



COLORADO RIVER INDIAN TRIBES
OFFICE OF THE ATTORNEY GENERAL

April 3, 2006

Bill Maze
Assemblyman, 34th District
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0034

Re: Colorado River Indian Tribes' Business Licenses and Taxation Ordinances

Dear Assemblyman Maze:

We received your letter dated February 17, 2006. On behalf of the Colorado River Indian Tribes ("Tribes") and the Tribes' Department of Revenue and Finance, we hereby respond to your inquiry concerning whether lessees operating businesses on lands owned by the Tribes, managed by the Tribes' Big River Development Enterprise, and located within the exterior boundaries of the Tribes' Reservation, must comply with the Tribes' business license requirement and Taxation Code.

We understand from your letter that you believe the Tribes lack jurisdiction over the Big River lands. Although we are not familiar with the information you have been given, it is clearly incorrect. This letter provides you with accurate information and documentation demonstrating the Tribes' authority to require tribal business licenses of and assess applicable tribal taxes against persons conducting or engaged in business activities on leased lands within Big River.

The information in this letter supplements the information that we understand will be provided to you by the Bureau of Indian Affairs in a separate letter. For your convenience, we have enclosed copies of a number of documents referred to below. Additional documentation is available should you have any remaining concerns after reviewing this letter.

A. History of the Big River Lease

1. Acts of Congress Confirm that Big River Lies Within the Tribes' Reservation.

You assert that the Tribes' jurisdiction "does not, nor has it ever, extended to the California side of the Colorado River." This assertion is incorrect. On numerous occasions, Congress has affirmed that the Tribes' Reservation includes lands in California. Big River is located within the Tribes' Reservation and is tribal land.

The Act of March 3, 1865, 13 Stat. 559, as modified and further defined, created the Colorado River Indian Reservation along the Colorado River in Arizona and California for the "Indians of said river and its tributaries" and plainly reserved lands "in the State of California" for the Tribes. Subsequently, an act of Congress permitted the leasing of certain lands within Big River, California, located within the exterior boundaries of the Tribes' Reservation, to non-Indian lessees. Pub. L. 87-627, 76 Stat. 428 (Sept. 5, 1962); *see also* Pub. L. 88-302, 78 Stat. 188 (Apr. 30, 1964) ("An Act to fix the beneficial ownership of the Colorado River Indian Reservation located in the States of Arizona and California").

Most recently, Congress related the history of the creation of the Tribes' Reservation and the establishment of the Reservation boundaries in the findings of the "Colorado River Indian Reservation Boundary Correction Act." Pub. L. 109-47, 119 Stat. 451 (2005) (Attach. A). In this Act, Congress declared that the boundaries of the Tribes' Reservation "include those boundaries as were delineated by the [Chandler] Robbins Survey," and thus are the same boundaries that were established in an 1876 Executive Order issued by President Grant. *Id.* § 2(a). These boundaries are described as follows:

Beginning at a point where La Paz Arroyo enters the Colorado River and 4 miles above Ehrenberg; thence easterly with said Arroyo to a point south of the crest of La Paz Mountain; thence with said mountain crest in a northerly direction to the top of Black Mountain; thence in a northwesterly direction over the Colorado River to the top of Monument Peak, in the State of California; thence southwesterly in a straight line to the top of Riverside Mountain, California; thence in a direct line toward the place of beginning to the west bank of the Colorado River; thence down said west bank to a point opposite the place of beginning; thence to the place of beginning.

Exec. Order, May 15, 1876 (emphasis added) (Attach. B). According to this description, the Tribes' Reservation plainly extends across the Colorado River into California: the boundary runs from the top of Black Mountain, in Arizona, "thence in a northwesterly direction over the Colorado River to the top of Monument Peak, in the State of California." *Id.* (emphasis added). The boundary then extends from the top of Monument Peak, in California, "thence southwesterly in a straight line to the top of Riverside Mountain, California." *Id.* (emphasis added). Finally, the Reservation boundary runs from the top of Riverside Mountain, in California, "thence in a direct line toward the place of beginning to the west bank [*i.e.*, California side] of the Colorado River." *Id.* (emphasis added).

