Mechoopda Indian Tribe of Chico Rancheria v. Schwarzenegger

Decided Mar 12, 2004

No. CIV. S-03-2327 WBS/GGH.

March 12, 2004

MEMORANDUM AND ORDER

WILLIAM SHUBB, Chief Judge, District

Plaintiff, the Mechoopda Tribe of the Chico Rancheria ("the Tribe"), brought this action under the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701 et seq., alleging that defendants, Governor Arnold Schwarzenegger and the State of California, failed to fulfill their obligation under 25 U.S.C. § 2710(d)(3)(A) to negotiate in good faith with the Tribe. Pursuant to Federal Rule of Civil Procedure 12(b)(6), defendants now move to dismiss this action. *2

2

I. Factual and Procedural History [1]

[1] The facts set forth in this section are taken from the allegations of the Tribe's complaint and judicially noticeable facts unless otherwise noted.

"A court may . . . consider certain materials — documents attached to the complaint, documents incorporated by reference into the complaint, or matters of judicial notice — without converting the motion to dismiss into a motion for summary judgment." United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003).

The Tribe is a federally recognized tribe located in the State of California. (Cmpl. ¶ 8). The Tribe alleges that it has "Indian Lands located in the State of California." (Id.). Between 1939 and 1958, the Tribe resided on the Chico Rancheria, which consisted of lands held in trust by the United States for the Tribe's benefit and located inside the city limits of Chico, California. (Defs.' Req. for Jud. Notice ("RJN") Ex. A (Nat'l Indian Gaming Comm'n ("NIGC") Advisory Mem.) at 6). In 1958, Congress enacted the California Rancheria Act, which authorized the termination of the Indian status and trust status of lands of forty-one California rancherias, including that of the Tribe. (Id.). The Tribe was terminated by a proclamation published on June 2, 1967. (Id.). Following the termination, the Tribe lost the entire Chico Rancheria through "unscrupulous land sales." (Id.).

In 1986, the Tribe filed suit challenging its termination. (Id. at 7). The Tribe and the defendants in the Scotts Valley litigation entered into a Stipulation for Entry of Judgment ("Stipulated Judgment"); the United States District Court for the Northern District of California ordered entry of final judgment according to the terms of the Stipulated Judgment. *3 Scotts Valley v. United States (Final Judgment), No. C-86-3660-VRW (N.D. Cal. April 17, 1992) (attached to Defs.' RJN as Ex. C). Under the Stipulated Judgment, the defendants in theScotts Valley litigation agreed that the Chico Rancheria was not lawfully terminated in accordance with the California Rancheria Act. Scotts Valley v. United States (Stipulated Judgment), No. C-86-3660-VRW at 2 (N.D. Cal. Jan. 6, 1992) (attached to Defs.' RJN as Ex. C). The Stipulated Judgment provided that "the Mechoopda Indian Tribe of the Chico Rancheria and its members shall be eligible for all rights and benefits extended to other federally recognized Indian tribes and their

3

members. . . ." Id. On May 4, 1992, the Assistant Secretary for Indian Affairs published a notice in the Federal Register that the Tribe and its members were reinstated to their pre-termination status. 57 Fed. Reg. 19,133 (May 4, 1992); (Defs.' RJN Ex. A (NIGC Advisory Mem.) at 7).

The site of the Tribe's former Chico Rancheria is located in the center of the city of Chico. (Defs.' RJN Ex. A (NIGC Advisory Mem.) at 7). Approximately one half of that territory is now owned by the State of California and is part of the California State University, Chico campus. (Id.). The other half contains fifty separate parcels and lots devoted to mixed residential and commercial uses. (Id.). In the Stipulated Judgment, the Tribe agreed that it "will not seek . . . to reestablish the former boundaries of the Chico Rancheria, and that no action taken in connection with [the] settlement shall be construed as reestablishing the former Rancheria boundaries." Scotts Valley (Stipulated Judgment), No. C-86-3660-VRW at 10. *4

4

At the time of the Stipulated Judgment, the only two parcels within the boundaries of the former Chico Rancheria remaining in Indian ownership were: (1) a parcel used as a cemetery for the Tribe and held in Indian ownership in trust for the Tribe, and (2) a parcel held in fee by two individuals. Id. at 3-4. Under the terms of the Stipulated Judgment, the "[f]ederal defendants agree[d] to accept in trust status . . . [the] cemetery. . . . The [Tribe] agree[d] that the use of this parcel shall be restricted solely to its current use as a cemetery." Id. at 3. The Stipulated Judgment also provided that any future acquisition of trust land by the Tribe within the "exterior boundaries" of the former Chico Rancheria would be subject to the condition that its use be consistent with the land use element of the applicable General Plan of the City of Chico or of the County of Butte.Id. at 5.

