

FILED

UNITED STATES COURT OF APPEALS

FEB 03 2011

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

WATER WHEEL CAMP
RECREATIONAL AREA, INC. *et al.*,

Plaintiffs - Appellees,

v.

THE HONORABLE GARY LARANCE *et al.*,

Defendants - Appellants.

Nos. 09-17349 and 09-17357

D.C. No. 2:08-CIV-00474-DGC

ORDER

Water Wheel Camp Recreational Area, Inc. (“Water Wheel”) and Robert Johnson move for leave to file a reply to the United States’ *amicus curiae* brief. The proposed brief argues the property on which Water Wheel operated was not reservation land held in trust by the United States for the Colorado River Indian Tribes. Water Wheel and Johnson waived this argument in the district court. ER 3-4. Water Wheel and Johnson did not appeal the district court’s “assumption that Water Wheel occupied reservation land.” ER 4. “[A]ppellate courts will not consider arguments that are not ‘properly raise[d]’ in the trial courts.” *O’Rourke v. Seaboard Surety Co. (In re E.R. Fegert, Inc.)*, 887 F.2d 955, 957 (9th Cir. 1989) (quoting *Rothman v. Hospital Serv. of Southern California*, 510 F.2d 956, 960 (9th Cir. 1975)). Because they seek to raise an issue not before this court, Water

Wheel's and Johnson's motion for leave to reply to the United States' *amicus curiae* brief is DENIED.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Wendy Li
Deputy Clerk