



1875 EYE STREET, N.W., SUITE 1200
WASHINGTON, DC 20006-5420
TELEPHONE: (202) 457-0160
FACSIMILE: (202) 659-1559
<http://www.dickinsonwright.com>

DENNIS J. WHITTLESEY
DWhittlesey@dickinsonwright.com
(202) 659-6928

March 9, 2010

Via Federal Express

Jonathan Holub, Esquire
Deputy County Counsel
OFFICE OF RIVERSIDE COUNTY COUNSEL
3960 Orange Street
5th Floor
Riverside, California 92501

Re: *Water Wheel Resort -- Analysis of Legal Status of Land on West Bank of Colorado River.*

Dear Jon:

You and I have discussed the West Bank situation in the past, including the fact that there is great confusion as to the status of the land title and federal jurisdiction. This confusion extends to three separate agencies within the Department of the Interior which simultaneously have claimed jurisdiction over this land. As you know, they are the Bureau of Reclamation ("Reclamation"), Bureau of Land Management ("BLM") and Bureau of Indian Affairs ("BIA"). The issue is critical not only for residents of the West Bank, but also for Riverside County, given the increasing efforts of the Colorado River Indian Tribes ("CRIT") to exercise tribal authority and law over the land.

My direct activity has been to challenge CRIT's tribal court jurisdiction over both the non-Indian corporation, Water Wheel Recreational Camp, Inc., and its President Robert Johnson. As you know, we litigated the jurisdiction issue in Phoenix federal court, the result of which was a ruling that Water Wheel was subject to tribal court jurisdiction but that Mr. Johnson was not. The case is now on appeal before the United States Court of Appeals for the Ninth Circuit. This case followed an eviction trial in CRIT Tribal Court before a Judge who was a tribal employee and adopted in his findings and conclusions what amounts to little more than *verbatim* recitation of language proposed by tribal attorneys. Moreover, he refused to allow Water Wheel's counsel to challenge the legal status of the West Bank land, as discussed in the following paragraph.

In order to secure federal jurisdiction to enable us to present the tribal court jurisdictional issue to the United States District Court, we were precluded from challenging the status of the West Bank land. This is because CRIT claims the land is

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both (1) in trust status and (2) its reservation, and the law is established that such claims make it an indispensable party under Rule 19 to any judicial determination on those issues. The result is that we were able to secure an adjudication of tribal court jurisdiction only by accepting *for the purposes of the litigation* that the land was in both trust and reservation status. However, the fact remains that there has never been an adjudication of whether *as a matter of law* the land is in either trust or reservation status.

CRIT now is asserting that it has the legal right to exercise self-help evictions of West Bank companies and residents without any judicial review other than the "Kangaroo Court" rulings by the Judge it hired and the tribal court it controls. To this end, the Riverside County Sheriff apparently has agreed that CRIT may do so and is prepared to observe – but not prevent – such tribal undertakings.

As the attached memorandum and exhibits demonstrate and document, we believe that the land status claimed by CRIT (and accepted by the BIA) is contrary to federal law. While there is no doubt that the lands are in federal ownership, all of the legally competent authority is that they simply are not Indian lands. Indeed, the Exhibits reflect a conflict within the Department of the Interior on the jurisdictional issue, for jurisdiction over the Water Wheel lands currently is variously asserted by Reclamation, BLM and BIA.

If the land is not in trust and reservation status, then the BIA cannot and does not have jurisdiction. The recent history and current CRIT activity requires that this issue be decided by a court of competent jurisdiction, something can be attained by Riverside County's exercising its police powers to preclude self help evictions in the absence of judicial review and decision. By going to court, CRIT would waive its sovereign immunity, which would then allow any defendant to present as a defense the very legal issues of Indian land status foreclosed to us in the federal action in Phoenix.

If CRIT is correct in its claims, then it has no concerns and should be willing to quickly file such an action – and I know that we all would welcome the opportunity to finally secure an independent and sophisticated review of the law as it pertains to the West Bank lands. If CRIT is not correct, then the County would be in a position to exercise the jurisdiction it otherwise would enjoy on these lands and protect its citizens from any unlawful harassment or occupancy interference from the Arizona tribe.

With this, we respectfully request your consideration of this letter and attached materials. This matter cannot be resolved unless the United States or CRIT files legal action to evict one or more residents, something which we are advised the federal government will not do. However, the County can force CRIT to do so by requiring it to secure a judicial determination of its legal rights over the land. Once it files litigation in

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any court, CRIT will waive its sovereignty as to the issues presented, which would include defenses contesting land status. With that, the parties would be in a position to fully ventilate the legal and factual issues which have never been considered in any court. This would resolve these perplexing matters which for too long have consumed time and attention both by the residents and the County.

With this, we are available to talk to you at any convenient time and are willing to do so in your offices if such is desirable. And please do not hesitate to raise any concerns or questions which may arise.

Very truly yours,

Dennis J. Whittlesey

DJW/
Enclosures

cc: (via Federal Express) (w.encl.)
Mr. Robert Johnson
WATER WHEEL CAMP RECREATIONAL AREA, INC.

cc: (via Internet transmission) (w/o encl.)
Timothy Moore, Esquire

DC 35609-1 151276

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