

Valley Center

VALLEY CENTER: Court says Rincon has no authority on private property



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A federal court ruled last week that the Rincon Band of Mission Indians has no authority over a disputed privately owned, 5-acre property.

The Valley Center tribe has argued in court that the property at 33777 Valley Center Road, directly across from the Harrah's Rincon Casino, is an environmental hazard. Attorneys for the tribe also have argued that the property is subject to the tribe's environmental laws because it sits within the

reservation area and could contaminate its ground water.

On Oct. 20, 2009, Marvin Donius filed a lawsuit in federal court saying that tribal rules did not apply on his property because it was private land.

George McGill, an attorney for Donius, said the ruling by a three-judge panel for the 9th Circuit Court of Appeals vindicates his client.

"I think they (Rincon) should have never asserted their so-called authority," McGill said.

Scott Crowell, an attorney for Rincon, said the tribe planned to ask that the case be heard by the full 11-judge circuit panel.

"We are very disappointed and we believe that it is wrong," Crowell said of the decision.

The tribe says the 5-acre property is subject to its environmental rules under a U.S. Supreme Court decision in *Montana v. United States*. In the 1981 case, the court ruled that a tribe has the civil authority over nontribal lands within its reservation when the health or welfare of the tribe is threatened.

Last year, Judge William Hayes dismissed Donius' case, saying he had to pursue the matter in tribal court. Hayes said that because the tribe had jurisdiction over the land under the Montana case, the dispute had to be settled in tribal court first.

However, the appeals court said in its decision last week that the Rincon case did not meet the criteria under the Montana decision.

"To hold that the potential threats of harm presented on this record give rise to tribal jurisdiction under Montana's second exemption would allow the exemption to swallow the rule; any property within the Rincon reservation faces similar potential threats," according to the three-page

decision. "Because the potential threats did not create a plausible basis for tribal court jurisdiction, the district court erred when it dismissed (the complaint) for failure to exhaust tribal remedies."

In October 2010, the tribe placed three concrete barricades blocking the entrance of the property.

Steven Rogers-Dial and his wife, Suzanne, are caretakers living on the property. They use a generator to power their home because the tribe has not allowed San Diego Gas & Electric permission to restore electricity to the property since the lines were severed in the 2007 wildfires.

The couple started a website called "Steve and Suzanne's Last Stand at Rincon" to document the feud with the tribe.

In the past, the property has housed a vehicle storage yard, a trucking business, a mushroom farm and numerous recreational vehicles. The property is now largely vacant except for two modular homes and some abandoned motor homes.

After the 2007 wildfires, the tribe enacted its Tribal Environmental Policy Ordinance in an effort to eliminate environmental problems and fire hazards on the reservation.

Rincon claims in court documents that the chemicals from the various businesses on the property may have contaminated the ground water.

Crowell said that the owners removed tons of contaminated soil to clean it up after the fires.

"They have proven in the past that they have been totally irresponsible," Crowell said.

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