As this description of the northwest boundary of the Reservation refers to fixed monuments rather than the changeable course of the Colorado River, there has never been any doubt about the location of this segment of the boundary. The Big River Development lies squarely within the Reservation. Big River is located just west of the Colorado River, southwest of Monument Peak, and northeast of Riverside Mountain.

2. The Big River Master Lease Confirms that the Lands Are Within the Tribes' Reservation.

The Master Lease for the Big River Development, entered into by the Secretary of the Interior and the Central California Land Development Company, provides further evidence that Big River lies

within the boundaries of the Tribes' Reservation. See Master Lease (Attach. C). The Secretary of the Interior entered into the Master Lease after Congress authorized the Secretary in 1962 to "lease any unassigned lands on the [Tribes'] reservation." Pub. L. 87-627. In 1964, Congress formally transferred beneficial ownership of the lands within the Reservation to the Tribes. Pub. L. 88-302. Accordingly, in Supplemental Agreements Nos. 2, 3, and 4 to the Master Lease, the Tribes are expressly named the "Lessor" of the property. As such, all Big River residents are lessees of the Tribes.

Three matters are made abundantly clear in the Master Lease. First, the lands subject to the Master Lease are part of the Tribes' Reservation. The lands upon which the Big River lessees' businesses are located are expressly described in the Master Lease as being "located within the exterior boundaries of the Colorado River Indian Reservation." Master Lease § 2 (Land Description). Second, the Master Lease only grants the lessee development company a leasehold interest in the property, lasting for a term of 65 years. *Id.* § 3 (Term). The Master Lease does not transfer an ownership or "fee simple" interest in this property—nor could it, for the land is held in trust by the United States for the Tribes. Thus, no resident or business owner in Big River may assert a valid claim to own property in Big River. Third, the Master Lease provides that all lessees "shall otherwise comply with all public laws, ordinances, and resolutions applicable to said premises" and that the lessee "shall pay, when and as the same become due and payable, all taxes, assessments, licenses, fees and other like charges levied during the term of this lease . . ." *Id.* §§ 8, 16 (emphasis added).

It appears that you have confused this issue concerning the Big River businesses with the so-called Western Boundary dispute. However, that dispute not only lacks merit, is not relevant to this matter. The contentious boundary issue is south of Big River, in Riverside County, not in San Bernardino County. There is no question that Big River is part of the Tribes' Reservation. Unfortunately, your letter is not the first challenge to the Tribes' jurisdiction over lands in California. The Tribes' jurisdiction has been unsuccessfully challenged before. See *McClendon v. United States*, 885 F.2d 627 (9th Cir. 1989) (dismissing suit brought by lessees against Tribes). However, these meritless challenges do not change the salient fact that the Big River area is not in dispute. Indeed, there is not now, nor has there ever been, any legitimate argument that Big River is not part of the Tribes' Reservation.

B. Business and Professions Code

The Tribes retain jurisdiction to regulate the activities of nonmembers who operate businesses or reside on tribal lands. In *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982), the United States Supreme Court described this tribal power as follows:

Nonmembers who lawfully enter tribal lands remain subject to the tribe's power to exclude them. This power necessarily includes the lesser power to place conditions on entry, on continued presence, or on-reservation conduct, such as a tax on business activities conducted on the reservation. When a tribe grants a non-Indian the right to be on Indian land, the tribe agrees not to exercise its ultimate power to oust the non-Indian as long as the non-Indian complies with the initial conditions of entry.

Id. at 144.

Section 1-104 of the Tribes' Business and Professions Code, Article I, Business Licenses provides that "[a]ll persons conducting or engaged in business or trade upon any land subject to the jurisdiction of the Colorado River Indian Tribes must obtain a tribal business license and pay a license fee." The tribal business license "is required of every business upon any land subject to the jurisdiction of the Colorado River Indian Tribes, whether temporary or permanent, regardless of whether such business is required to obtain a federal trader's license or permit, or any other license or permit required by this tribal law, and shall include all entities required to obtain a federal tax identification number." *Id.* The only exemptions from this requirement are for governmental entities; employees of a licensed business; certain activities conducted by churches, schools, clubs, or athletic organizations; or those businesses, the entire proceeds of which, are distributed to any charitable, religious, educational, or other eleemosynary group or organization. *Id.* § 1-105.

