* Stipulated Judgment and as such, not involved in both cases thereby allowing the Plaintiff to present the argument that the 1987 Stipulation was restricted to taxation issues only.[1]

Next, Defendants point to the definition of "Indian Country," initially established in in the 1983 *Hardwick* Stipulation and again in the 1987 Stipulation. In this instance, the Defendants ignore the fact that the County had no opportunity in 1983 to express concerns about the Rancheria's land status, as well as issues associated with Rancheria legal claims to reservation status beyond local tax issues. This is underscored by the fact that the County's purpose in negotiating and executing the 1987 Stipulated Judgment was to resolve issues of *County taxation,* and certainly did address any issue associated with Indian Gaming. Asserting a definition outside the parameter of "Indian Country" in a realm other than County taxation would put the County in an unfair position.

[1] As outlined in Plaintiff's Statement of Facts, the 1987 *Hardwick* Stipulated Judgment is the basis of the County's resolution of outstanding taxes incurred by the Rancheria. This point is further underscored by the parties identified in the Stipulation: Amador County Tax Collector, Amador County Tax Assessor and their lawyer, the Amador County Counsel.

A litigant is estopped from raising an issue in a collateral proceeding when the following four factors are met: "(1) the party against whom the estoppel is asserted was a party to the prior adjudication, (2) the issues which form the basis of the estoppel were actually litigated and decided on the merits in the prior suit, (3) the resolution of the particular issue was necessary to the court's judgments, and (4) those issues are identical to issues raised in the subsequent suit." *Wozniak v. DuPage County*, 845 F.2d 677, 682-83 (7th Cir.1988) (quotation marks and citation omitted); *accord Talarico v. Dunlap*, 281 Ill.App.3d 662, 217 Ill. Dec. 481, 667 N.E.2d 570, 572 (1996), *aff'd*, 177 Ill.2d 185, 226 Ill. Dec. 222, 685 N.E.2d 325 (1997).

It is clear that "[i]f rights between litigants are once established by the final judgment of a court of competent jurisdiction those rights must be recognized in every way, and wherever the judgment is entitled to respect, by those who are bound by it." *Kessler v. Eldred*, 206 U.S. 285 (1907). However, 'binding of those rights', in this instance, is limited solely to federal officials represented here by the Defendants who were party to the 1983 Stipulated Judgment but not the 1987 Stipulated Judgment. It is Amador's position that the 1987 Stipulated Judgment is not specifically linked to the 1983 Stipulation – but rather is an indirect result of the earlier Stipulation, dealing with County and not federal issues. This is

analogous to a Federal Circuit decision: "[t]he key dispute between the parties [was] … a corresponding structure … [and] not clearly linked to the claimed function …." *Brain Life, LLC v. Eleckta*, 746 F.3d 1045, 1050 (Ct. Fed. Cir. 2014).

The ability of Amador to bring its Statement of Facts before the Court should be permitted by this Court since the County was not party to the 1983 Stipulated Judgment, and the facts relating to the present cause of action certainly are beyond the County's interests in agreeing to the 1987 Stipulation, for they go to the issue of IGRA Section 20(b) "reservation status for gaming" which was not addressed in the County's 1987 *Hardwick* Stipulated Judgment.

B. "Reservation" Is a Legal Status and Not a Term Uniformly Applied to Lands Otherwise Characterized as "Indian Country."

The Defendants apparently believe that when federal agents use the term "reservation" to apply to any land occupied by Indians that land becomes a "Reservation" as a matter of law. *See, e.g.,* Defs'. Br, at pp. 46-50. In the process they cite a series of cases purporting to establish this point. However, the cases relied on do not support the argument that nothing more is required for land to acquire "Reservation" status.

The Defendants' argument essentially amounts to "it is because we say it is." However, that conclusion is not supported by the very cases relied on.

