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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PIRTLE, MORISSET  
SCHLOSSER & AYER

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD ROWLAND, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. C-92-2910 SAW
	)	
MEMBERS OF THE HOOPA VALLEY	)	
TRIBAL COUNCIL,	)	
	)	
Defendants.	)	

ENTERED IN CIVIL DOCKET

8/4, 1993

MEMORANDUM AND ORDER

I. BACKGROUND

Plaintiffs Richard and Margaret Rowland own Hoopa Valley Ready Mix, a business which mines and manufactures gravel for sale to the public, governmental entities, and the Hoopa Valley Tribe.<sup>1</sup> Plaintiffs also own land known as Lot 104, Agency Field, on the Hoopa Valley Reservation in fee simple absolute. ~~Plaintiffs have mined a gravel bar on their property since the 1960s.~~ Since 1983, Plaintiffs have stored, weighed, and loaded gravel on their property and on a tribal land assignment to Thelma Thom -- a Hoopa Valley tribe member.<sup>2</sup> Since 1988, Plaintiffs have also stored, weighed, and loaded gravel on a portion of the Cal

<sup>1</sup> Plaintiffs are not members of the Hoopa Valley Tribe, and are not Indians.

<sup>2</sup> Plaintiffs' storage of the material at the Thelma Thom assignment is allegedly in accordance with a rental agreement between Ms. Thom and Plaintiffs.

Stipulation & Order Amending & Dismissing filed 10/7/93

MTT

1 Pac Sawmill site.<sup>3</sup>

2 On June 5, 1992, under direction from Defendant members  
3 of the Hoopa Valley Tribal Council, tribal attorney Stephen  
4 Suagee informed Plaintiffs that their use of the two tribal  
5 sites was an ongoing trespass, and that they would be  
6 monetarily liable for the trespass. Mr. Suagee further  
7 informed Plaintiffs that if they wished to use the sites  
8 for stockpiling materials, they had to obtain permission to  
9 do so from the tribe and the Bureau of Indian Affairs. On  
10 the same day, the Hoopa Valley Tribal Council directed its  
11 agents to blockade Plaintiffs' access to the Thom and Cal  
12 Pac sites.

13 On July 12, 1992, Plaintiffs filed a complaint in Hoopa  
14 Valley Tribal Court against the members of the Hoopa Valley  
15 Tribal Council, praying for injunctive and declaratory  
16 relief. Plaintiffs sought a court order preventing  
17 Defendants from continuing to withhold Plaintiffs'  
18 materials and equipment. On July 28, 1992, Plaintiffs  
19 filed a similar action in federal court. On July 29, 1992,  
20 the Court denied Plaintiffs' motion for a temporary  
21 restraining order, instructing Plaintiffs to exhaust tribal  
22 court remedies. On August 2, 1992, the Hoopa Valley Court  
23 of Appeals ordered that the Hoopa Valley Tribe be  
24 restrained from interfering with Plaintiffs' removal of  
25 gravel from the Cal Pac and Thelma Thom sites. That court

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26 <sup>3</sup> Plaintiffs allegedly obtained permission to  
27 stockpile gravel at the Cal Pac site free of charge from  
28 Hercules Vlahoylis, the former Chief Executive Officer of  
the Hoopa Valley Development Enterprise.

1 prohibited Plaintiffs from removing gravel from any other  
2 part of the reservation, or from removing any machinery and  
3 equipment at all. The Hoopa Valley Court of Appeals also  
4 required that Plaintiffs deposit either cash or a bond for  
5 the value of any gravel to be removed.

6 Claiming that they had exhausted tribal remedies  
7 without receiving effective relief,<sup>4</sup> on August 4, 1992,  
8 Plaintiffs filed a second motion for a temporary  
9 restraining order in federal court. On September 15, 1992,  
10 the Court denied this motion.

11 Defendants now move to dismiss for lack of subject  
12 matter jurisdiction. Plaintiffs oppose the motion.

## 13 II. DISCUSSION

14 A federal court is presumed to lack jurisdiction in a  
15 particular case unless the contrary affirmatively appears.  
16 Stock West v. Confederated Tribes of Colville Reservation,  
17 873 F.2d 1221, 1225 (9th Cir. 1989). Plaintiffs contend  
18 that 28 U.S.C. § 1331 confers federal jurisdiction in the  
19 instant case. That statute provides that "[t]he district  
20 courts shall have original jurisdiction of all civil  
21 actions arising under the Constitution, laws, or treaties  
22 of the United States." 28 U.S.C. § 1331(a).

23 The mere fact that one of the parties in the dispute is  
24 an Indian tribe is not enough to confer jurisdiction under  
25 28 U.S.C. § 1331. Moronggo Band of Mission Indians v. Rose,

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26 <sup>4</sup> Plaintiffs contend that posting a bond for the  
27 value of the gravel removed would be prohibitively  
28 expensive. They further contend that they should be  
allowed to remove their machinery and equipment.

1 893 F.2d 1074, 1077 (9th Cir. 1990). The Ninth Circuit has  
2 noted, however, that a non-Indian challenging an exercise  
3 of tribal legislative or adjudicatory power as being  
4 contrary to federal common law states a claim which arises  
5 under federal law for purposes of 28 U.S.C. § 1331.  
6 Chilkat Indian Village v. Johnson, 870 F.2d 1469, 1475 n.10  
7 (9th Cir. 1989). It is undisputed that: (1) Plaintiffs are  
8 non-Indians; (2) Defendants are members of a federally  
9 recognized Indian tribe; and (3) Plaintiffs challenge  
10 Defendants' actions as being contrary to federal common  
11 law. Accordingly, to determine whether Plaintiffs' claim  
12 arises under federal law for purposes of 28 U.S.C. § 1331,  
13 the Court must ascertain whether Defendants' actions  
14 constituted legislative or adjudicatory power.

