

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE**

PLAINTIFF(S): Michael Salinas, et al.	DEFENDANT(S): Bobbi Lamere, et al.	DATE/DEPT: 7-23-04 D-5	CASE NUMBER: RIC 406255
COUNSEL: None	COUNSEL: None	REPORTER: None	
PROCEEDING:			

Notice of Ruling

The present posture of this case is that there are two pending matters, one being a Motion to Quash filed by defendants, the second being a Demurrer filed by defendants. Both matters rest entirely on defendant's argument that this court lacks jurisdiction of this cause, based on principals of sovereign immunity as it relates to defendant Band and the actions herein under review.

The plaintiffs herein consist of persons who have heretofore been members of the Temecula Band of Luiseno Mission Indians of the Pechanga Indian Reservation, and will be referred to herein as "plaintiffs." Defendants are individual members of the same Band and are alleged members of the Enrollment Committee of said Band, and are sued herein in their capacities as individuals and as members of the "Enrollment Committee," and will be referred to herein as the "Pechanga Band."

The history of the Pechanga Band is both a reflection of the rather consistent cruelty and broken promises inflicted in general on the various bands and tribes of Indians by non-Indian settlers, as well as the story of this particular hard working and unique Band. Resident in the western side of the Temecula valley for a very long time prior to the coming of the white and Hispanic settlers, the Pechanga Band was included in the groups pressed into service in the late 1700's by the establishment of the Mission of San Luis Rey. That service has been described as essentially comparable to slavery by most authors, and in any event worked great hardships on the Band members, and caused forced migration of the Band. By the mid-1800's, when the Missions released the various tribes and bands,

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the Pechanga Band returned to their ancestral area. By Treaty of 1863, their historic lands were accorded to them. In 1875, however, ranchers in the area filed a petition in the Federal Court in San Francisco, seeking ownership rights to the Band's lands, and got a decree to evict the Band. This court order was forcibly carried out by the Sheriff of San Diego, who moved the tribe and placed them in the hills south of Temecula in 1881. A Federal Executive Order of 1882 set aside this land as the Band's new reservation, and by 1883 it was up and running.

A good account of this history may be found in that portion of Exhibit 1 to the complaint herein consisting of relevant sections of a report "On the Conditions and Needs of the Mission Indians of California" prepared on site in 1883 by Helen Hunt Jackson, noted poet, historian, and author (of, among other things, the book *Ramona*, which is the basis of the Ramona pageant held yearly). That report was prepared for President Chester A. Arthur's administration, and was included by Ms. Jackson in her book *A Century of Dishonor, A Sketch of the United States Government's Dealings With Some of the Indian Tribes*, published in 1885 and frequently republished, and available today. Among Ms. Jackson's observations were, prior to the settlement in Pechanga Canyon, "For forty years these Indians have been recognized as the most thrifty and industrious Indians in all California." Further, she commented that after their removal in 1881, "A portion of these Temecula Indians, wishing to remain as near their old homes and the graves of their dead as possible, went over to the Pechanga Canyon. It was a barren, dry spot, but the Indians sunk a well, built new houses, and went to work again." On revisiting the valley in May 1883, she wrote: "Our first thought on entering it was, would all persons who still hold to the belief that Indians will not work could see this valley. It would hardly be an extreme statement to say that the valley was one continuous field of grain." And, further, "The whole expression of the place had changed, so great a stimulus had there been to the Indians in even the slight additional sense of security given by the Executive Order setting off their valley as a reservation".

Various changes in the applicable legal and economic framework gave the tribe a renewed opportunity for improved economic health in the 1990's. Since the opening of

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their first major venture, in 1995, a series of businesses have been started and expanded by the Band, and it is now an extremely successful entity. The business activities here included various gaming and recreational enterprises. Considering the history of Indians in general and this Band in particular, it is a heartwarming story of new opportunity and new success. However, with this progress has come internal conflict. In particular, a dispute has arisen with respect to membership in the Band and concurrent participation in the new prosperity that comes with Band membership. This suit arises from actions of the Band through its "Enrollment Committee," and particularly the "disenrollment" proceedings against plaintiffs. Plaintiff's action seeks to maintain tribal membership for plaintiffs, and to stop or reverse disenrollment actions. Defendants' demurrer essentially states that this court lacks jurisdiction over the defendant Band and the individual members of the Enrollment Committee. An enormous amount is at stake for the plaintiffs, who stand to lose their income from the tribe, which is substantial, as well as their health, education, and other benefits.

