

Board of Supervisors
County of San Bernardino

MARSHA TUROCI
SUPERVISOR, FIRST DISTRICT



November 17, 1993

Mr. Everett L. Hodges
Havasu Water Company
14711 Bentley Circle
Tustin CA 92680

Re: County Jurisdiction on Indian Land

Dear Mr. Hodges: *Reed,*

I am writing in response to your letter of October 29, 1993 in which you asked the Board of Supervisors to investigate the legality of the Chemehuevi Indian Tribe occupying the shoreline of the Lake Havasu, California community area; and to investigate your complaints regarding sewage disposal into Lake Havasu near your water company's intake line.

OCCUPATION OF SHORE LINE

I have been informed by the County Counsel that, although the Chemehuevi Indian Reservation was never formally established by an Act of Congress, a federal court is quite likely to determine that those lands, including the shoreline area, are Indian trust lands over which the Chemehuevi Indian Tribe retains aboriginal ownership rights, and which the tribe is entitled to keep because of the tribe's justified reliance on longstanding federal recognition of the tribe's rights to those lands. A county not asserting any ownership interest in these lands for itself that seeks to secure a declaration that these lands are federal public lands is very likely to be rebuffed for lack of standing to sue over this matter.

Moreover, federal courts have historically always accorded great weight to rulings by the Department of the Interior in land matters. County Counsel has cited Cramer v. United States (1923) 261 [U.S. 219, 227, 67 L.Ed. 622, 625, 43 S.Ct. 342, 344]. At present, and often reiterated in the historical record of these lands, the Department of Interior recognizes the shoreline area of Lake Havasu on the California side as being part of the Chemehuevi Indian Reservation and belonging to the Chemehuevi Indian Tribe. Thus, the Chemehuevi Indian Tribe has a well-documented legal claim to occupy those lands.

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SEWAGE DISPOSAL

I have also been informed by the County Counsel that the County does not have jurisdiction for enforcement of regulatory laws or ordinances on Indian land. County Counsel cites the most recent case regarding this issue in California as California v. Cabazon Band of Mission Indians (1987) 480 U.S. 202 [94 L.Ed.2d 244, 107 S.Ct. 1083]. In that case, the court held that states do not have general civil regulatory authority over Indian land. If the intent of a state law is generally to prohibit certain conduct, the state has criminal jurisdiction on Indian land. For instance, the County Sheriff can arrest someone on Indian land pursuant to the jurisdiction conferred by Public Law 280 (18 USC 1162(a)), but only for prohibitive criminal offenses or for federal crimes. Such a criminal offense might occur if someone deliberately tried to poison the water supply.

But, if the state law generally permits the conduct, subject to regulation, it must be classified as civil/regulatory and the state has no authority to enforce the state law on Indian land. In the Cabazon case, the court reasoned that since California permits a substantial amount of gambling activity, including bingo, it regulates rather than prohibits gambling and bingo. Therefore, California cannot regulate bingo on Indian land.

The same reasoning applies to the County's authority to regulate sewage disposal on Indian land. As sewage disposal is an activity which is regulated, but not prohibited, by the County, the County does not have jurisdiction to regulate sewage disposal on Indian land. The fact that an otherwise regulatory law is enforceable by criminal as well as civil means does not necessarily convert it into a criminal law which is enforceable by the County (California v. Cabazon Band of Mission Indians, supra, 480 U.S. at p. 211). County regulatory ordinances do not apply on Indian land.

The regulatory agency with authority to regulate sewage disposal on Indian land is the federal Environmental Protection Agency. Linda Wandres, senior attorney for Indian law in EPA Region 9, stated there is substantial case law authority for finding that the EPA is the agency with primary responsibility for enforcing federal environmental laws in the United States, including on Indian land. Accordingly, the EPA has asserted and exercised authority over the Chemehuevi sewage system and has investigated spills from the Chemehuevi sewage plant. Complaints and documentation regarding sewage spills on or from Indian land should be directed to Jeremy Johnstone, Environmental Protection Agency, Region 9, Permits and Compliance Branch of the Water Management Division, 75 Hawthorne Street, San Francisco, California 94105, (415) 744-1853.

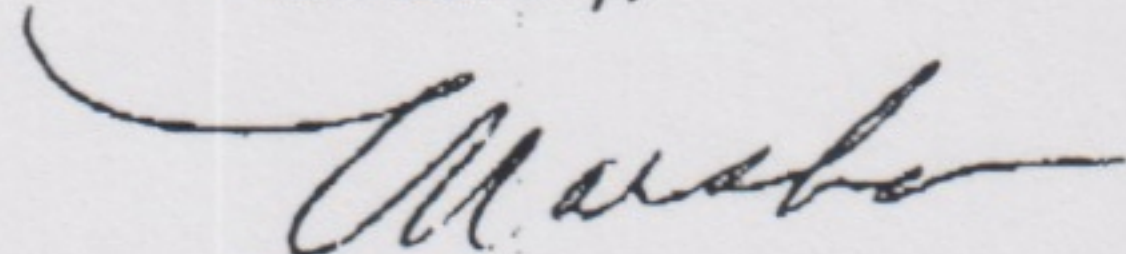
The State Water Resources Control Board and the Regional Water Quality Control Boards are the principal state agencies with primary responsibility for the coordination and control of water quality in the waters of the state, which includes the portion of Lake Havasu located in California. Todd Thompson, California

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Regional Water Quality Control Board, Colorado River Basin Region, 73-720
Fred Waring Drive, Suite 100, Palm Desert, California, 92260, (619) 776-8964
may be contacted regarding the state's jurisdiction over this complaint.

Sincerely,



MARSHA TUROCI
Vice Chairman
Board of Supervisors

cc: Honorable Jerry Lewis, Congressman, 40th District
Jeremy Johnstone, Environmental Protection Agency
Todd Thompson, California Regional Water Quality Control Board
Susan L. Nash, Deputy County Counsel
Pamella Bennett, Director, Department of Environmental Health Services
Janette Hoover, Field Representative