In addition to the tribal cemetery, the Tribe currently holds fee-title interest in a forty-acre almond orchard, a half-acre parcel acquired for the construction of a community center, and thirty units of tribal housing; these lands are all located in the County of Butte. (Cmpl. Ex. A (Req. for Negotiations)). In 1996, in collaboration with the Department of Interior, Bureau of Indian Affairs ("BIA"), the Tribe identified a parcel it desired to acquire and transfer to the United States as trustee for the Tribe. (Defs.' RJN Ex. A (NIGC Advisory Mem.) at 8). In December 2001, the Tribe purchased a 645-acre parcel located outside the Chico city limits in Butte County. (Id. at 1, 9). The parcel is approximately ten miles from the boundaries of the former Chico Rancheria. (Id.). One of the planned uses for the *5 property is a gaming facility. (Id. at 1, 8). The Tribe currently has a fee-to-trust application pending before the BIA for this parcel. (Id. at 1). Currently, the Tribe does not have any land held in trust. (Cmpl. Ex. A (Req. for Negotiations)).

5

On March 20, 2000, the Tribe formally requested that defendant, the State of California, enter into a Tribal-State compact for class III gaming on Indian lands. (Cmpl. ¶ 20, Ex. A (Req. for Negotiations)). Defendants have "failed and refused to negotiate in good faith with the Tribe" for a Tribal-State compact. (Id. ¶ 25).

On November 6, 2003, the Tribe filed this action seeking: (1) an order declaring that defendants have failed to negotiate in good faith with the Tribe for a Tribal-State compact governing the conduct of class III gaming; and (2) an order compelling defendants to conclude a Tribal-State compact governing the Tribe's conduct of class III gaming activities within a sixty day period from the entry of the order and appointment of a mediator to resolve any impasse in accordance with 25 U.S.C. § 2710(d)(7)(B)(iv). (Id. at 6-7). Defendants move to dismiss the Tribe's complaint on the ground that the Tribe lacks standing to seek compact negotiations with defendants or to bring this action.

II. Discussion

A. Motion to Dismiss

On a motion to dismiss, the allegations of the complaint must be taken as true. Cruz v. Beto, 405 U.S. 319, 322 (1972); City of Roseville v. Norton, 219 F. Supp.2d 130, 144 (D.D.C. 2002) ("`For purposes of ruling on a motion to dismiss for want of standing,' the Court `must accept as true all material allegations of the complaint.'") (quoting Warth v. Seldin, 422 U.S. 490, 501 (1975)). The court may not dismiss for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim which would entitle him or her to relief. Hishon v. King Spalding, 467 U.S. 69, 73 (1984). Dismissal is appropriate only when the plaintiff fails to put forth either: (1) a cognizable legal theory, or (2) sufficient allegations of fact under a cognizable theory. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990) (citing Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 533-34 (9th Cir. 1984)).

6 *6

B. IGRA

In 1988, Congress enacted the IGRA as a means of granting states some role in the regulation of Indian gaming. Artichoke Joe's Cal. Grand Casino v. Norton ("Artichoke Joe's"), 353 F.3d 712, 715 (9th Cir. 2003). By enacting the IGRA, Congress intended to provide a statutory basis for the operation of gaming by Indian tribes as a means "to promote tribal economic development, tribal self-sufficiency, and strong tribal government." 25 U.S.C. § 2701(4). The IGRA creates three classes of gaming, each of which is subject to a different level of regulation.[2] At issue in this case is class III gaming, which includes "all forms of gaming that are not class I gaming or class II gaming," 25 U.S.C. § 2703(8), and "the types of high stakes games usually associated with casino-style gambling, as well as slot machines and parimutuel horse-wagering." Artichoke Joe's, 353 F.3d at 715. Of the three classes of gaming, class III is the most heavily regulated. Id.

7 *7

[2] Under the IGRA, "`class I gaming' means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations." 25 U.S.C. § 2703(6). Class II gaming includes bingo and card games that are explicitly authorized by state laws or "are not explicitly prohibited by the laws of the State and are [legally] played at any location in the State." 25 U.S.C. § 2703(7)(A). Class II gaming specifically excludes banked card games and slot machines. 25 U.S.C. § 2703(7)(B).

The IGRA permits class III gaming on Indian lands only where three conditions are met: (1) authorization by an ordinance or resolution of the governing body of the Indian tribe and the Chair of the National Indian Gaming Commission ("NIGC"); (2) location in a state that permits such gaming for any purpose by any person, organization, or entity; and (3) the existence of a Tribal-State compact approved by the Secretary of the Interior ("Secretary"). 25 U.S.C. § 2710(d)(1). The compact requirement allows states to negotiate with tribes located within their borders regarding aspects of the class III gaming that might affect legitimate state interests.[3] 25 U.S.C. § 2710(d)(3)(C).

