

Stand Up For California!
“Citizens making a difference”

www.standupca.org

P.O. Box 355
Penryn, CA 95663

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Desk Officer
Department of the Interior
Office of Management and Budget
FAX: 202-395-5806
OIRA--DOCKET@omb.eop.gov

Ben Burshia
Bureau of Indian Affairs
Division of Real Estate Services
Mail Stop 4639-MIB
1849 C. Street, NW.,
Washington, D. C. 20240
FAX: 202 - 219-1195
Ben.Burshia@bia.gov

RE: Fed. Reg. August 17, 2010 (Volume 75, Number 158) pages 50776-50777
Renewal of Agency Information Collection for Leases and permits on trust or
Restricted Land

Dear Desk Officer - OMB and Mr. Burshia:

Stand Up for California! is a statewide organization started in 1996 with a focus on gambling issues and issues related to the development of tribal businesses in California communities. We are a non-profit, public service corporation. One of our mission goals is to develop focused policies that safeguard communities, local governments and tribal governments and promotes mutually cooperative and beneficial government-to-government relationships. We write this letter in conjunction with the *Colorado River Resident for Justice*, a civic minded community group dedicated to resolving the western boundary dispute along the west bank of the Colorado River in Riverside County. This 20 mile section of land along the west bank of the Colorado River has been named by the United States Supreme Court Justices in the *Arizona v California* litigation as the “disputed area”.

Our organizations appreciate the opportunity to present comment during the information collection under 25 CFR 162, Leases and Permits, for the review and approval by the Department of the Interior for Indian Tribes. The review covers the following areas:

- a. Whether or not a lease may be approved or granted**
- b. The value of each lease**
- c. The appropriate compensation to landowners; and**
- d. Provisions for violations of trespass**

An area of concern in many of the lease issues that have arisen in California is the lack of a fair, open and transparent process for dispute arbitration or if necessary litigation in a court of familiar jurisdiction. I hope, that in the collection of information this topic can be added to your list.

(a) Whether or not a lease may be approved or granted

There are several areas of concern however the most immediate is lease and permits issued by the Colorado River Indian Tribe ("CRIT") to residents in the State of California. The land along the west bank of the Colorado River is described as the disputed area. On April 30, 1964 Public Law 88-302 was enacted by the Senate and House of Representatives of the United States of America. Section 5 of this Act specially states:

*"Provided, however, That the authorization herein granted to the Secretary of the Interior shall not extend to any lands lying west of the present course of the Colorado River and south of Section 25 township 2 south, range 23 east, San Bernardino base and meridian in California, **and shall not be construed to affect the resolution of any controversy over the location of the boundary of the Colorado River Reservation;** Provided further, that any of the described lands in California shall be subject to the provisions of this Act **when and if determined to be within the reservation.**"*

To date, there has been no congressional action or federal litigation to determine if the lands along the west bank are or are not part of the CRIT reservation. Clearly, they are not trust lands. Some of the lands were transferred to the state of California pursuant to the School Election Act of 1853, some withdrawn pursuant to the National Reclamations Act of 1902, and 1931 and subsequent withdrawals up until 1997, and thus as a matter of federal law are not trust lands. There is no independent congressional language creating a reservation for the CRIT as required by the 1864 Four Reservations Act. This raises serious questions about any and all leases that the Secretary of the Interior may have issued, approved or is presently before the Secretary of the Interior for approval on behalf of the CRIT.

(b.) The value of each lease

There is no apparent process for establishing the value of the leases along the western boundary. The value appears to be at the whim of the Tribe. The value of the lease appears to be based on how much each person appears capable of paying or willing to pay. In some instances the CRIT has requested a 3% increase in the values of the lease yet there is no fair open and transparent

process for how that percentage is arrived at. Sums for back rent have varied by thousands of dollars. We suggest for the sake of uniformity, leases contain a component that includes the determination of fair rental value for the use of the property. This should be determined by an independent appraiser, who is mutually agreed upon by the parties, but, in the event the parties cannot agree, then an appraiser selected by the Secretary or his designated representative to make the determination of fair rental value.