15 A. Legislative Power

16 "Legislative" is defined as "pertaining to the function  
17 of law-making or to the process of enactment of laws."  
18 Black's Law Dictionary 810 (Deluxe 5th ed. 1979).  
19 Plaintiffs do not challenge any law which Defendants have  
20 enacted. Nor do Plaintiffs contest the process through  
21 which Defendants have enacted those laws. Rather,  
22 Plaintiffs allege that Defendants acted beyond their  
23 authority in implementing such laws. The contested acts,  
24 therefore, are not legislative.

25 B. Adjudicatory Power

26 There is no standard definition of "adjudicatory  
27 power." "Adjudication" involves the pronouncement of a  
28 judgment or decree regarding factual or legal disputes.

1 Id. at 39. An "adjudicatory process" generally refers to  
2 adjudication which occurs during "administrative  
3 proceedings in contrast to judicial proceedings." Id. at  
4 39-40. There is no definition of an administrative  
5 proceeding, but an administrative act involves "those acts  
6 which are necessary to be done to carry out legislative  
7 policies and purposes" of the legislative body. Id. at 42.  
8 A "power" is the ability or authority to perform certain  
9 acts. Id. at 1053. Taken together, the Court finds that  
10 Defendants exercised adjudicatory power if they (1) made a  
11 judgment in a factual or legal dispute, (2) in an  
12 administrative proceeding, (3) in which they intended to  
13 carry out their legislative policies.

14 1. Defendants Made a Judgment in a Factual and  
15 Legal Dispute.

16 The June 6, 1992 letter from Mr. Suagee to Plaintiffs  
17 shows that Defendants made a judgment regarding the factual  
18 and legal dispute of whether Plaintiffs trespassed on  
19 tribal land. Defendants decreed that Plaintiffs' use of  
20 the disputed sites was an illegal trespass. As Mr. Suagee  
21 wrote, "[y]our use of [the Thelma Thom and Cal-Pac sites]  
22 for gravel storage is a trespass under Sections 15.3 and  
23 15.5 of the Conservation and Trespass Ordinance." There  
24 was a dispute regarding the legality of Plaintiffs' acts at  
25 the storage sites, since Plaintiffs believed that their use  
26 of the disputed sites was legal. Defendants attempted to  
27 resolve the dispute and to decree, through their agent,  
28 that Plaintiffs' use of the land was an illegal trespass

1 which the tribe would no longer tolerate. This  
2 pronouncement of a decree regarding the issue of  
3 Plaintiffs' alleged trespass reveals the adjudicatory  
4 nature of Defendants' actions.

5 2. Defendants Engaged in an Administrative  
6 Proceeding.

7 There is no dispute that Defendants are members of a  
8 governing body, charged with the administration of all  
9 tribal property. See Constitution and Bylaws of the Hoopa  
10 Valley Tribe in California, Article IX, § 1(a). Defendants  
11 have consistently admitted that they acted collectively to  
12 halt further trespasses onto the disputed sites. Since  
13 Defendants are an administrative body, and they convened to  
14 resolve the issue of Plaintiffs' alleged trespass, their  
15 meeting was an administrative proceeding.

16 3. Defendants Sought to Carry Out Their  
17 Legislative Policies.

18 The record contains no transcript of the proceeding  
19 which led Defendants to bar Plaintiffs' access to their  
20 materials on the Thelma Thom and Cal-Pac sites. The letter  
21 from Mr. Suagee to Plaintiffs, however, indicates that  
22 Defendants sought to implement legislative policies of  
23 preventing ongoing trespasses onto tribal lands. Mr.  
24 Suagee advised Plaintiffs, for instance, to "make no  
25 further attempts to enter [the disputed] lands." He also  
26 pointed out that "the Conservation and Trespass Act  
27 provides that the Tribal Court may order the impoundment or  
28 seizure of equipment used in committing a violation."  
Defendants did not appeal to the tribal court, however,

1 before blocking Plaintiffs' access to this equipment  
2 themselves. Furthermore, Mr. Suagee warned Plaintiffs not  
3 to detain the tribal agents blockading the sites since,  
4 "the Riparian Protection and Mining Practices Ordinance  
5 authorizes tribal agents to go upon private lands for  
6 purposes of carrying out responsibilities under the  
7 Ordinance." The above statements reveal that Defendants  
8 sought to implement tribal ordinances which reflected the  
9 legislative policy of preventing trespass onto tribal  
10 lands.

11 4. Conclusion.

12 The foregoing discussion indicates that Defendants:  
13 (1) made a judgment in the legal and factual dispute  
14 regarding Plaintiffs' alleged trespass on tribal land; (2)  
15 acted collectively, as an administrative body during an  
16 administrative proceeding; and (3) sought to carry out  
17 their legislative policy of eliminating incidents of non-  
18 Indian trespasses on tribal land. Defendants, therefore,  
19 exercised adjudicatory power. Accordingly, federal  
20 jurisdiction exists under 28 U.S.C. § 1331. See Chilkat  
21 Indian Village, 870 F.2d at 1475 n.10.<sup>5</sup>

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22 <sup>5</sup> Defendants contend, however, that they acted as  
23 landowners, rather than as adjudicators or legislators.  
24 Defendants argue that their disputed actions were not  
25 adjudicatory because they did not use the tribal court  
26 system to bar Plaintiffs from the land. As discussed  
27 above, however, courts are not the only entities which  
28 perform adjudicatory acts. Administrative bodies, such as  
a tribal council, can also perform adjudicatory acts.

Defendants also contend that a government has the  
rights of an ordinary proprietor with respect to its own  
lands. As a proprietor, Defendants argue, the government  
can prosecute trespassers. See Camfield v. United States,