8 *8

[3] The IGRA provides that a negotiated Tribal-State compact may include provisions relating to:

> (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;
>
> (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;
>
> (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

> (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;
>
> (v) remedies for breach of contract;
>
> (vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and
>
> (vii) any other subjects that are directly related to the operation of gaming activities. 25 U.S.C. § 2710 (d)(3)(C).

The IGRA establishes the framework by which a federally recognized tribe can require a state to enter into negotiations concerning the establishment of a gaming facility. Under 25 U.S.C. § 2710(d)(3)(A), a federally recognized tribe initiates the negotiation process by making a formal request to enter negotiations with the state. Upon receiving the tribe's request, the state "shall negotiate with the Indian tribe in good faith to enter into such a compact." 25 U.S.C. § 2710(d)(3)(A). The IGRA further provides that the tribe may initiate a federal cause of action where, 180 days after the tribe's request for negotiations, the state fails to enter into negotiations concerning a Tribal-State compact or fails to conduct such negotiations in good faith.[4] 25 U.S.C. § 2710(d)(7)(A)(i) and (B)(i). Under the IGRA, the court "shall order the State and the Indian Tribe to conclude [the] compact within a 60-day period."[5] *9 25 U.S.C. § 2710(d)(7)(B)(iii).

[4] Under California Government Code § 98005, the State of California "submits to the jurisdiction of the [federal] courts. . . . in any action brought against the state by any federally recognized California Indian tribe asserting any cause of action arising from the state's refusal to enter into negotiations . . . for the purpose of entering into a" new or amended "Tribal-State compact pursuant to the IGRA or to conduct those negotiations in good faith. . . ."

[5] If the state and tribe fail to conclude a Tribal-State compact within the sixty day period, a mediator will select, from the state's and the tribe's proposed compacts, the compact that best comports with the IGRA and other applicable laws. 25 U.S.C. § 2710(7)(B)(iv). If the state does not consent to a proposed compact submitted by the mediator, the Secretary "shall prescribe, in consultation with the Indian tribe, procedures . . . under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction." 25 U.S.C. § 2710(7)(B) (vii).

Here, on March 20, 2000, the Tribe made a formal request to then-Governor Gray Davis, asking that defendant, the State of California, enter into negotiations with the Tribe for class III gaming facilities. Defendant, the State of California, declined to negotiate. The Tribe initiated suit under sections 2710(d)(7)(A) and (B) on November 6, 2003, more than 180 days after its initial request to enter negotiations.

1. Indian Lands as Prerequisite to Negotiations

Defendants argue that the Tribe lacks standing to bring this action because the Tribe has no Indian land, as defined by the IGRA, and Indian land is a jurisdictional prerequisite to a federal cause of action to compel compact negotiations as provided in section 2710(d)(7)(A). The plaintiff tribe's fulfillment of the statutory prerequisites for negotiation under the IGRA is an entirely reasonable standing requirement.Match-E-Be-Nash-She-Wish Band for Pottawatomi Indians v. Engler ("Engler"), 304 F.3d 616, 618 (6th Cir. 2002). Section 2710(d)(7)(A)(i) states:

> The United States district courts shall have jurisdiction over —

> (i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith . . .

The Tribe argues that reference to "paragraph (3)" in section 10 *10 2710(d)(7)(A)(i) does not effectuate an incorporation of a requirement that a tribe have jurisdiction over Indian lands. In support of this argument, the Tribe contends that the phrase "under paragraph (3)" modifies the term "compact" rather than "Indian tribe." (Pl.'s Resp. at 14).

However, a more plausible reading of the section suggests that "under paragraph (3)" modifies the broader phrase, "entering into a Tribal-State compact." The use of the same phrase, "under paragraph (3)" throughout section 2710(d) supports this reading. For example, section 2710(d)(1)(C) states, "a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3)," and suggests that "paragraph (3)" describes the process by which the state and the tribe enter into a compact.

Finally, the content of paragraph (3) itself suggests that reference to "paragraph (3)" directs the reader to the process by which the state and the tribe negotiate and enter into a compact. Section 2710(d)(3)(A) of paragraph (3) states that:

> Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

"Interpretation of a statute must begin with the statute's language." Mallard v. United States Dist. Court, 490 U.S. 296, 301 (1989). The trust doctrine, an outgrowth of the unique trust relationship between the United States and Indian tribes, creates a presumption that doubt as to the 11 proper *11 interpretation of an ambiguous provision in a federal statute enacted for the benefit of an Indian tribe will be resolved in the Indian tribe's favor. See Artichoke Joe's, 353 F.3d at 729. However, ambiguity is a prerequisite for any application of the presumption. Id. " [A]lthough statutes benefitting Native Americans generally are construed liberally in their favor," the court will not rely on this factor to contradict the plain language of a statute. Rumsey Indian Rancheria of Wintun Indians v. Wilson, 64 F.3d 1250, 1257 (9th Cir. 1994) op. am. on den. of reh'g, 99 F.3d 321 (9th Cir. 1996). In most cases, where the statutory language is unambiguous, the court will not resort to legislative history to guide its review. Id.