You state that the Tribes' imposition of business license fees and taxes on the Big River Businesses is "unauthorized." Again, this is not correct. The Big River lessees at issue operate businesses on lands owned by the Tribes that lie within the Tribes' Reservation. The Business and Professions Code applies to all businesses located within the Reservation that are subject to the Tribes' jurisdiction. Since these businesses to which your inquiry relates are physically located within the exterior boundaries of the Tribes' Reservation on lands managed by the Tribes, these businesses are required to obtain a business license, unless otherwise exempted because the business is of a governmental or charitable nature. To our knowledge, none of the subject businesses qualify for one of the enumerated exemptions.

Therefore, depending on the nature of the businesses at issue, the businesses must apply for a temporary, seasonal, or annual business license. Business and Professions Code § 1-107. The continued failure of the three businesses in Big River to obtain such a license will subject the businesses to civil fines and other penalties until business licenses are obtained. *Id.* § 1-113. The businesses are presently operating without a valid tribal business license, are in violation of tribal law and are incurring penalties and interest.

C. Taxation Code

Indian tribes have long been recognized as having taxing powers. This power is regarded as one of the fundamental aspects of tribal sovereignty. The famous 1934 Opinion of Solicitor Margold, which was quoted in *Washington v. Confederated Tribes of the Colville Reservation*, 447 U.S. 134 (1980), *rev. denied*, 448 U.S. 991 (1980), states this principle as follows:

Chief among the powers of sovereignty recognized as pertaining to an Indian tribe is the power of taxation. Except where Congress has provided otherwise, this power may be exercised over members of the tribe and over nonmembers, so far as such non-members may accept privileges of trade, residence, etc., to which taxes may be attached as conditions.

Opinion of the Solicitor of the Department of Interior, 55 I.D. 14, 46 (1934); *Colville*, 447 U.S. at 152 ("The power to tax transactions [with non-Indians] occurring on trust lands and significantly

involving a tribe or its members is a fundamental attribute of sovereignty which the tribes retain unless divested of it by federal law or necessary implication of their dependent status).

Ample United States Supreme Court precedent supports the Tribes' taxation authority over the Big River lessees. As discussed above, in *Colville*, the U.S. Supreme Court upheld tribal taxes on sales to non-Indians who came on the reservation to do business with tribal vendors. Likewise in *Merrion v. Jicarilla Apache Tribe*, the Court upheld tribal taxes on mineral production by non-Indian lessees doing business on the reservation, and in *Kerr-McGee Corp. v. Navajo Tribe of Indians*, 195 U.S. 195 (1985), the U.S. Supreme Court upheld a tribal tax on activities related to non-Indian lessees' mineral production on the reservation. Most recently, in *Atkinson Trading Co. v. Shirley*, 532 U.S. 645 (2001), the Court confirmed that tribes have regulatory jurisdiction over non-members where, *inter alia*, there exists a "consensual relationship" that stems "from 'commercial dealing, contracts, leases, or other arrangements'" occurring "on trust lands and significantly involving a tribe or its members." *Id.* at 658.59.

The legal incidence of each of the Tribes' taxes falls on retailers conducting certain business activity within lands subject to the jurisdiction of the Tribes. Which tax applies turns on the exact nature of the retailer's business. Retailers who conduct business on tribal lands or engage in transactions with the Tribes or its members may be subject to one or more of the Tribes' taxation ordinances.

D. Compliance with Applicable Tribal Laws

Your letter also ignores the fact that the Tribes have provided ample opportunities to the Big River businesses to comply with tribal laws. The Tribes sent multiple notice letters and, only more recently, issued notices of violation concerning only the business license requirement to three businesses operating on lands leased from the Tribes.

The three businesses are as follows: the Dock Restaurant, Dumas Walker Bar & Grill, and One Stop Hair Shop. As you may know, these businesses have received multiple notice letters from the Tribes concerning the business license and taxation requirements, and multiple opportunities to comply with the Tribes' laws. These businesses are operating on lands owned by the Tribes and managed by the Tribes' Big River Development Enterprise. Nevertheless, these businesses have chosen not to comply with the Tribes' laws. Until they comply, they will be subject to additional fines and penalties, and other legal action. These businesses (and all similarly situated retail businesses) conducting or engaged in business activities within lands subject to the Tribes' jurisdiction are subject to both the Tribes' Business and Professions Code and applicable provisions of the Tribes' Taxation Code.

