UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22208

WILLIAM C. TUTTLE Appellant, v. ACTING WESTERN REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	Supplemental Brief of Appellant Providing Newly Discovered Materials Previously Not Disclosed by Appellee or CRIT Docket No. IBIA 10-135

Appellant WILLIAM C. TUTTLE respectfully submits that the following information is directly relevant to the issues pending before this Honorable Board. Specifically, Appellant was informed a few days ago that the Attorney General of the Colorado River Indian Tribes ("CRIT") was formally advised some two and one half years ago that the State of California has concluded that no land on the West Bank of the Colorado River is within CRIT's reservation.

Rather than disclose this development, CRIT Attorney General Eric Shepard has concealed the fact that CRIT's claim that California land is within its reservation was formally rejected the Legal Affairs Secretary to former Governor Arnold Schwarzenegger in response to an apparent attempt by CRIT to develop a casino project in California on what CRIT claimed to be land within its reservation.

For years, CRIT and its Attorney General Eric Shepard have argued in numerous venues – including CRIT's tribal courts, federal courts in Arizona and California, state court in

California and the Riverside (CA) County Board of Supervisors and its County Counsel – that CRIT's Reservation extends beyond the Colorado River into California, land which they claim is accordingly is exclusively subject to tribal jurisdiction. A number of tribal self-help evictions of residents and businesses have been sanctioned by Riverside County and its law enforcement personnel as a direct result of the tribal arguments. The most recent of these occurred only a few months ago, in which a business was forcibly displaced despite the fact that its claims were then pending before the United States Court of Appeals for the Ninth Circuit.

The United States has supported the CRIT jurisdictional claims and are doing so even in this appeal, which challenges the United States' termination of Appellant's lease of federal property upon CRIT's demand that it do so. To Appellant's knowledge, federal attorneys working on the various CRIT disputes have never disclosed the Governor's concerns.

Attached as **Exhibit A** to this Supplemental Brief is a copy of the state's rejection of CRIT's claim to reservation status for land within California, which is articulated in a September 12, 2008, letter to General Shepard. The letter was written by Andrea Lynn Hoch, then Legal Affairs Secretary to the Governor, in which she concluded that "any CRIT California reservation lands, which were terminated in 1904, have not been restored." In support of that conclusion, Secretary Hoch cited a 1964 Act of Congress requiring a legal determination that never has been rendered.

The letter mirrors legal arguments presented by private litigants in all of the venues identified above, which have been aggressively contested by CRIT and its outside attorneys from a San Francisco law firm.

DISCUSSION

The Reservation was established by Congress in the Territory of Arizona only – not in California – by the Act of March 3, 1865, 13 Stat. 559 ("1865 Act"), a territorial limitation which was consistent with, and unquestionably **did not amend**, the California Indian Reservation Act of April 8, 1864, 13 Stat. 39 ("1864 Act"), limiting to four the number of Indian reservations which lawfully could be established in California. Although CRIT has long ignored this statutory preclusion and claimed that its reservation extends beyond the Colorado River into California, the specificity of the 1864 Act mandates that any lawful intrusion of the CRIT Reservation into California must have been authorized by a specific federal statute. That statute has never been enacted. Thus, Appellant TUTTLE is occupying land which has been adjudicated to be within the public domain[1] and, accordingly, is administered by the Bureau of Land Management and not the Bureau of Indian Affairs.

The foundation of Secretary Hoch's rejection of CRIT's claims to reservation lands is found in Section 5 of the Act of April 30, 1964, 78 Stat. 188 (Public Law 88-302). That law expressly prohibits the Secretary of the Interior ("Secretary") from leasing any land on the Colorado River's West Bank on behalf of CRIT pursuant to the Indian Long Term Leasing Act of 1955, 25 U.S.C. § 415, until the western boundary of the Reservation has been **formally** determined as including the California land. In other words, pursuant to the specific terms of

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1 *Indians of California v. United States,* 98 Ct.Cl. 583 (1942).

Section 5, the Secretary's authority to lease the West Bank Land on behalf of CRIT can only occur after the land has been formally and lawfully determined to be eligible under the statutory precondition of a "determination" to that effect. While the Secretary purported to make the required determination in 1969, that legality of that action has been rejected by the U.S. Supreme Court. [2]

The lawful formal determination of reservation status for any land in California has never been rendered, as noted by Secretary Hoch in rejecting CRIT's apparent attempts to pursue gaming in that state pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.* And, as the 1964 Act makes clear, the determination is also an absolute precondition to the Secretary's authority to even lease land in California on CRIT's behalf. Thus, the Secretary's termination of Appellant's lease at the direction of CRIT is both *ultra vires* and simply unlawful.

Significantly, there is no record of CRIT having appealed or otherwise contested the California rejection of the tribal reservation claims to land within the state.

Apart from the fact that at all times relevant to this matter CRIT has known of California's formal rejection and pointedly not disclosed it, the question has to be raised as to the

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[2] While the Secretary issued an Order dated January 17, 1969, declaring that the CRIT Reservation extends into California to include the West Bank Land, the Supreme Court rejected tribal arguments that the Secretarial Order satisfies the Section 5 requirement for a formal boundary determination. *See Arizona v. California*, 460 U.S. 605, 636, n 26 (1983) (stating that "the Colorado River Tribes will have to await the results of further litigation before they can receive an increase in their water allotment based on the land determined to be part of the reservation") (emphasis supplied).

extent to which federal attorneys have known of the state's position, including whether they were aware of it at the time their client terminated Appellant's lease at CRIT's direction.

CONCLUSION

This Honorable Board should reject the United States' continued refusal to accept the legal status of the West Bank Lands as public domain and not CRIT reservation or trust land.

As discussed above, existing federal statutory law prohibits a CRIT Reservation in California. No legislation as established an exception to the 1864 Act in favor of CRIT and there has been no reservation "determination" satisfying the 1964 Act. The Secretary's termination on the basis of CRIT's demands was illegal, based on concealment by CRIT's counsel and simply wrong as a matter of fact since Appellant had satisfied all financial obligations prior to the lease termination.

This Board should both rule in Appellant's favor in this matter and assess the actions of counsel to determine whether they should be the subject of further review in another forum.

DATED this ___ day of March, 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of March, 2011, I filed the foregoing Motion for Leave to File Supplemental and Supplemental Brief of Appellant Providing Newly Discovered Materials Previously Not Disclosed by Appellee or CRIT by mailing the same via first class mail.

In accordance with 43 C.F.R. § 4.333, I certify that each of the parties identified below were also served with a copy of the Opposition To Motion of Appellee To Strike Appellant's Supplemental Reply and that service was accomplished via first class mail on the date of execution hereof.

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