The court finds no ambiguity in 25 U.S.C. § 2710(d)(3)(A) to trigger the presumption favoring the Tribe. The Tribe argues that the phrase "having jurisdiction" applies at the time when the "gaming activity . . . is to be conducted," not when the request for negotiations is made. Under the Tribe's interpretation, the "having jurisdiction" provision would allow a tribe to request negotiations with the state for a compact governing gaming activities on Indian lands over which the tribe will have jurisdiction in the future, when the gaming is actually conducted. The plain language of the statute disfavors that interpretation. In referring to class III gaming activity, section 2710(d)(3)(A) contemplates activity "being conducted, or . . . to be conducted." The phrase "to be conducted" modifies the phrase "gaming activity," not the phrase "having jurisdiction over . . . Indian lands." But, the section refers only to an "Indian tribe 12 having jurisdiction over the Indian lands." *12

(emphasis added). The statute's use of present tense denotes current jurisdiction over the Indian lands.

The Tribe suggests that interpreting section 2710(d)(3)(A) to require that a tribe possess jurisdiction over Indian lands before the state is obligated to enter negotiations would be inconsistent with defendants' past actions. The Tribe claims that defendants have negotiated and executed a compact with at least one other tribe that did not have jurisdiction over Indian lands, and the federal government approved this compact without requiring that the tribe have jurisdiction over Indian lands. (Pl.'s Resp. at 15 n. 7); see City of Roseville, 219 F. Supp.2d 130 (the tribe entered into a gaming compact with the State of California prior to obtaining Indian lands). However, by its terms, section 2710(d)(3)(A) only describes the conditions under which the state is obligated to, or "shall," negotiate. In contrast, section 2710(d)(3)(B) states that "[a]ny State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe," suggesting that the state may enter into compact negotiations even when not specifically required to do so under the IGRA.

The Sixth Circuit, interpreting section 2710(d)(3)(A), determined that "[h]aving jurisdiction over land for the [gaming facility] is a condition precedent to negotiations and federal jurisdiction." Engler, 304 F.3d at 618 (affirming dismissal of the action where the plaintiff tribe owned land in the state, but those lands were not Indian lands, as defined by the IGRA); see also Tomac v. Norton, 193 F. Supp.2d 182, 193 (D.D.C. 2002) (holding that the Department of Interior could place land in
13 *13 trust so that a tribe could build a casino although there was no valid gaming compact under the IGRA and stating, "[i]n fact, a tribe gains authority to compel a state to negotiate concerning Class III gaming only after it has obtained `Indian lands' suitable for a casino site") (emphasis in original) (citingMatch-E-Be-Nash-She-Wish-Band of Pottawatomi Indians v. Engler, 173 F. Supp.2d 725, 727 (W.D. Mich. 2001)). In Engler, the Sixth Circuit explained that section 2710(d)(3)(A) "describes not just an Indian tribe, but one that is in possession of land," and that "the sentence is best read conjunctively — the party must be an Indian tribe and it must have land over which it exercises jurisdiction and it must be operating or contemplating the operation of a gaming casino." 304 F.3d at 618 (emphasis in original).

Several policy rationales justify the prerequisite to the state's obligation to negotiate. The prerequisite of having jurisdiction over Indian land ensures that the gaming facility at issue will be inside the state, gives the state notice of the gaming facility's location, and requires the tribe to have a place for the gaming facility that has been federally approved.Id. Without information about the gaming facility's location, "the State would have no way to assess the environmental, safety, traffic and other problems that such a casino could pose." Id.

In urging this court to decline following the Engler decision, the Tribe offers several cogent arguments. The Tribe argues that having jurisdiction over Indian lands is unnecessary to ensure that the gaming facility will be located inside the state borders because it seems unlikely that a tribe would
14 *14 request negotiations with one state for a compact governing a gaming facility to be located elsewhere. Additionally, because the gaming facility's location is subject to negotiation during the compacting process, see Wisconsin Winnebago Nation v. Thompson, 824 F. Supp. 167, 171-72 (W.D. Wis. 1993) aff'd, 22 F.3d 719 (7th Cir. 1994), possession of Indian lands does not appear necessary to provide notice to the state of the gaming facility's location.

However, the absence of the prerequisite would force the state to negotiate location and assess environmental, safety, traffic and other problems assuming the existence of a hypothetical parcel of Indian land If "the Indian tribe does not have any

land in the State that can be used for a casino, why should the State waste its time negotiating about such a casino?" Engler, 304 F.3d at 618. The prerequisite ensures that the state does not waste its efforts.[6] *15

15

[6] In the past, defendants have negotiated and executed Indian gaming compacts that did not provide for a specific location for a gaming facility. The Tribe claims that those actions undermine the sincerity of defendants' present concern that the absence of the prerequisite to the obligation to enter compact negotiations would make assessment of the environmental, safety, traffic and other problems posed by a casino impossible.