1. The Legal Authority Cited by Defendants.

The Defendants assert at page 48 a principle that "the term 'Indian reservation' generally encompasses any trace of land set aside formally or informally by the federal government for use or occupancy of Indians." In support of this statement, they cite *United States v. Celestine,* 215 U.S. 278, 285 (1909) and *Minnesota v. Hichcock,* 185 U.S. 373, 390 (1902). The *Celestine* case concerned land that was reserved "for the use and occupancy of the who were members of more than 20 historic tribes that were parties to the Treaty of Point Elliott of January 22, 1855, a treaty ratified by Congress at 12 Stat. 927, which provided for the set aside of lands reserved for the treaty signatory tribes. The Court noted that it is up to the courts to determine what is meant by the term "Indian country" when found in certain sections of federal law. However, the Court plainly noted that fact that the "word 'reservation'" is not the same as the term "Indian country" with the following conclusion: "It may be a military reservation, or an Indian reservation, or, indeed, one for any purpose for which Congress has authority to provide." (Emphasis supplied.) Given the fact of Congressional ratification of the Treaty, it was easy for the Court to determine that

Congress had specifically authorized the President to establish a Reservation and to also set aside individual tracts within the larger property in accordance with the clear language of the Treaty. *See* 215 U.S. 285-286. The critical element to "Reservation" status in that case was the Congressional action in confirming the Treaty pursuant to which specific lands clearly were set aside for the affected members of the signatory Indian tribes.

Similarly, the *Hitchcock* Court concerned specific land set aside pursuant to the Treaty with the Chippewa – Red Lake and Pembina Bands of October 2, 1863 (13 Stat. 667). The Court explained that Reservation status is not dependent on a formal cession or formal act, but rather on the appropriation of land for "certain purposes," adding: "Here the Indian occupation was confined by the treaty to a certain specified tract. That became, in effect, an Indian reservation." *See* 185 U.S. 389-390. As with the *Celestine* decision, the Court looked for the specific Government action, including the Treaty execution by representatives of historic tribes and Congressional ratification, from which there was a clearly stated intent to establish a reservation from the treaty cession lands for the signatory historical tribes of Chippewa.

2. Defendants' Misplaced Analogy to the Auburn Rancheria

Interwoven throughout Defendants' brief are repeated references[2] analogizing the Buena Vista Rancheria (created for occupancy by "homeless Indians" living in the vicinity) to the land status of the Auburn Rancheria located in nearby Placer County: "This Court has also recognized that another small California Rancheria established under circumstances similar to the Buena Vista Rancheria was a reservation," citing *City of Roseville v. Norton,* 348 F.3d 1020 (D.C. Cir. 2003) Defs'. Br. at 45) This assertion was repeated at page 49: "(As noted above at 45), this circuit already has recognized one California rancheria as a reservation. (Citing *City of Roseville* at 348 F.3d 1022.)"

While Defendants may believe that Rancherias are automatically "Reservations" without requiring any further demonstrations of reservation status, Congress clearly did not understand that two words are legally identical in the absence of some further identification of some intervening event or fact that automatically conveyed reservation status on a given Rancheria. Indeed, the Auburn Indian Restoration Act of October 31, 1994, 25 U.S.C. §1300*l*, *et seq.* legislated that land acquired by the Auburn Tribe, including former trust lands of the Rancheria, would be taken into trust by the Secretary [Section 1300*l*-2(a)].

[2] See Defs.' Brief at, pp. 8, 14, 17, 18, 45, 48, 49

Significantly, and not discussed in the Defendants' Brief, the Recognition Act also legislated that all lands acquired by the Auburn Tribe, including former Rancheria lands, would have reservation status. *See* 25 U.S.C. §1300*l*.

Nothing in the Auburn Recognition Act suggests that the Auburn Rancheria had Reservation status prior to that law's enactment.

C. The Rancheria Is Not Eligible for Class III Gaming Because It Was Neither Trust Nor Reservation Land as of October 17, 1988.

Defendants claim the 1987 Stipulated Judgment converted, in all but name, the Buena Vista Rancheria to "Reservation" status thereby affording the Rancheria certain distinctions, specifically, all rights and privileges of a "reservation" and, as a result, fulfilling IGRA's Section 20(b) requirement allowing gaming operations on the property. IGRA specifically provides that tribes may only conduct gaming on land qualifying as "Indian lands." 25 U.S.C. § 2710(d)(1) (providing, *inter alia*, that a tribe may only conduct Class III gaming on Indian lands over which such tribe has jurisdiction); *Id*. at Section 2702(3) (stating that Congress enacted IGRA in order to declare "Federal regulatory authority for gaming on Indian lands" and to establish "Federal standards for gaming on Indian lands") (emphasis added); S. Rep. No. 100-446, 1 (Aug. 3, 1988).

