Roger L French
10 Sugarpine
Irvine, CA 92604

March 10, 2013

The Honorable Senator Mimi Walters
California 37th District
State Capitol, Room 3086
Sacramento, Ca 95814

RE: **SB 406**
**Tribal Court Civil Judgment Act**
**Opposition**
**Unintended Consequences**

Dear Senator Walters:

It has come to my attention through Stand Up for California and other resources within the West Bank Homeowners Association, of which I am the current president, that the Senate is considering SB 406, the Tribal Court Civil Judgment Act, and that the Judiciary Committee is currently evaluating the bill. I also understand that you are vice chair of that committee. I am writing you today as your constituent to advise you of my opposition to this bill. Since I have been directly involved as a non-Indian defendant in tribal courts, I have specific experience from which to draw in pointing out the ill advised consequences of SB 406.

Currently, any recognition of a tribal court judgment must comply with the Uniform Foreign-Country Money Judgments Recognition Act (CCP §1713-1724). The proposed legislation, SB 406, would mandate that recognition of tribal court judgments would have far less restrictions. Removal of those restrictions currently in place as proposed by SB 406 would have the following dire consequences:

- Non-Indian defendants would be stripped of their constitutional right to an impartial court of law (CCP §1716 (b) (1)) compatible with the requirements of due process of law.
- Non-Indian defendants would be denied their rights guaranteed by the U.S. and California Constitutions.
- A California court would be mandated to recognize a tribal court judgment where that judgment or cause of action is "repugnant to the public policy of this State" (CCP §1716(c) (3))

## 1. Lack of Impartiality

Indian tribes not only pay their judges, but all officers of the court. For anyone to honestly propose that such a context could provide an unbiased impartial court system for a non-Indian defendant clearly demonstrates a gross misunderstanding of reality. The U.S. Constitution establishes a representative form of government, a republic that establishes participation of the people. A non-Indian has no such participation in tribal government, and is therefore denied rights in a tribal court system consistent with the U.S. and California constitutions. Tribal courts exist to support tribal government. Therefore, when a non-Indian party adverse to the tribe is forced to undergo jurisdiction of a tribal court, he simply cannot be afforded impartiality by definition. To infer otherwise is simply ludicrous.

**This intellectual folly is clearly on display within SB 406 at §1737 (b)(3):**

> "(b) A tribal court judgment shall not be recognized and entered if the respondent demonstrates to the superior court that ….(3) The tribal court judge was not impartial."

But it is the **process** that is inherently the antithesis of impartiality, regardless of the actions or rulings of the judge.

**The absurd assumption that somehow an Indian court could be impartial to a non-Indian defendant is apparent in SB 406 with the omission of §1716 (b)(1):**

> "A court of this state shall not recognize a foreign-country judgment if ….(1) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law."

Since this component of the Foreign-Country Money Judgment Recognition Act is absent from SB 406, it appears that the law assumes precisely the folly explained above and again clearly demonstrates the lack of understanding of the inherent nature of the tribal court system which cannot and will never be able to provide an impartial tribunal for a non-Indian.

## 2. Denial of Constitutional Rights

Tribal attorneys and tribal courts are quick to point out that the U.S. Constitution does not apply where tribal courts have or assert jurisdiction. Tribes are also quick to utilize sovereign immunity whenever challenged on constitutional issues or rights issues, even when those rights are stated in their own constitution.

There is no question that SB 406 will strip California citizens of their right to due process of law, equal protection, and all rights guaranteed by the U.S. and California constitutions. Tribal courts determine their own jurisdiction, which can only be challenged in federal court after exhaustion of legal remedies in the tribal court system, that often times includes a Tribal Appellate Court. Judgments for damages and constitutional rights issues cannot be appealed to a U.S. court. Only tribal court jurisdiction can be challenged in federal court. Therefore, it is of paramount importance to preserve constitutional rights for all California citizens, and not allow the forfeiture of those rights in accordance with SB 406.

## Impacts of SB 406 to California Residents along the Colorado River

The western boundary of the Colorado River Indian Tribes (CRIT) reservation is a 25 mile stretch of the river near Blythe, California. The reservation is primarily in Arizona, with some land within California. The Department of the Interior and CRIT assert that the western boundary consists of both an 8-mile riparian section (where the river flows), and a 17-mile fixed line section that includes a strip of land along the river within California. The State of California asserts that the entire western boundary is riparian in nature. The U.S. Supreme Court found that the entire western boundary was riparian (*AZ v CA I*), and later confirmed California's position, and the court's earlier findings in 1992 and 1996 (*AZ v CA III*). In spite of the U.S. Supreme Court's Orders, CRIT and the U.S. Dept of Interior (trustee for the Tribes), still hold that the 17-mile "disputed area" is within the reservation. The disputed area originally included 9 resorts and approximately 200 families living on individual lots when CRIT started attempts to confiscate properties during the 1970's. Over the years CRIT has been successful in taking over 2 major resorts, burning down one (Red Rooster), destroying part of another (Paradise Point), and most recently managed a forced eviction of the Blythe Boat Club which had been in possession of their property since 1947.

In 2010, CRIT initiated retaliatory unlawful detainer actions in tribal court against 3 individual residents, including myself. All 3 parties had provided testimony in a lawsuit filed against the

Riverside County Sheriff. The testimony involved the theft of a boat and a mobile home by CRIT agents in the presence of the Sheriff's deputies who were given orders to stand down.