However, the IGRA does not appear to require that states conduct negotiations with each tribe in the same manner. "[I]t cannot be assumed that a responsible state officer would automatically continue to enter into further, identical compacts no matter the accumulation of experience, the pressures against permitting urban tribal gaming establishments, public opinion, and other potentially relevant economic and legal developments."Artichoke Joe's Cal. Grand Casino v. Norton ("Artichoke Joe's I"), 216 F. Supp.2d 1084, 1101 (E.D. Cal. 2002) (determining whether plaintiffs faced an immediate threat of future injury from the possible approval of future Tribal-State compacts). Further, the legislative history demonstrates that Congress expected that a state's relationship with, and therefore its Tribal-State compact with, each individual tribe would be unique. "The terms of each compact may vary extensively depending on the type of gaming, the location, the previous relationship of the tribe and State, etc." S. Rep. No. 100-446, at 14 (1988)reprinted in 1988 U.S.C.C.A.N. 3071, 3084. Thus, the court does not view defendants' past compact negotiations as inconsistent with the arguments they present in the instant motion.

In Mashantucket Pequot Tribe v. State of Connecticut, 913 F.2d 1024, 1028 (2d Cir. 1990), the court broadly stated that "the only condition precedent to negotiation specified by the IGRA is a request by a tribe that a state enter into negotiations." However, the issue in the instant action is distinguishable from that encountered by the Second Circuit inMashantucket. In Mashantucket, the court was presented with the question of whether adoption of "a tribal ordinance permitting casino-type gambling on the Reservation, . . . was required by section 2710(d)(1)(A) as a prerequisite to any obligation to negotiate." 913 F.2d at 1027.

Accordingly, the Mashantucket court's analysis focused on the interpretation of section 2710(d)(1), which sets forth the "conditions that must be satisfied before a tribe can lawfully engage in class III gaming," and how that section should be read in conjunction with section 2710(d)(3)(A), which describes when a state is required to enter into negotiations with a tribe. See 913 F.2d at 1028. Thus, the decision in Mashantucket is most accurately described as determining whether section 2710(d)(1) is a prerequisite to the provisions of section 2710(d)(3)(A), rather than a determination as to whether section 2710(d)(3)(A) itself contains any prerequisites to the state's obligation to negotiate. Moreover, the Second Circuit did not deal with the specific question of whether possession of Indian land is a *16 prerequisite to the state's obligation to negotiate with a tribe.

16

Accordingly, the court determines that standing under 25 U.S.C. § 2710(d)(3)(A) and (d)(7) to compel compact negotiations with defendants requires that the Tribe presently possess jurisdiction over "Indian lands," as defined by the IGRA.

2. Possession of Indian Lands

Under the IGRA, "Indian lands" are defined as:

> (A) all lands within the limits of any Indian reservation; and
>
> (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power. 25 U.S.C. § 2703(4).[7]

[7] "Rancherias are small Indian reservations." Artichoke Joe's Cal. Grand Casino v. Norton ("Artichoke Joe's II"), 278 F. Supp.2d 1174, 1177 n. 1 (E.D. Cal. 2003) (citing Duncan v. United States, 667 F.2d 36 (Ct.Cl. 1981) ("Rancherias are numerous small Indian reservations or communities in California, the lands for which were purchased by the Government . . . for Indian use")).

The NIGC is charged with interpreting and applying the IGRA to Indian lands used for gaming. Grand Traverse Band of Ottawa Chippewa Indians v. United States Attorney, 46 F. Supp.2d 689, 707 (W.D. Mich. 1999) (citing Miami Tribe of Oklahoma v. United States, 927 F. Supp. 1419, 1422 (D. Kan. 1996) (holding that the NIGC had authority to determine whether particular lands were within the tribe's jurisdiction for purposes of determining whether they constituted "Indian lands" within the meaning of the IGRA)). NIGC regulations further clarify the "Indian lands" definition, stating that:

> Indian lands means:
>
> (a) Land within the limits of an Indian reservation; or
>
> (b) Land over which an Indian tribe exercises governmental power and that is either —
>
> (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or
>
> (2) Held by an Indian tribe or individual subject to restriction by the United States against alienation. 25 C.F.R. § 502.12.

At least one court has construed 25 U.S.C. § 2710(d)(3)(A)'s "having jurisdiction" phrase to require jurisdiction as an element of the definition of Indian lands under the IGRA. See State of Rhode Island v. Narragansett Indian Tribe, 19 F.3d 685, 701-03 (1st Cir. 1994). Tribes are presumed to possess tribal jurisdiction within their reservation. See South Dakota v. Yankton Sioux Tribe, 522 U.S. 329 (1998); Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 140 (1982) (tribes are "invested with the right of self-government and jurisdiction over persons and property within the limits of the territory they occupy, except so far as that jurisdiction has been restrained and abridged by treaty or act of Congress"). The courts have clarified that "tribal jurisdiction" is a threshold requirement to the exercise of governmental power. See Narragansett Indian Tribe, 19 F.3d at 701-03.