The County's Amended Complaint challenged whether the Buena Vista Rancheria was a "reservation" within the statutory provision at IGRA Section 4(4)(A) or whether the lands would fall within the strict definition of Indian Lands. *See* Document 1.

IGRA's plain language designates the Secretary as the federal official with authority to affirmatively approve Tribal-State compacts to those that permit gaming on Indian lands. It follows then, that the Secretary had no authority to affirmatively approve a Compact that purports to authorize Indian gaming on lands that do not qualify for gaming under IGRA's statutory requirements. In this case, the Rancheria land that does not qualify for Reservation status. This is significant as IGRA's provision governing approval through inaction, 25 U.S.C. §2710(d)(8)(C), provides for the deemed approval of "a compact described in [25 U.S.C. §2710(d)(8)(A)]" (*i.e.* a compact authorizing gaming on Indian lands). That is to say, IGRA only authorizes Secretarial approval, either affirmatively or thorough inaction, of compacts that authorize gaming on Indian land. The Secretary had no authority to approve or to deem approved any compact that authorizes Indian gaming on lands that are not eligible for gaming under IGRA.

Here, the Tribe's Amended Compact specifically identifies the Rancheria as the land on which the Tribe intends to conduct Indian gaming. However, none of

the land located within the boundaries of the former Rancheria qualifies as "Indian lands" pursuant to IGRA. *See* AR_000086 - 133. As such, the Compact purports to authorize Indian gaming on tribally owned fee land located within the former Rancheria boundaries despite the fact that the Site is not "Indian lands." And, only a Compact that is eligible to be affirmatively approved by the Secretary (*i.e.* one that, among other things, provides for gaming on Indian lands) may be deemed approved by operation of 25 U.S.C. §2710(d)(8)(C). *See Id*. (providing that "a compact described in [25 U.S.C. §2710(d)(8)(A)]" may be considered to have been approved if not acted on in 45 days). Since the Amended Compacts referenced by Defendants provided for gaming on non-Indian lands, the Secretary could not have affirmatively approved it pursuant to 25 U.S.C. §2710(d)(8)(A) and, thus, it cannot be deemed approved pursuant to §2710(d)(8)(C).

Defendant contends that the Rancheria meets the parameters of IGRA pursuant to the codified definition in the Indian Major Crimes Act under 18 U.S.C. §1151. Plaintiff admits that the Tribe is federally recognized, and agrees with the Defendant that "federally recognized tribes may operate Class III gaming in accordance with a tribal-state compact". Def. Br. 8¶ 1. However, the Tribe must *first* satisfy the requirements of IGRA which in this case limit such gaming to land with "Reservation status" as a matter of law for the reason that (a) the parties agree

that there is no trust land within the Rancheria boundaries, (b) no claim has been made that the Rancheria land is within a reservation, held in trust for tribe, and (c) no claim that the land is held in in *restricted fee status*. *See* 25 U.S.C. §2703(4).

Moreover, nothing was done by the Tribe to satisfy the legal defect in land title status as required by Section 2E of the 1987 Stipulated Judgment (refunding all past taxes paid to the County between 1979 and subsequent years if the Tribe has the Rancheria land placed into trust no later than December 31, 1988). Accordingly, the land remains in fee title and is fully subject to renewed County taxation by virtue of the Stipulated Agreement. Br. at pp. 13-14, ¶¶ 28, 35. "[T]he original reservation was Indian country simply because it had been validly set apart for the use of the Indians … under the superintendence of the Government …[t]he Government retain[ed] title to the lands … [t]he Government has authority to enact regulations and protective laws respecting this territory. (Emphasis added). *United States v. McGowan*, 302 U.S. 535 (1938) citing *United States v. Ramsey*, 271 U.S. 467, 471 (1926). However, no formal "Reservation" designation has ever been propounded.

It was arbitrary, capricious and contrary to IGRA for the Secretary to allow the Amended Compacts to ripen into an approved compact through inaction and then to publish it in the Federal Register.