(c) The appropriate compensation to landowners

This is an interesting question along the Colorado River. Many residents have not paid rent since 1996, when the CRIT terminated their leases. Some residents occupy the property under a "Use permit" with the BLM or the BIA. Some have bought mobile homes from prior parties without a lease and the CRIT have refused to issue a lease, as has the BLM or the BIA. Some have bought mobile homes with leases and the CRIT have refused to transfer the leases to the new owners. But again, consider the language above from Public Law 88-302, the CRIT have no authority to issue a lease on these lands until there is a determination of whether or not the land is within the Reservation. It would appear that both the federal and state levels of government have left these citizens and the CRIT in no-mans-land. The Department of the Interior and BLM are operating from the position that the Secretarial Order of 1969 is the current determination of federal land status. Thus, the BLM manages the lands accordingly.

Nevertheless, there is still the United States Supreme Court stipulated agreement between the State of California, the United States and the CRIT that make clear the land is still in dispute, leaving the western boundary of the CRIT reservation unresolved. Residents are victims caught in the middle of a three-way governmental dispute. These residents would like to have leases. However, residents would like leases that can be resolved in a court of familiar jurisdiction. Leases issued by the appropriate owners of the land.

(d) Provisions for violations of trespass

This raises complex and problematical questions regarding CRIT's jurisdiction over the west bank of the Colorado River. Any person who enters property under a valid occupancy arrangement, i.e. (lease, use permit, rental agreement, etc.), cannot be considered a trespasser, if, that arrangement is terminated at a future date. The landlord must obtain a valid court order terminating the occupancy arrangement before eviction procedures can be commenced. Further in the case of the CRIT it would require a voluntary consensual arrangement with the property occupier to consent to tribal court. Until the western boundary dispute is resolved it is difficult to understand the reasoning for CRIT to have tribal court jurisdiction over non-Indian citizens who have not given consent to the tribal court. It is not clear if tribal law can be enforced on BOR or BLM land within the boundary of the State of California, which is a Public Law 280 state.

(e) Dispute resolution – missing from CFR 162

We suggest that all leases contain a component such as "meet and confer process". Making this process formal will eliminate unnecessary adversarial situations when there are disagreements between leasee and lessor. In the event that either party believes that the other has committed a

possible violation of the lease or desires to reopen negotiations of any provision hereof, it may request in writing that the parties meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the problem or issue in a specific period of time. Of course, unless the complaining party identifies a problem that potentially creates a threat to public health or safety.

If the either the lease or lessor is not satisfied with the result of the meet and confer process, it may provide written notice to the other identifying and describe the unresolved issue or any alleged violation of the lease. The complaining party may request in a specified period of time a written response either agreeing or disagreeing to the alleged violation of the lease. If no solution can be provided, then the complaining party may wish to proceed in an arbitration process or judicial review.

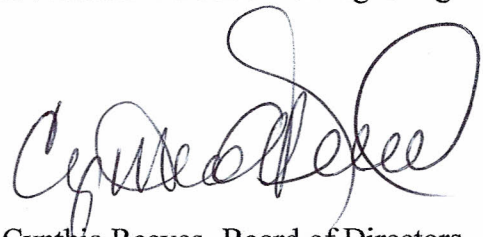
The point is, whatever the disagreement, there should be a process identified for curing the conflict, and a process defined in the event arbitration or a judicial review is require. There must be due process.

Once again, thank you for the opportunity to participate in the information collection regarding leasing or permitting on restricted fee or trust lands.

Sincerely,



Cheryl Schmit – Director
916-663-3207
cherylschmit@att.net
www.standupca.org



Cynthia Reeves- Board of Directors
951-640-1972
cynthiareeves4@hotmail.com
www.crr4justice.com

CC: United States Senator Dianne Feinstein
Congresswoman Mary Bono-Mack