Additionally, even if a tribe possesses "Indian land" as defined by the IGRA, the IGRA prohibits gaming on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988. 25 U.S.C. § 2719(a). The IGRA provides two exceptions to this prohibition where:

> (1) such lands are located within or contiguous to the boundaries of the reservation on October 17, 1988; or
>
> (2) the Indian tribe has no reservation on October 17, 1988, and . . .
>
> (B) such lands are located in a State other than *18 Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located. Id. [8]

17 *17

18

8 For the purposes of section 2719(a), restored lands can include off-reservation parcels. See Grand Traverse, 46 F. Supp.2d at 702.

The prohibition of gaming on lands acquired in trust by the Secretary after October 17, 1988, does not apply where: (1) the Secretary, with the concurrence of the Governor of the state in which the gaming activity is to be conducted, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community; (2) lands are taken into trust as part of a settlement of a land claim, the initial reservation of an acknowledged Indian tribe, or the restoration of lands for an Indian tribe that is restored to Federal recognition; or (3) lands are of specifically listed Indian tribes. See 25 U.S.C. § 2719(b).

Here, the Tribe alleges that it possesses "Indian Lands located in the State of California." (Cmpl. ¶ 8). The Tribe alleges that it "currently holds fee-title interest in forty acres of almonds[,] . . . an additional half-acre parcel . . . acquired for the construction of a community center [,]. . . . [a] tribal cemetery. . . . [and] thirty units of tribal housing. . . . [a]ll . . . located in the County of Butte, State of California." (Id. Ex. A (Req. for Negotiations)). The Tribe does not have any land held in trust by the United States. Id. Thus, any land possessed by the Tribe must fall under the IGRA's definition of Indian land as "all lands within the limits of any Indian reservation." 25 U.S.C. § 2703(4)(A). The Tribe claims that all lands within the limits of its former Chico Rancheria, its former reservation, qualify as Indian lands. (Pl.'s Resp. at 8-9).

Both the Tribe and defendants agree that the
19 Stipulated *19 Judgment settled the Tribe's claims against the United States regarding the termination of the Tribe's Chico Rancheria. (Mot. at 5; Pl.'s Resp. at 2). The Stipulated Judgment set forth the terms of the restoration of the Tribe's rights. Because the Tribe was reinstated according to the terms of a stipulation entered into between the Tribe and the United States, the court looks to the Stipulated Judgment to determine whether the Tribe's reservation lands, the Chico Rancheria, were re-established, and to determine what land, if any, the Tribe retained after its reinstatement. See, e.g., Artichoke Joe's I, 216 F. Supp.2d at 1096-97 (a tribe previously terminated by the federal government under the California Rancheria Act was reinstated according to the terms of a stipulation entered into between the tribe, the United States, and the County of Sonoma where the tribe's lands historically were located); Hardwick v. United States, Civ. No. 79-1710, 1994 WL 721578 (N.D. Cal. 1994) (stipulated judgment restored recognition and entitlement to federal Indian benefits of thirty-four rancherias terminated by the California Rancheria Act); Governing Council of Pinoleville Indian Cmty. v. Mendocino County, 684 F. Supp. 1042, 1044-46 (N.D. Cal. 1988) (stipulated judgment restored all land within the tribe's Rancheria as it existed prior to the tribe's unlawful termination under the California Rancheria Act).

The court relies on basic contract principles to interpret the Stipulated Judgment. See Jeff D. v. Andrus, 899 F.2d 753, 759-60 (9th Cir. 1990) (applying Idaho contract law as the stipulation was entered into in Idaho and the parties were all residents of Idaho); Kinzli v. City of Santa Cruz,
20 *20 539 F. Supp. 887, 900 (N.D. Cal. 1982). The court interprets a stipulated judgment "so . . . as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful." Cal. Civ. Code § 1636. "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." Cal. Civ. Code § 1641. The court "must presume that the provisions [of the stipulated judgment] were intended to be

consistent."Pinoleville Indian Cmty., 684 F. Supp at 1046 (interpreting a stipulated judgment restoring an illegally terminated rancheria).

In the Stipulated Judgment, the Tribe and the federal defendants agreed that "the Chico Rancheria was not lawfully terminated." Scotts Valley (Stipulated Judgment), No. C-86-3660-VRW at 2. Also, by the Stipulated Judgment, the Tribe and the federal defendants agreed that "the [Tribe] will not seek, and Federal defendants will not agree, to reestablish the former boundaries of the Chico Rancheria, and that no action taken in connection with this settlement shall be construed as reestablishing the former Rancheria boundaries." Id. at 10. Thus, by the terms of the Stipulated Judgment, the Tribe's former reservation, the Chico Rancheria, was not re-established.