D. The 1987 *Hardwick* Stipulated Judgement was First and Foremost A Taxation Vehicle

The 1987 Stipulated Judgment was negotiated and written as the sole vehicle to resolve the outstanding unpaid County taxes against the Rancheria land. There are several important issues with respect to Section 2.F and each turns on the definitions of the Stipulated Judgment's terms. By Section 2.F, the County only agreed not to accept, collect or recover any "Unpaid Property Taxes" fees or assessments with respect to "Indian Parcels" located within the Rancheria and, "except as provided in Paragraphs G, [it] shall not have jurisdiction to tax or assess Indian Parcels on said Rancheria." 1987 *Hardwick* Stipulated Judgment, at 2.F.

The Stipulation defines "Unpaid Property Taxes" as "real property taxes due on Indian Parcels", presumably as of the date of the Stipulated Judgment. *Id*. at K. The Stipulation also specifically defines "Indian parcels", and states that they are: "all those parcels of real property or interests in said parcels within the boundaries of the [Buena Vista Rancheria] currently owned by Indians entitled to return said parcels or interests thereof to the [U.S.] in accordance with the Judgment [in the 1983 *Hardwick* Litigation]" *Id*. at 1.E.

Next the definitions of the Judgment offer specific insight as to the first intent of the Stipulation – that to afford the County collection of past due taxation.

The Stipulation defines "Indians" as "any Indian who owns any interest in a [Buena Vista Rancheria] parcel. *Id*. at 1.I. Thus, reading Section 2.F in the context of its definitions reveals that the County agreed not to collect or assess any taxes that were then due on parcels of land owned by individual Indians – while not addressing whether County otherwise has the right to tax fee land owned by the Tribe. In that same provision, the County agreed that (subject to an important exception, which is discussed below) that did not have jurisdiction to tax or assess Indian parcels, i.e., those parcels located on the Rancheria and owned by individual Indians. Thus, it is clear that Section 2.F applies only to the County's agreement with respect to taxation.

Finally, Defendants challenge a statement made by the County's expert Dr. Stephen Dow Beckham concerning what they term "the County's claim (Defs'. Br. 30) that the Rancheria has never been federally-documented as an Indian reservation, which statement is supported at footnote 35 of their Brief. However, the Defendants apparently misread the statements from Dr. Beckham as they were summarized in the County's Brief at p. 12, ¶¶ 23 and 24, (*See* County's Br. at p. 12.) Each of these paragraphs reports Dr. Beckham's research in the records of the Bureau of Indian Affairs at the National Archives in San Bruno, California, which

is perhaps the single most important archive for documents concerning the Indians of California.

Paragraph 23 states that the San Bruno records do not contain "any identification, much less recognition, of a Buena Vista Tribe of Miwok Indians."

Paragraph 24 states that the San Bruno records do contain "any record that the Bureau of Indian Affairs ever designated Buena Vista Rancheria a reservation. Moreover, those records also fail to document any measures of tribal presence, such a tribal governing documents of tribal meetings, or federal tribal interaction of any kind.

In summary, the San Bruno Achieves show an absence of federal officials having any historical interaction with the Buena Vista Rancheria and its Tribe.

E. The 1987 Stipulated Judgment Can Be Adjudicated in This Proceeding.

Defendants claim the 1983 and 1987 *Hardwick* Stipulated Judgments ipso facto "restored" the Buena Vista Rancheria to "reservation" status regardless of its land status prior to termination. This claim thus includes notion that the "restoration" in turns affords the Rancheria all rights and privileges of a "Reservation," including satisfaction of IGRA's Section 20(b) requirements for tribal gaming operations on the Buena Vista Rancheria. Defendants further claim

that as a result of the 1987 *Hardwick* Stipulated Judgment, Plaintiff's Statement of Facts as outlined in its Opening Brief of February 13, 2017, is "inadmissible, immaterial and not properly presented before this court" because – to paraphrase Defendants' argument -- many of the stated Facts were previously adjudicated, and, thus, barred by the doctrine of res judicata.

