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E-Filed 12/21/06

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THE PICAYUNE RANCHERIA OF THE
CHUKCHANSI INDIANS,

Plaintiff,

v.

COUNTY OF MADERA, et al.,

Defendants.

Case Number C 06-7613 JF (PVT)

ORDER¹ DENYING PLAINTIFF'S
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND
SETTING HEARING ON MOTION
FOR PRELIMINARY INJUNCTION

The Court has received Plaintiff's application for temporary restraining order ("TRO") filed December 13, 2006 and supplementary letter brief filed December 19, 2006, as well as Defendants' opposition filed December 20, 2006. The Court concludes that this motion is appropriate for disposition without oral argument pursuant to Civil Local Rule 7-1(b). For the reasons discussed below, the application for TRO will be denied and Plaintiff's motion for preliminary injunction will be set for hearing on January 12, 2007 at 9:00 a.m.

¹ This disposition is not designated for publication and may not be cited.

I. BACKGROUND

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2 This action is one of several arising out of disputes between Plaintiff, The Picayune
3 Rancheria of Chukchansi Indians (“the Tribe”), and Defendants, the County of Madera and its
4 board of supervisors, tax assessor, treasurer/collector, planning director and planning department
5 (collectively “the County”).

Hardwick v. United States

6
7 In 1979, individuals from thirty-four Indian tribes that had been terminated by the United
8 States filed suit in the Northern District of California, seeking restoration of their status as
9 Indians and entitlement to federal Indian benefits, as well as the right to reestablish their tribes as
10 formal government entities. *Hardwick v. United States*, Case No. 79-1710. Two stipulated
11 judgments were entered in that case: the 1983 stipulated judgment resulted in the United States
12 restoring the Tribe’s status as an Indian tribe, and the 1987 stipulated judgment resulted in
13 Madera County’s agreement to treat the Tribe’s lands as “Indian Country” and to refrain from
14 imposing any taxes on those lands other than *ad valorem* taxes. The Tribe subsequently
15 reacquired tribal lands that had been sold to non-Indian individuals following termination of the
16 Tribe, and constructed a casino on those lands. After completion of the casino, the County
17 asserted that the Tribe was subject to annual *ad valorem* taxes in excess of \$4 million and filed a
18 motion to enforce the 1987 stipulated judgment, seeking to collect those *ad valorem* taxes. This
19 Court denied the County’s motion after concluding that the Tribe was not a party to, and was not
20 bound by, the 1987 stipulated judgment. The Court stated explicitly that it was *not* resolving the
21 question of whether the County had authority to impose *ad valorem* taxes separate and apart from
22 the 1987 stipulated judgment; the Court’s holding was limited to a finding that *the 1987*
23 *stipulated judgment* did not give the County such authority. See Order Denying Motion For
24 Reconsideration filed 10/13/04 at 6.

In Rem Action:

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26 In October 2004, the County filed an *in rem* action in the Madera Superior Court, seeking
27 declaratory relief as to the taxability of the Tribe’s lands. *County of Madera v. 48.53 Acres of*
28 *Land*, Case No. MCV 025339. On December 1, 2006, the Madera Superior Court denied the

1 Tribe's motion to dismiss, holding that it had *in rem* jurisdiction over the Tribe's lands. That
2 action is pending.

3 Tribe's Motion To Enforce Hardwick 1987 Stipulated Judgment:

4 The Tribe has begun an expansion project intended to add a hotel and spa facilities to the
5 casino on its lands. The County has asserted that the Tribe must follow local and state health,
6 safety and environmental laws. The Tribe has declined to follow the necessary procedures to
7 obtain County permits for construction of the hotel and spa, and the County has issued stop work
8 orders with respect to the Tribe's construction. In October 2006, the Tribe filed a motion to
9 enforce the 1987 stipulated judgment in the *Hardwick* action, asserting that the judgment
10 precludes the County from imposing local and state laws on the Tribe's construction. This Court
11 denied the Tribe's motion, concluding that the issues raised in the Tribe's motion went beyond
12 the scope of the 1987 stipulated judgment and more properly would be presented in a new action
13 for declaratory relief. The Court indicated that if the Tribe were to file such an action in the
14 Northern District of California, the Court would relate such action to the earlier-filed *Hardwick*
15 action. This indication of an intent to relate the cases seems to have caused some confusion
16 among the parties. The Court's indication of its intent was *not* a determination that it would have
17 subject matter jurisdiction over a declaratory relief action by the Tribe, or a determination that
18 this Court is the appropriate forum for resolving some or all of the parties' conflicts. The Court
19 simply intended to indicate that *if* the Tribe were to file a declaratory relief action in the Northern
20 District of California, the undersigned would relate the cases as a matter of judicial efficiency.

21 Nuisance Abatement Action:

22 In November 2006, the County issued stop-work notices to the Tribe and its contractors
23 because various County construction permits had not been obtained. The Tribe refused to stop
24 work. On November 21, 2006, the County filed a nuisance abatement action in Madera Superior
25 Court, alleging a number of state law actions arising out of the Tribe's construction. The Tribe
26 removed the action to the Eastern District of California, which remanded the action to the
27 Madera Superior Court on December 18, 2006.

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1 warranted in light of the ongoing state court proceedings. It appears to the Court that abstention
2 may be appropriate pursuant to *Colorado River Water Conservation District v. United States*,
3 424 U.S. 800 (1976) or pursuant to *Younger v. Harris*, 401 U.S. 37 (1971).

4 Given these questions, the Court concludes that the Tribe has failed to establish a
5 likelihood of success on the merits or otherwise established its right to a TRO. Accordingly, the
6 Tribe's application for TRO will be denied. The Court will, however, set the Tribe's motion for
7 preliminary injunction for an expedited hearing and afford the parties an opportunity to brief the
8 questions of subject matter jurisdiction and abstention prior to the hearing.

9 **III. ORDER**

- 10 (1) The Tribe's application for TRO is DENIED;
- 11 (2) The Tribe's motion for preliminary injunction is set for hearing on January 12,
12 2007 at 9:00 a.m. The parties shall file supplemental briefs, not to exceed fifteen
13 pages, addressing subject matter jurisdiction and abstention on or before January
14 5, 2007.

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20 DATED: 12/21/06

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22 JEREMY FOGEL
23 United States District Judge
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1 Copies of Order served on:

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