If the Big River businesses continue to maintain that they are not subject to any of the Tribes' ordinances, we suggest that the businesses seek a formal private taxpayer ruling pursuant to Section 20-1407 of the Tribes' Taxation Code. Such a ruling can also address the applicability of the Business and Professions Code. A private taxpayer ruling will enable the Tribes to consider the businesses' situation in light of all necessary and relevant facts, and will help to determine which, if any, of the Tribes taxes apply.

A request for such a ruling must be signed by the business owner and must include the following information: (1) the name, address and, if applicable, Taxpayer Identification Number of the

Assemblyman Bill Maze

April 3, 2006

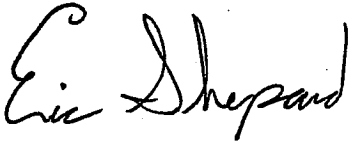
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taxpayer or potential taxpayer who requests the ruling; (2) all facts relevant to the requested ruling; and (3) to the best knowledge of the taxpayer or potential taxpayer, whether the issue or related issues are being considered by the Tribes' Department of Revenue and Finance in connection with an active examination, audit, protest, or appeal that involves the taxpayer or potential taxpayer. Once the Tribes' Department of Revenue and Finance receives the required information, it will be able to clarify the applicability of the Tribes' taxation ordinances to the businesses.

We trust this letter addresses your concerns. We hope that, in the future, you will address your concerns to the Tribes through normal government-to-government channels of communication. If you are interested in meeting with the Tribal Council to discuss these matters further, please contact us to arrange a visit to the Tribes' Reservation.

Sincerely yours,

COLORADO RIVER INDIAN TRIBES
OFFICE OF THE ATTORNEY GENERAL



Eric Shepard
Attorney General

Enclosures

cc: Senator Dianne Feinstein (CA)
Senator Barbara Boxer (CA)
Senator John McCain (CA)
Senator Jon Kyl (CA)
Representative Jerry Lewis (CA)
Representative Mary Bono (CA)
Representative Raul Grijalva (AZ)
Governor Arnold Schwarzenegger
Attorney General Bill Lockyer

UNITED STATES PUBLIC LAWS
109th Congress - First Session
Convening January 7, 2005

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Additions and Deletions are not identified in this database.
Vetoed provisions within tabular material are not displayed
PL 109-47 (HR 794)
August 2, 2005

COLORADO RIVER INDIAN RESERVATION BOUNDARY CORRECTION ACT

An Act To correct the south boundary of the Colorado River Indian Reservation in Arizona, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States
of America in Congress assembled,

SECTION 1. SHORT TITLE, FINDINGS, PURPOSES.

- (a) **SHORT TITLE.**--This Act may be cited as the "Colorado River Indian Reservation Boundary Correction Act".
- (b) **FINDINGS.**--Congress finds the following:
- (1) The Act of March 3, 1865, created the Colorado River Indian Reservation (hereinafter "Reservation") along the Colorado River in Arizona and California for the "Indians of said river and its tributaries".
 - (2) In 1873 and 1874, President Grant issued Executive Orders to expand the Reservation southward and to secure its southern boundary at a clearly recognizable geographic location in order to forestall non-Indian encroachment and conflicts with the Indians of the Reservation.
 - (3) In 1875, Mr. Chandler Robbins surveyed the Reservation (hereinafter "the Robbins Survey") and delineated its new southern boundary, which included approximately 16,000 additional acres (hereinafter "the La Paz lands"), as part of the Reservation.
 - (4) On May 15, 1876, President Grant issued an Executive Order that established the Reservation's boundaries as those delineated by the Robbins Survey.
 - (5) In 1907, as a result of increasingly frequent trespasses by miners and cattle and at the request of the Bureau of Indian Affairs, the General Land Office of the United States provided for a resurvey of the southern and southeastern areas of the Reservation.
 - (6) In 1914, the General Land Office accepted and approved a resurvey of the Reservation conducted by Mr. Guy Harrington in 1912 (hereinafter the "Harrington Resurvey") which confirmed the boundaries that were delineated by the Robbins Survey and established by Executive Order in 1876.
 - (7) On November 19, 1915, the Secretary of the Interior reversed the decision of the General Land Office to accept the Harrington Resurvey, and upon his recommendation on November 22, 1915, President Wilson issued Executive Order No. 2273 "... to correct the error in location said southern boundary line ..."--and thus effectively excluded the La Paz lands from

the Reservation.

