HAVASU WATER CO.

January 20, 2009

Honorable Ken Salazar
Secretary of the Interior
1849 C Street, N.W
Washington, D.C. 20240

RE: REQUEST FOR A "TAKINGS ASSESSMENT" EXECUTIVE ORDER 12630

Dear Secretary Salazar:

First, congratulations on your appointment and confirmation as Secretary of the Interior. Your experience as a westerner, who has farmed and ranched, brings with it the unique understanding of the use of public lands. Your expertise in water law is vital to the concerns of the citizens of California and specifically the community of citizens in the Lake Havasu area.

The Havasu Water Company wishes to bring to your attention a pressing issue begun under your predecessor. An issue we believe requires your immediate attention.

Lake Havasu is the location of the major intake of water from the Colorado River for the Central Arizona Project and Metropolitan Water District which then sells water to Arizona and the densely populated counties of Los Angeles, San Bernardino and San Diego. Of concern is the potential for a diminished water supply due to the establishment of a new Indian Reservation. It is well settled that the establishment of an Indian Reservation carries with it an implied reservation of the amount of water necessary to fulfill the purposes of the reservation with a priority date no later than the date of creation of the reservation. *See- Winters v. United States*, 207 U.S. 564, 576-77 (1908): see also *Arizona v. California*, 372U.S. 546, 599-601 (1963); *United States v. Winans*, 198 U. S. 371 (1905)

The Arizona Bureau of Indian Affairs (BIA) has directed the California Bureau of Land Management (BLM) to issue a Reservation Patent (a land title) which includes 30,000 acres of land for the Chemehuevi Tribe. The BLM has stated it is not required to give public notice or opportunity for public comment. However, a letter dated November 20, 1998 was sent to affected federal parties and the Los Angles Office of Metropolitan Water District. Yet, clearly a party of great significance, the State of California was not notified, nor was the Havasu Water Company, the County of San Bernardino or the 210 citizens directly affected by the loss of water which this action will bring.

The BLM's role in the preparation and issuance of the requested Chemehuevi Indian Trust Patent is authorized by the Secretary of the Interior designated in the Act of Congress of June 17, 1948 (43 U.S.C. 15) as the official to issue all patents for public lands. In this instance the Secretary has delegated the authority of issuance of a trust patent for a new reservation to BLM. Consequently BLM's role is strictly administrative action (e.g., preparation of the patent). **Or is it?**

It is a real legal strain to interpret the language of 25 U.S.C. section 465 as referring to the public lands. Nothing in the Indian Reorganization Act discusses the transfer of surplus federal lands. The Secretary is authorized to acquire, through various means, interests in lands for Indians. Since public lands are already under the Secretary's jurisdiction he/she does not acquire them. It may be possible

that public lands could be exchanged for tribal lands under that authority but not assign or transfer public lands unilaterally. Nonetheless, it is BIA who is responsible for determining whether an Indian Tribe is eligible to receive an Indian Trust Patent.

The BIA has not offered an opportunity to any affected party to comment on the creation of a new reservation within our State Boundaries. This determination is being made behind closed doors.

> **Indeed, the administrative process does not appear open, objective or transparent. (43 U.S.C., Section 150) states that only Congress can create or enlarge an Indian Reservation. Further, the "Four Reservations" Act of April 8, 1864, 13 Stat. 39, (1864 Act) prohibits the Chemehuevi Reservation from extending into California without further Congressional authorization which Congress has not seen fit to enact.**

The Chemehuevi claim to control significant portions of the California shoreline at Lake Havasu is not supported by a title policy which demonstrates the lands are public domain lands and not in trust. Indeed, the process itself demonstrates that there is no current trust title to the alleged reservation land and no trust relationship between the United States and the Reservation. **The land is public domain land as a matter of federal law.**

Thus, resolutions to the many civil right disputes over fair treatment, private property, water rights, land-use, taxation, law enforcement authority and jurisdiction stemming from the dispute over the Chemehuevi lands all these years are too important to be left unaddressed through a seldom used Bureau of Indian Affairs *administrative process*. The impact to the public has been and will be significant as will the impact to the State of California.

Further, if the BIA and the Chemehuevi are successful in doing this "end run" around obtaining the approval of Congress and the State of California in expanding its reservation, other tribes are certain to follow this path to reservation expansion. The Colorado River Indian Tribes (CRIT) has been aggressively attempting to expand the jurisdiction of its tribal court to include land in California in violation of the 1864 Act. CRIT is certain to follow this path if its neighbor, the Chemehuevi, is successful.

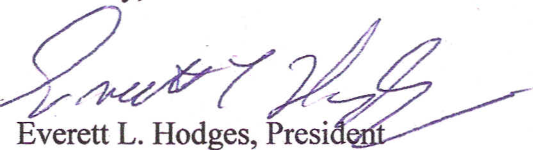
The Havasu Water Company has been operating for over 30 years, serving the needs of some 210 customers residing on fee-land in California. The source of the water supply to these residents, many who are now advanced in years, is from the Havasu Water Company who wheels water through a 1500' pipeline across Bureau of Reclamation land. In approximately 1981, the County of San Bernardino passed a resolution authorizing an easement in perpetuity for the pipeline to deliver water to the residents of the County in this area. In 2006 the Tribe claimed it was time to renegotiate the terms of the easement and asked that we have an appraisal. We did and the easement was appraised at $300 per year (which is about what we had been paying for the past 30 years). The Tribe then proposed a fee that was approximately $19,000 per year. We have attempted to negotiate but they are not willing to reduce the fee to what we believe to be a reasonable amount and, in addition, they want the right to cancel the easement after five years. We believe they are not dealing in good faith.

The Havasu Water Company is requesting a "Takings Assessment" Executive Order 12630. The process of the BLM to issue a trust patent without a National Environmental Impact Statement or recommendations for compensation to non tribal citizens in the area represents a "takings". Likewise, the "Memorandum of Understanding" established in 2001 between the Bureau of Reclamation and the Chemehuevi Tribe grants the Chemehuevi Tribe the position of "LESSOR" of the federal lands. Citizens who sign leases have no recourse in federal court unless the Chemehuevi waive sovereignty

and address complaints on their merits. This certainly was not the intent of the Department of the Interior but sometimes, the practical affects are the result of unintended consequences.

We believe a takings assessment and a thorough review of the unique federal laws that apply to the State of California with regard to the development of Indian Reservations is in the best interests of all affected parties. Moreover, this action will restore confidence in the Department of the Interior, Bureau of Indian Affairs which has suffered from numerous scandals over the last few years.

Sincerely,



Everett L. Hodges, President

Attachment:

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