This court has attempted to become familiar with the applicable statutes and cases, which is a truly substantial body of information. Further, and often due to "membership" disputes, this is becoming an increasingly litigated and contentious area of law. As many tribes and bands have become more successful economically, there are many more litigated disputes of all kinds. For example, while this case has been under submission, a ruling has been issued by the National Labor Relations Board, in a case involving the San Manuel Indian Bingo and Casino, the Hotel and Restaurant Employees Union, and the Communication Workers of America, another union. The case is cited as 341 NLRB No 138, reverses precedent to the contrary, and asserts that the NLRB has jurisdiction over a dispute as to an unfair labor practice allegedly committed by the Tribe. The facts are not terribly close to those of the within case, but this case is illustrative of the increasing assertion of administrative and judicial scrutiny over matters previously considered to be within the sole jurisdiction of the "sovereign authority" of a tribe or band. (Additionally, that case is at the very beginning of a series of likely judicial reviews, and is a long way from

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any final holding.) The court only comments on this as an example of the increasing number of, and areas of, disputes which pertain to claims of "tribal sovereignty."

Several observations may be in order here. First, notions of "Tribal Sovereignty" was originally enunciated in three cases dating from 1829 to 1832, and known as the "Marshall Trilogy." These cases included: *Johnson v. McIntosh* (1829) 21 U.S. 543; *Cherokee Nation v. Georgia* (1831) 30 U.S. 1; and *Worcester v. Georgia* (1832) 31 U.S. 515. Reviewing the key holdings of those cases provides some background for some of the divergent holdings of the many cases and laws that have "followed" these cases. As the United States Supreme Court noted, the "federal tribal relationship today embodies a convoluted history of case law and interaction among the three arms of American government." (*United States v. Kagama* (1886) 118 US 375, 378-385.)

Among the doctrines enunciated in the "Trilogy" is that tribal sovereignty is subject to diminution by the United States, but not by individual states.

But the legal status of Indians continue to evolve. Congress only extended United States Citizenship status to all Indians born in the United States in 1924, and a growing recognition of the many gaps in the legislative framework applicable to Indian rights led to, among others, the enactment, in 1968, of the Indian Civil Rights Act, as well as, in 1953, of Public Law 280. Public Law 280 is the principle authority upon which plaintiffs rely. Public Law 280, in relevant part codified as 28 U.S.C. Section 1360, and states that California courts (as well as the courts of several other states) "have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in Indian country." In response, defendants rely principally on *Bryan v. Itasca County* (1976) 426 U.S. 373, arguing that said case holds, at page 392, that "(there is notably absent any conferral of state jurisdiction over the tribes themselves under Public Law 280." It appears to this court that the *Bryan* case dealt with a taxation issue, governed specifically in Section 1360(b), and this comment is at best dicta insofar as it relates to the issue here and it does not appear persuasive to this court.

Plaintiffs also rely in part on *Bryan, supra*, at page 383, for the proposition that Public Law 280 was enacted "to redress the lack of adequate Indian forums for resolving

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private legal disputes between reservation Indians." That appears to be a valid point. The issues raised in this complaint are neither trivial nor simple, and do involve consideration of due process issues by a decision-maker competent to deal with such matters. The defendant Band, which has a total membership (including plaintiffs) of about 1,100, and which has no tribal courts, appears to be almost totally inadequate to the task. To refer issues of this nature to a tribal council, all of whom have a personal stake in the outcome, few if any of whom have legal training, and where the council is under no compunction to follow established due process rights, appears to fall into the category referred to above of a "lack of an adequate forum."

This court has attempted to fully review the arguments and issues presented by each side. A discussion as to all would be extensive and would not be determinative of the issues before this court. At the time of the hearing held April 19th, this court requested further briefs in the basic question as to whether the sovereign nation arguments "trumped" the due process clause of the state and federal constitutions. Upon further review, and with the good assistance of the further briefs, it does appear to this court that the issue more properly is solely to determine whether Public Law 280 applies. As above stated, this court holds that it does.

For the reasons set forth above, and having given consideration to the other arguments submitted, as court holds that Public Law 280 does apply in this instance, this court does have jurisdiction of this matter. Defendants' demurrer is therefore overruled, and defendants' motion to quash is denied.

Both sides having indicated to the court an intent to seek a writ if this ruling is adverse to their position, this court will also stay this order for a period of 30 days from the date of issuance of this order to permit adequate time for such further procedures if necessary.

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