*452 (8) Historical evidence compiled by the Department of the Interior supports the conclusion that the reason given by the Secretary in recommending that the President issue the 1915 Executive Order--"to correct an error in locating the southern boundary"--was itself in error and that the La Paz lands should not have been excluded from the Reservation.

(9) The La Paz lands continue to hold cultural and historical significance, as well as economic development potential, for the Colorado River Indian tribes, who have consistently sought to have such lands restored to their Reservation.

(c) PURPOSES.--The purposes of this Act are:

(1) To correct the south boundary of the Reservation by reestablishing such boundary as it was delineated by the Robbins Survey and affirmed by the Harrington Resurvey.

(2) To restore the La Paz lands to the Reservation, subject to valid existing rights under Federal law and to provide for continued reasonable public access for recreational purposes.

(3) To provide for the Secretary of the Interior to review and ensure that the corrected Reservation boundary is resurveyed and marked in conformance with the public system of surveys extended over such lands.

SEC. 2. BOUNDARY CORRECTION, RESTORATION, DESCRIPTION.

(a) Boundary--The boundaries of the Colorado River Indian Reservation are hereby declared to include those boundaries as were delineated by the Robbins Survey, affirmed by the Harrington Survey, and described as follows: The approximately 15,375 acres of Federal land described as "Lands Identified for Transfer to Colorado River Indian Tribes" on the map prepared by the Bureau of Land Management entitled "Colorado River Indian Reservation Boundary Correction Act, and dated January 4, 2005", (hereinafter referred to as the "Map").

(b) MAP.--The Map shall be available for review at the Bureau of Land Management.

(c) RESTORATION.--Subject to valid existing rights under Federal law, all right, title, and interest of the United States to those lands within the boundaries declared in subsection (a) that were excluded from the Colorado River Indian Reservation pursuant to Executive Order No. 2273 (November 22, 1915) are hereby restored to the Reservation and shall be held in trust by the United States on behalf of the Colorado River Indian Tribes.

(d) EXCLUSION.--Excluded from the lands restored to trust status on behalf of the Colorado River Indian Tribes that are described in subsection (a) are 2 parcels of Arizona State Lands identified on the Map as "State Lands" and totaling 320 acres and 520 acres.

SEC. 3. RESURVEY AND MARKING.

The Secretary of the Interior shall ensure that the boundary for the restored lands described in section 2(a) is surveyed and clearly marked in conformance with the public system of surveys extended over such lands.

SEC. 4. WATER RIGHTS.

The restored lands described in section 2(a) and shown on the Map shall have no Federal reserve water rights to surface water

or ground water from any source.

***453 SEC. 5. PUBLIC ACCESS.**

Continued access to the restored lands described in section (2)(a) for hunting and other existing recreational purposes shall remain available to the public under reasonable rules and regulations promulgated by the Colorado River Indian Tribes.

SEC. 6. ECONOMIC ACTIVITY.

(a) **IN GENERAL.**--The restored lands described in section (2)(a) shall be subject to all rights-of-way, easements, leases, and mining claims existing on the date of the enactment of this Act. The United States reserves the right to continue all Reclamation projects, including the right to access and remove mineral materials for Colorado River maintenance on the restored lands described in section (2)(a).

(b) **ADDITIONAL RIGHTS-OF-WAY.**--Notwithstanding any other provision of law, the Secretary, in consultation with the Tribe, shall grant additional rights-of-way, expansions, or renewals of existing rights-of-way for roads, utilities, and other accommodations to adjoining landowners or existing right-of-way holders, or their successors and assigns, if--

(1) the proposed right-of-way is necessary to the needs of the applicant;

(2) the proposed right-of-way acquisition will not cause significant and substantial harm to the Colorado River Indian Tribes; and

(3) the proposed right-of-way complies with the procedures in part 169 of title 25, Code of Federal Regulations consistent with this subsection and other generally applicable Federal laws unrelated to the acquisition of interests on trust lands, except that section 169.3 of those regulations shall not be applicable to expansions or renewals of existing rights-of-way for roads and utilities.