Plaintiff's Statement of Facts is properly before the Court for the reason that it does not meet the requirements for invoking the *res judicata* defense:

> Applications of the doctrine of *res judicata* barring a claim require the satisfaction of three (3) requirements: (1) prior judgment was rendered by court of competent jurisdiction, (2) decision was final judgment on merits, and (3) same cause of action and same parties or their privies were involved in both cases. (Emphasis added.) *Coates v. Kelly*, 957 F. Supp. 1080 (E.D. Ark. 1997).

Similarly, the doctrines of preclusion and judicial estoppel prevent a party from prevailing on an argument in an earlier matter and then relying on a contradictory argument in a subsequent matter. *See New Hampshire v. Maine*, 532 U.S. 742, 749, 121 S.Ct. 1808, 149 L.Ed.2d 968 (2001):

> In determining whether a party is judicially estopped from raising an argument, we examine three factors: (i) whether the party's positions in the two litigations are clearly inconsistent; (ii) whether the party successfully persuaded a court to accept its earlier position; and (iii) whether the party would derive an unfair advantage if not judicially estopped. *Id.* at 750-51, 121 S.Ct. 1808; *see*

> *also United States v. Christian*, 342 F.3d 744, 747 (7th Cir.2003). In addition, to qualify as a judicial admission, a statement also must be "deliberate, clear, and unambiguous." *Robinson v. McNeil Consumer Healthcare*, 615 F.3d 861, 872 (7th Cir.2010).

Defendants argue that the both the 1983 and 1987 *Hardwick* Stipulated Judgments established that the Rancheria land "shall be treated by the County and the United States as any other federally recognized Indian Reservation … provisions the Secretary argues … establish the Rancheria qualifies as 'Indian land'", *Amador County v. S.M.R. Jewell*, 170 F. Supp.3d 135, 140 (2016). Yet, the County was not a party to the 1983 *Hardwick* action and accordingly neither bound by its provisions nor precluded from arguing that the 1987 Stipulation (to which the County was a party) was restricted to taxation issues only, as plainly presented and documented it its Statement of Facts and the argument presented in the County's Opening Brief[3].

[3] As outlined in Plaintiff's Opening Brief, the 1987 *Hardwick* Stipulated Judgment was entered into by the County and formed the basis of the County's resolution of outstanding taxes incurred by the Rancheria. Indeed, resolution of the tax issues was the *raison d'etra* for the County executing that Stipulated Judgment, a point that is underscored by the identity and professional roles of the County officials who are the participating parties in the Stipulation: Elmer G. Evans/Tax Collector for Amador County, Raymond Eliverria/Assessor for Amador County, and their legal counsel Mary Ann McNitt, Amador County Counsel.

In addition, Defendant points to the definition of "Indian Country" initially established in the 1983 Stipulated Judgment and augmented in the 1987 Stipulated Judgment. In this instance, it may be the federal Defendants who should be barred from presenting such an argument and defense under the tenants of *res judicata*, preclusion doctrine and judicial estoppel since they are successors to the federal officials were parties to the 1983 *Hardwick* Stipulated Judgment but not the 1987 Judgment between the County and the Tribe. To this point, the Defendants are pressing matters addressed in the 1983 Judgment; matters which the Plaintiff had no opportunity to address in 1983, specifically to afford the Rancheria privileges possessed by "reservations." To reiterate, Plaintiff's 1987 Stipulated Judgment addressed County taxation only and that intent is clear from any reading of the Judgment itself. The County had no role in determining whether any tribal land satisfied the requirements for gaming pursuant to IGRA, and certainly did not consent to gaming in the 1987 Stipulation. Asserting a definition outside the parameter of "Indian Country" in the realm other than County Taxation would extend an unfair advantage to the Defendants through the broader scope of the 1983 Stipulation that was never contemplated by the County. .

A litigant is estopped from raising an issue in a collateral proceeding when the following four factors are met: "(1) the party against whom the estoppel is

asserted was a party to the prior adjudication, (2) the issues which form the basis of the estoppel were actually litigated and decided on the merits in the prior suit, (3) the resolution of the particular issue was necessary to the court's judgments, and (4) those issues are identical to issues raised in the subsequent suit." *Wozniak v. DuPage County*, 845 F.2d 677, 682-83 (7th Cir.1988) (quotation marks and citation omitted); accord *Talarico v. Dunlap*, 281 Ill.App.3d 662, 217 Ill. Dec. 481, 667 N.E.2d 570, 572 (1996), *aff'd*, 177 Ill.2d 185, 226 Ill. Dec. 222, 685 N.E.2d 325 (1997).

