

# ***Stand Up For California!***

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P.O. Box 355  
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October 31, 2008

Honorable Arnold Schwarzenegger  
Governor of California  
Office of the Governor  
State Capitol  
Sacramento, CA. 95814

Honorable Jerry Brown  
Attorney General of California  
California Department of Justice  
1300 I Street  
Sacramento, CA. 95814

**RE: BLM to Issue Chemehuevi Trust Patent at Lake Havasu for 30,000 Acres of Land – Potential Imminent Threat to Southern California Water Supply and Loss of State Taxes**

Dear Governor Schwarzenegger and Attorney General Brown:

**This letter is to alert and bring to your attention a federal *administrative process* which is currently in progress at Lake Havasu, San Bernardino County, California.** 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 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*, 372 U.S. 546, 599-601 (1963); *United States v. Winans*, 198 U. S. 371 (1905)

The Department of the Interior and its Bureau of Land Management is attempting to resolve a 101 year-old problem<sup>1</sup> through this *administrative process*. 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 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 Angeles Office of Metropolitan Water District. Yet, clearly a party of great significance, the State of California was not notified. I have been advised that there is no Environmental Impact Statement (EIS) or National Environmental Impact Report (NEPA). It is simply land taken out of the boundaries of the State of California, by the BLM at the direction of the Arizona Office of BIA.<sup>2</sup>

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<sup>1</sup> In 1907, a Secretarial Order “set aside” land in anticipation of congressional legislation which never occurred. This administrative action could not lawfully establish a reservation in light of the 1864 statute. The legal status of the so called reservation is public domain land. The Tribe is arguing it is a Mission Indian and that the 1907 Congressional Amendment to the Mission Indian Relief Act (MIRA) covers the expansion of the reservation. If Congress had intended to expand the MIRA to include the Chemehuevi it would have done so with clear and precise language.

<sup>2</sup> Contact: Jan Bedrosian Deputy Director California BLM – (916) 978-4616

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). It is a real legal strain to interpret the language of 25 U.S.C. section 465 as referring to the public 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 is 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 the State of California 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<sup>3</sup> 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.

Accordingly, we suggest that you may be interested in (a) disseminating this information to your legal staff or members for review, (b) pursuing further information on the subject, and (c) undertaking such political, legal and/or lobbying activity as you deem appropriate. The BLM has stated anticipated completion of the process is scheduled for December of 2008.

Even a potential threat to our states water supply has far reaching implications. We hope that you will give this your consideration and look forward to hearing from you soon.

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<sup>3</sup> Lake Havasu Water Company has estimated approximately 20 miles of shoreline is included in this transfer and there is accrued unpaid possessory and state sales tax from 1975 to date estimated between \$20-\$50 million dollars.

Sincerely,

Cheryl Schmit – director  
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