The Tribe argues that "[t]his `agreement' `not to seek reestablishment,' . . . does not square with the primary holding that the Rancheria was `not terminated. . . . [T]here is no need to `reestablish' an Indian reservation that was `not terminated' in the first place." (Pl.'s Resp. at 9). However, where a rancheria has been unlawfully terminated, there
21 is no *21 easy, automatic remedy. Cf. Smith v. United States, 515 F. Supp. 56 (N.D. Cal. 1978) (finding that the rancheria was unlawfully terminated and fashioning equitable decrees entitling the plaintiff to damages for the loss of two parcels and reconveyance of remaining parcels to United States to be held in trust). Each tribe's stipulated judgment is unique and represents the terms of its reinstatement. At least one tribe, unlawfully terminated by the California Rancheria Act and reinstated via a stipulated judgment, has been landless, without a reservation, upon reinstatement. Compare Artichoke Joe's I, 216 F. Supp.2d at 1096-97 (stipulated judgment left tribe landless upon restoration) with Pinolleville Indian Cmty., 684 F. Supp. at 1044 (stipulated judgment declared that all lands within the Rancheria boundaries, as they existed immediately prior to the illegal termination, were "Indian Country").

Interpreting the Stipulated Judgment as a whole, the agreement that the Chico Rancheria was not lawfully terminated and the agreement that the Tribe will not re-establish its former rancheria are consistent and not violative of each other. The Stipulated Judgment first provides acknowledgment that the Chico Rancheria was not lawfully terminated and then resolves the varied ramifications of the unlawful termination. The status of the former rancheria lands is one of several ramifications of the unlawful termination addressed by the Stipulated Judgment. For example, the Stipulated Judgment also addresses the status of tribal members: the federal defendants "agree[d] that the Indian status of the persons named as distributees in the distribution plan of the Chico Rancheria was not terminated in
22 accordance with *22 the Rancheria Act," and the distributees "are eligible for all rights and benefits extended to other federally recognized Indian tribes and their members." Scotts Valley (Stipulated Judgment), No. C-86-3660-VRW at 2.

Taken as a whole, the Stipulated Judgment evinces an intent, with regard to the land within the boundaries of the former rancheria, to maintain the status quo. Land within the former rancheria now comprising California State University, Chico and a portion of the city of Chico was not re-established as the Tribe's reservation; the individually owned parcel within the former rancheria in Indian ownership remained held in fee; future acquisition of land within the former rancheria would "remain consistent" with the local land use plans. Id. at 3-5. Also, the section headings refer consistently to the "former boundaries of the Chico Rancheria" (emphasis added) throughout the Stipulated Judgment. Thus, the Stipulated Judgment makes clear that the Tribe's reservation lands, the Chico Rancheria,

have not been re-established. Accordingly, lands of the former Chico Rancheria does not qualify as Indian land for the purposes of IGRA.

Alternatively, the Tribe argues that the cemetery, retained in Indian ownership and within the boundaries of the Tribe's former reservation, the Chico Rancheria, qualifies as Indian land However, defendants point out that by the terms of the Stipulated Judgment, the cemetery parcel is restricted to use as a cemetery, and thus is not land eligible for a gaming facility under the IGRA. The Tribe disputes this characterization of the terms of
23 the Stipulated Judgment, arguing *23 that the use restriction applies only on the condition that the parcel is taken into trust by the federal government on behalf of the Tribe. The Tribe argues that because the cemetery was never taken into trust, the use restriction does not apply; thus, the Tribe has qualifying Indian lands with which to enter into compact negotiations. The relevant question is whether the use restriction is conditioned on the trust status of the cemetery.

The paragraph of the Stipulated Judgment addressing the cemetery states:

> Federal defendants agree to accept in trust status that particular parcel of land within the boundaries of the former Chico Rancheria . . . which is currently used as a cemetery for the Mechoopda Tribe. This parcel is currently in Indian ownership and was deeded or passed as tribal community property as a direct consequence of termination. Title is currently held in the name of Henry Azbill, et al., Trustees c/o Mechoopda Indian Tribe. The Mechoopda Indian plaintiffs agree that the use of this parcel shall be restricted solely to its current use as a cemetery. Id. at 3.

The paragraph contains no conditional language, nor does the structure of the paragraph suggest that the federal defendants' and the Tribe's agreements are in any way related. Rather, the discussion of the cemetery mirrors that of the only other parcel within the former rancheria under Indian ownership, which is held in fee by two individuals. Id. at 3-4. The discussion of the cemetery and the individually owned parcel appear in the section titled "Lands Within the Former Boundaries of the Chico Rancheria and Currently in Indian Ownership." Id. at 3. Both discussions describe the current status of the land, and in both, the Tribe agreed to maintain the current status of the land; the Tribe agreed that the
24 cemetery parcel would be *24 restricted solely to its current use as a cemetery, and that the individually owned parcel would remain in its current fee status.