(c) **FEES.**--The fees charged for the renewal of any valid lease, easement, or right-of-way subject to this section shall not be greater than the current Federal rate for such a lease, easement, or right-of-way at the time of renewal if the holder has been in substantial compliance with all terms of the lease, easement, or right-of-way.

SEC. 7. GAMING.

Land taken into trust under this Act shall neither be considered to have been taken into trust for gaming nor be used for gaming *454 (as that term is used in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)).

Approved August 2, 2005.

LEGISLATIVE HISTORY--H.R. 794:

CONGRESSIONAL RECORD, Vol. 151 (2005):

April 12, considered and passed House.

July 26, considered and passed Senate.

PL 109-47, 2005 HR 794

ARIZONA—COLORADO RIVER RESERVE.

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erly, following substantially the western base of the Dragoon Mountains, to the place of beginning, be, and the same is hereby, canceled, and said lands are restored to the public domain.

U. S. GRANT.

Colorado River Reserves.

[In the Colorado River Agency; occupied by the Chemehuevi, Walapai, Kowia, Cocopa, Mohave, and Yuma tribes; area, 370 square miles; established by act of March 3, 1865 (13 Stat., 559), and following Executive orders.]

EXECUTIVE MANSION, November 22, 1873.

It is hereby ordered that the following-described tract of country in the Territory of Arizona be withdrawn from sale and added to the reservation set apart for the Indians of the Colorado River and its tributaries, by act of Congress, approved March 3, 1865 (U. S. Stat. at Large, vol. 13, p. 559), viz: All that section of bottom-land adjoining the Colorado Reserve, and extending from that reserve on the north side to within 6 miles of Ehrenberg on the south, bounded on the west by the Colorado River, and east by mountains and mesas.

U. S. GRANT.

EXECUTIVE MANSION, November 16, 1874.

It is hereby ordered that a tract of country embraced within the following-described boundaries, which covers and adds to the present reservation, as set apart by act of Congress approved March 3, 1865 (Stat. at Large, vol. 13, p. 559), and enlarged by Executive order dated November 22, 1873, viz:

Beginning at a point where the La Paz Arroyo enters the Colorado River, 4 miles above Ehrenberg; thence easterly with said Arroyo to a point south of the crest of La Paz Mountain; thence with said crest of mountain in a northerly direction to the top of Black Mountain; thence in a northwesterly direction across the Colorado River to the top of Monument Peak, in the State of California; thence southwesterly in a straight line to the top of Riverside Mountain, California; thence in a southeasterly direction to the point of beginning, be, and the same is hereby, withdrawn from sale and set apart as the reservation for the Indians of the Colorado River and its tributaries.

U. S. GRANT.

EXECUTIVE MANSION, May 15, 1876.

Whereas an Executive order was issued November 16, 1874, defining the limits of the Colorado River Indian Reservation, which purported to cover, but did not, all the lands theretofore set apart by act of Congress approved March 3, 1865, and Executive order dated November 22, 1873; and whereas the order of November 16, 1874, did not revoke the order of November 22, 1873, it is hereby ordered that all lands withdrawn from sale by either of these orders are still set apart for Indian purposes; and the following are hereby declared to be the boundaries of the Colorado River Indian Reservation in Arizona and California, viz:

Beginning at a point where La Paz Arroyo enters the Colorado River and 4 miles above Ehrenberg; thence easterly with said Arroyo to a point south of the crest of La Paz Mountain; thence with said mountain crest in a northerly direction to the top of Black Mountain; thence in a northwesterly direction over the Colorado River to the top of



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WESTERN REGION
P.O. Box 10
Phoenix, Arizona 85001



IN REPLY REFER TO:

Division of Real Estate Services
(602) 379-6781 Fax: 6754
Control No. A007060468

MAR 28 2006

Mr. Bill Maze
Assemblyman, 34th District
State Capitol
P.O. Box 942849
Sacramento, California 94249-0034