Two parties decided against risking their life savings in a lawsuit and chose instead to leave their homes to CRIT. I chose to represent the 400 families being terrorized by CRIT and subsequently defended myself, my rights, and my property against the legal action.

Our briefs included challenges to due process and violations of equal protection arguments, as well as a direct challenge to jurisdiction based on California's arguments that the entire western boundary is riparian, U.S. Supreme Court's affirmation of California's arguments, CRIT's admission of the boundary dispute in a letter by their attorney general to California then Governor Schwarzenegger, admissions of the boundary dispute by their Tribal Council Chairman in deposition, and CRIT's signature on the 2000 settlement in *AZ v CA III* where the boundary determination was deferred.

The tribal court ignored all our arguments and ruled in favor of CRIT jurisdiction. The tribal court then scheduled a full trial on damages. Our briefs on damages included facts that CRIT was attempting to apply a tribal law that violates equal protection in allowing attorney fees only against a defendant, and applying that law 10 years retroactively. Our briefs also asserted that the court must offset any damages by the value of the realty improvements I was forced to leave on the property by the CRIT court order.

The tribal court's decision on damages again ignored all of our arguments, explaining that CRIT was "entitled to set rental rate …at any price it desires". CRIT was awarded all damages sought, including $200,000 in attorney fees.

I filed an appeal with the CRIT tribal appellate court in December, 2011. Comprehensive briefs were subsequently filed. I appeared before the CRIT Appellate Court on August 24, 2012. The court filed its Opinion and Order on February 20, 2013. During the hearing, it was apparent that the 3 judge panel had not read any of our briefs.

The ruling did not address any of the constitutional issues. The court's ruling reaffirmed CRIT's right to attorney fees and denied any offsets for my property that I was forced to leave behind. The Tribal Appellate Court went one step further by claiming that I was not entitled to any due process rights for the property confiscated by CRIT:

> "careful analysis of the requirements of due process suggests both that in this context French had no right to due process of law with respect to the issuance and execution of the writ of restitution since he had no liberty or property interest at stake that foreclosed his eviction…."
>
> "Thus, insofar as French's actual eviction from the Property is concerned he was actually not entitled any particular process as a matter of due process of law…"
>
> "In addition to pointing out that French had no liberty or property interest sufficient to require due process of law with respect to any part of this proceedings below other than the award of damages, costs, and attorneys' fees, this Court also must reject French's due process claim because he was fully afforded due process of law, **even if the Tribe was not constitutionally bound to afford it on any portion of the proceedings**…….due process of law generally reduces down to requirements of fair notice and an opportunity to appear and defend one's position in the proceeding…" [Emphasis added]

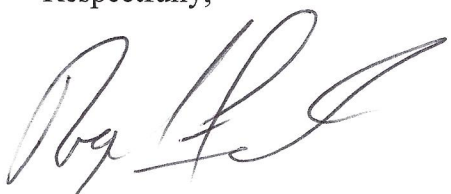
> "While French had no existing liberty or property right that required due process prior to his eviction from the Property, he nevertheless was given notice and had an opportunity to demonstrate that a factual hearing was required."
>
> "Since French does not deny that he received fair and timely notice of the hearing on damages, costs, and attorneys' fees and that the Tribal Court afforded him a full and fair opportunity to present his views and defenses at that evidentiary hearing in which he fully participated, this Court finds absolutely no basis for French's generalized and conclusory claim that the Tribal Court denied him due process of law."

As the CRIT Tribal Appellate Court has awarded attorneys' fees only for the tribal court proceedings, I anticipate that the award will be modified when CRIT attorneys submit their fees for the Tribal Appellate Court proceedings. And since we intend to challenge jurisdiction in federal court, I anticipate that another award will be forthcoming for those efforts. The ultimate award will put me in financial ruin if SB 406 becomes law. If the current law is allowed to continue, CRIT will never attempt to have its judgment recognized due to the State's consistent position in *AZ v CA* that puts the state court in a position to certainly find that jurisdiction in the disputed area is indeed "repugnant to the public policy of this State".

The fine citizens of the West Bank Homeowners Association and indeed all residents of the disputed area have had to live with the illegal confiscation of their properties by a hostile foreign sovereign for over 40 years. We are now in a position where the Riverside County Sheriff refuses to uphold PL280 and California Penal Code §418, effectively giving CRIT the ability to take possession of our properties any time we leave the premises. Yes, Indian casino money has led to this corruption with 3 of the 10 largest contributors to political candidates nationwide being Indian tribes, and all 3 in Riverside County. This is not the situation the founding fathers desired in writing our constitutions, either federal or state. Neither these good citizens nor I deserve to have lawmakers in Sacramento take away our rights, especially under these circumstances.

I pray that you will work to make sure SB 406 does not become the law of this fine state. Your assistance is much appreciated.

Respectfully,



Roger L. French, President
West Bank Homeowners Association

cc: Stand Up for California
Senator Noreen Evans, 2nd District
Senator Joel Anderson, 36th District
Senator Ellen M. Corbett, 10th District
Senator Hannah-Beth Jackson, 19th District
Senator Mark Leno, 11th District
Senator Bill Monning,17th District