The sole difference between the two discussions is the agreement by the federal defendants to take the cemetery parcel into trust for the Tribe. Id. at 3-4. This agreement makes sense in the context of the cemetery parcel because at the time of the Stipulated Judgment it was held by Henry Azbill, et al., as Trustees for the Tribe. Thus, the agreement by the federal defendants offers the option of shifting the trustee for the Tribe from Henry Azbil, et al., to the United States. A similar offer to take the individually owned parcel into trust would be nonsensical as the individual owners expressed a desire and agreed that their parcel remain in its current fee status. Id. at 4.

In addition, analysis of the whole of the Stipulated Judgment, with each paragraph aiding in the interpretation of the other, further indicates that the use restriction is not, as the Tribe argues, conditioned on the trust status of the parcel. In a later paragraph within the Stipulated Judgment discussing future acquisition of land within the boundaries of the former Chico Rancheria by the Tribe, the parties explicitly indicated that trust status was to be conditioned on use restrictions: "the [Tribe] agree[s] that acceptance of any such land in trust status shall be subject to the condition that its use be and remain consistent with the land use element of the General Plan of the City of Chico or the County of Butte. . . ." Id. at 5. The contrast between the language in this paragraph

and the complete absence of conditional language in the paragraph discussing the *25 cemetery parcel indicates that the agreements regarding the cemetery are not meant to be contingent upon each other. Thus, it appears that the parties made two separate agreements regarding the cemetery parcel: (1) the federal defendants agreed to take the land into trust status for the Tribe; and (2) the Tribe agreed to use the parcel as a cemetery.[9]

[9] In Sac Fox Nation of Missouri v. Norton, 240 F.3d 1250, 1266-67 (10th Cir. 2001), the court held that a reservation refers to land set aside by the federal government for occupation of trial members and does not encompass land set aside for the purposes of preserving the status of the parcel as a burial ground. The Sac Fox court held that a parcel originally set aside as a burial ground that has consistently maintained its character as a burial ground cannot be considered a "reservation" for purposes of the IGRA and cannot be used for gaming purposes.Id. However, unlike the facts of the instant case, the undisputed facts of Sac Fox demonstrated that the 1855 treaty reserving the cemetery to the tribe reserved the parcel strictly for the purposes of preserving its status as a burial ground.Id. Also, the court, in arriving at its decision, rejected the Secretary of the Interior's interpretation of "reservation." InCity of Roseville, 348 F.3d at 1029, the court noted that Congress "rebuked" the Sac Fox decision by enacting legislation stating that the authority to determine whether land is a "reservation" was delegated to the Secretary as of the effective date of IGRA.

Finally, the Tribe argues that the statutory definition of Indian lands in the IGRA "does not make room for any exceptions to lands that otherwise qualify;" thus, the use restriction agreed to in the Stipulated Judgment does not affect the cemetery's status as Indian lands under the IGRA. (Pl.'s Resp. at 12). However, 25 U.S.C. § 2710(d)(3)(A) of the IGRA does not merely refer to "Indian lands," but rather refers to "Indian lands upon which a class III gaming activity is . . . to be conducted." The Tribe itself concedes that the cemetery is *26 "not well-suited for use as site for a gaming establishment."[10] (Pl.'s Resp. at 10). Moreover, forcing defendants to negotiate a gaming facility to be placed on a parcel restricted to use as a cemetery would be tantamount to forcing defendants to negotiate an impossibility. As a matter of law, defendants' refusal to negotiate an impossibility cannot be considered an act of bad faith. Cf. Wisconsin Winnebago, 22 F.3d at 724 (holding that the state's "refusal to revisit a subject of a recently concluded compact cannot as a matter of law be considered an act of bad faith").

[10] It is hard to believe that the Tribe really wants to negotiate to build a gambling casino on their burial ground, but that is what they argue. At oral argument, the Tribe's counsel admitted that the Tribe hopes to use lands outside the former Chico Rancheria, the subject of a pending fee-to-trust application, for a gaming facility. (See also Pl.'s Resp. at 10 n. 3). Thus, use of the cemetery parcel seems to be merely a pretense to force the State into negotiations in an attempt to forestall any delay in installing a future gaming facility on the land outside the former Chico Rancheria.

Because the Stipulated Judgment applies a use restriction to the cemetery parcel regardless of whether it is held in trust or in fee, and does not re-establish the lands of the former Chico Rancheria, the court determines that the Tribe can prove no set of facts establishing that it has Indian land eligible for a gaming facility under the IGRA.

IT IS THEREFORE ORDERED that defendants' motion to dismiss be, and the same hereby is, GRANTED.

casetext