Dear Assemblyman Maze:

This refers to a series of letters we have received from your office, dating back to a referral of your May 27, 2004, letter to (then) Assistant Secretary - Indian Affairs David Anderson, concerning the Big River Development Enterprise (the "Enterprise") located on lands owned by the United States in trust for the Colorado River Indian Tribes ("CRIT"). Your original inquiry included a number of questions relating to the status of the land, the terms of the relevant lease agreements, and the extent of tribal jurisdiction over non-Indian residents within the development area. Many of these same questions were raised in your recent February 17, 2006, letter to CRIT (a copy of which was provided to our office), and it is our understanding that CRIT will be addressing the jurisdictional issues by separate response, as we believe to be appropriate. We will, in turn, attempt to address the land status and lease questions set forth in numbered paragraphs 1-4 of your May 27, 2004, letter.

1. Has the Congress declared that a reservation exists in Big River, California, for [CRIT]? If so, what and when was the act? If a federal agency has designated this land as a reservation, I would appreciate a detailed map or a metes and bounds description.

The Colorado River Indian Reservation was created by the Act of May 3, 1865 (13 Stat. 559), and the reservation boundaries were expanded and clarified by Executive Orders dated November 22, 1873, November 16, 1874, and May 15, 1876 (copies enclosed). The description of the northwest boundary of the Reservation set forth in these Orders ("southwesterly in a straight line [from the top of Monument Peak, in the state of California] to the top of Riverside Mountain, California") refers to fixed monuments, rather than the changeable course of the Colorado River, and there has never been any dispute about the reservation status of these lands. See the enclosed maps depicting the locations of: (1) the two fixed monuments and the boundary line connecting them, as described in the survey map completed by Chandler Robbins and approved by the Surveyor General on May 12, 1876; and (2) the 7800-acre Big River project located just west of the Colorado River, southwest of Monument Peak, and northeast of Riverside Mountain, within the reservation boundaries as established.

2. What is the status of CRIT in California - a private enterprise or a federally recognized Indian tribe?

CRIT is a federally recognized Indian tribe with reservation land in both Arizona and California, and the master lease is now held by a tribally-owned successor to the Big River Development Company, which exists as an instrumentality of the tribe but operates as a separate business enterprise created under tribal law.

07/23/2000 10:24

3. Can CRIT legally make changes to the master agreement that dictates the terms that CRIT agreed to when assuming managerial responsibilities for the Big River Development Project?

At one time, the authority to lease tribal land was reserved to the Secretary of the Interior, but that reservation was effectively lifted (relative to the area in question) by the Act of April 30, 1964 (78 Stat. 188), enacted just two months after the original Big River master lease was granted by this office, pursuant to authority delegated by the Secretary. Section 1 of the 1964 act expressly confirmed CRIT's beneficial title and the reservation status of the land, and Section 5 provided that any leases in the area in question could thereafter be granted by CRIT (rather than by the Secretary). Following the enactment of the 1964 act, a series of amendments to the master lease (referred to as "Supplemental Agreements") were entered into directly by CRIT, as Lessor, subject to the approval of the Secretary. Since CRIT's acquisition of the interest of the former Master Lessee in the 1990's, the Tribe and Enterprise can make changes in the terms of the master lease agreement (as Master Lessor and Master Lessee, respectively), so long as any such changes do not alter the rights or remedies of individuals or businesses under pre-existing subleases.

4. Can CRIT interject itself in land transfers when the land is believed to be privately held?

Big River land covered by a sublease is not privately-held land, but rather tribal land leased for a term of years set to expire no later than 2029, unless terminated earlier for cause. As Master Lessee, the Enterprise must consent to transfers of subleasehold interests, where such consent is required by the master lease and/or sublease documents. However, the consent to any such assignments may not be unreasonably withheld.

We regret our lengthy delay in providing this partial response, and we hope that the information contained herein (together with the separate, coordinated response being provided by CRIT) will help to resolve some of the concerns or misconceptions of the residents at Big River. If you have any questions, or if further information is needed, please contact Stan Webb in our Branch of Real Estate Services.

Sincerely,



Acting Regional Director

Enclosures