"If rights between litigants are once established by the final judgment of a court of competent jurisdiction those rights must be recognized in every way, and wherever the judgment is entitled to respect, by those who are bound by it." *Kessler v. Eldred*, 206 U.S. 285 (1907).

The County respectfully submits that the 1987 Stipulated Judgment is not specifically linked to the 1983 *Hardwick* Stipulated Judgment[4] – but rather was a logical result of the 1983 Stipulation: "[t]he key dispute between the parties [was] … a corresponding structure … [and] not clearly linked to the claimed function …." *Brain Life, LLC v. Eleckta*, 746 F.3d 1045, 1050 (Ct. Fed. Cir. 2014).

[4] The 1983 Stipulated Judgment is mentioned one time in the 1987 Stipulated Judgment at Paragraph 1.E with a general reference to parcels of tribal lands described in the earlier Judgment.

Amador should be permitted to bring its Statement of Facts before the Court as the County was not party to the first *Hardwick* Stipulated Judgment, and the facts relating to the present cause of action differ from the contents of 1987 *Hardwick* Stipulation -- the issue of IGRA Section 20(b) "reservation status for gaming" – which was not addressed in the subject 1987 Stipulation nor could it have been since the County has no role in determining such status for federal lands.

Finally, Defendant asserts that the Rancheria meets the parameters of IGRA pursuant to the codified definition under 18 U.S.C. §1151. Plaintiff admits that the Tribe is federally recognized, and agrees with the Defendant that "federally recognized tribes may operate Class III gaming in accordance with a tribal-state compact." Defs'. Br. 8 ¶1. However, the Tribe must first satisfy the requirements of IGRA - which limits such gaming to "Indian land," that is land (i) within a reservation, (ii) held in trust for tribes, or (iii) land in restricted fee status. (Emphasis added) 25 U.S.C. §2703(4). These conditions were not met by Defendant as (1) the Rancheria is not in Trust (Reply Br. 6 ¶ 1); (2) the Tribe failed to meet the December 31, 1988 deadline imposed at Section 2E of the 1987 *Hardwick* Stipulation requiring that the rancheria land be accepted into trust status, a failure that meant that the land was then subject to future County taxation. Br. ¶¶ 28, 35, *supra*. Moreover, lacking either "reservation" or "trust" status, means that

the rancheria land does not qualify as "Indian lands" for gaming under IGRA. "[T]he original reservation was Indian country simply because it had been validly set apart for the use of the Indians … under the superintendence of the Government …[t]he Government retain[ed] title to the lands … [t]he Government has authority to enact regulations and protective laws respecting this territory. (emphasis added) *United States v. McGowan*, 302 US 535 citing *United States v. Ramsey*, 271 U.S. 467, 471.

III. CONCLUSION

The district court erred in its conclusion that the County Stipulated Judgment was not a tax settlement, but rather was intended to waive its right to challenge the legality of the Rancheria's qualification for Indian gaming without regard to whether the land is eligible for gaming as a matter of federal law.

The County intended that the 1987 Stipulated Judgment was a tax settlement. To this point, it provided that the County would treat the Rancheria as a federally recognized Indian reservation for the purposes of the tax settlement, an intention that is clear from any reading of the document. There is nothing in that document waiving the County's right to challenge legitimate concerns about what it believes to be violations of federal law. IGRA unequivocally states that the Secretary may not approve gaming on land that was ineligible for gaming on

October 17, 1988. The County certainly could not have lawfully stipulated an eligibility that did not exist, and it did not agree to be bound by unlawful federal actions involving the Rancheria land.

DATED this 18th day of May 2017.

AMADOR COUNTY, CALIFORNIA

By Counsel

s/ Dennis J. Whittlesey

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FRAP 31(A)(7) CERTIFICATE OF COMPLIANCE

In compliance with Federal Rule of Appellate Procedure 31(a)(7), I certify that the forgoing contains 5512 words, excluding parts of the document that are exempted by the Rule.

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2017, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all listed counsel of record.

/s/ *Dennis J. Whittlesey*
Dennis J. Whittlesey

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