

Appeal Of Calif. Tribal Casino Approval Premature, Feds Say

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Law360, New York (May 8, 2017, 7:06 PM EDT) -- The federal government told the Ninth Circuit Friday it didn't have jurisdiction to hear a suit brought by community groups attempting to block a California tribe's San Diego-area casino, saying the groups were asking the appeals court to overreach its authority by ruling on a summary judgment bid that had yet not been decided in district court.

The U.S. Department of Justice, which is representing the U.S. Department of the Interior and the National Indian Gaming Commission among other parties in the suit, said in its Friday brief that the Jamul Action Committee's claim to a victory for lack of opposition to its claims misunderstands the government's position and the court's authority, as the Ninth Circuit doesn't have the power to grant the JAC's request while the lower court case is still open.

"JAC's most recent submission is nothing more than an inaccurate and unauthorized effort to avoid the limits set by federal law on this court's jurisdiction," the DOJ said. "This court should not consider [the JAC requests] unless and until they are presented in a proper appeal from the entry of a final judgment by the district court."

The JAC and other local groups appealed their case after the district court **dismissed most of their claims** and indicated that it intended to convert the government's motion to dismiss into a motion for summary judgement and hand the government a win. The suit, which was filed in 2013 against the NIGC, the U.S. Department of Interior, and several federal officials, argued that the proposed casino near Jamul, California was to be built on non-tribal land, making it illegal under California law.

The district court **dismissed the last** of the local groups' claims in December, two months after **the casino officially opened**.

The government responded to the appeal by contending **the court did not have jurisdiction** since a final judgement had not yet been entered and issues, including the JAC's own motion for summary judgement, were still pending.

The JAC **then argued** that, as the government hadn't offered any evidence to oppose its argument that the land under the casino was not tribal land, the appellate court should award the JAC a win.

"Appellees have not offered any evidence in rebuttal to the title documents and related evidence offered by JAC in support of its motion for summary judgement 14 months ago," the JAC said. "Thus there is no genuine dispute about the title status of the land or the fact that they are not Indian lands under IGRA."

In Friday's filing, the government stated that the JAC was incorrectly claiming that the government's arguments for lack of jurisdiction were "non-opposition," and that the JAC was also wrong to ask the appellate court to rule on a motion still pending in the district court, namely its request for summary judgement.

"JAC's submission attempts to thwart both the finality doctrine and the limits on this court's judicial role as a court of appeals by requesting that this court entertain in the first instance a summary judgment motion that is currently pending in the district court," the DOJ argued.

Counsel for the Jamul Action Committee and the government did not respond Monday to a request for comment.

The Jamul Action Committee and other appellants are represented by Kenneth R. Williams.

The government is represented by Elizabeth Ann Peterson, Attorney, Department of Justice, Environment and Natural Resources Division.

The case is Jamul Action Committee et al. v. Jonodev Chaudhuri et al., case number 16-16442, in the Ninth Circuit Court of Appeals.

--Additional Reporting by Andrew Westney, Christine Powell, Adam Lidgett, and Shayna Posses. Editing by Pamela Wilkinson.