

***Stand Up For California!***  
**“Citizens making a difference”**

[www.standupca.org](http://www.standupca.org)

P.O. Box 355  
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August 31, 2010

Lance Bishop – Director  
Bureau of Land management  
2800 Cottage Way, Room W 1634  
Sacramento, CA. 95825

**RE: Special Instructions Group No. 1584, California** - Instructions are Inapplicable, Requires an Amendment

Dear Director Bishop:

***Stand Up For California!*** writes today regarding Special Instructions Group No. 1584.

First, our organization would appreciate notification prior or simultaneously to the survey being published in the Federal Register, in the event that Group No. 1584 is approved as it is currently written.

Secondly, our organization wishes to express serious concerns over the limited character and method of procedure for the cadastral survey of the “disputed area”. It appears the purpose of this survey is to provide the Colorado River Indian Tribes (CRIT) with a manageable western boundary of its reservation. However, the instructions are inapplicable. This is explained below. Additionally, serious questions of CRIT’s jurisdiction over the land within the survey area are currently before the 9<sup>th</sup> Circuit Court of Appeals as well as the Interior Board of Indian Affairs (IBIA).

Special Instructions Group No. 1584 as it is currently written raises a number of questions and contradictions of law. What is meant by the phrase “provide the CRIT with a *manageable* western boundary”? On April 30, 1964 Public Law 88-302 was enacted by the Senate and House of Representatives of the United States of America. Section 5 of this Act specially states:

“Provided, however, That the authorization herein granted to the Secretary of the Interior shall not extend to any lands lying west of the present course of the Colorado River and south of Section 25 township 2 south, range 23 east, San Bernardino base and meridian in California, ***and shall not be construed to affect the resolution of any controversy over the location of the boundary of the Colorado River Reservation;*** Provided further, that any of the described lands in California shall be subject to the provisions of this Act ***when and if determined to be within the reservation.***”

Several years later, January 17, 1969, Solicitor Edward Weinberg of the U. S. Department of the Interior, wrote an opinion on the Western Boundary of the Colorado River Indian Reservation. It states:

“The Colorado River Indian Tribes have requested that the western boundary of the reservation be finally determined. Until such determination is made the leasing provision of the Act of April 30, 1964, supra, *do not extend to lands south of Section 25,T 2 S., R23 E., SBM., California.*”

The Solicitors Opinion failed to mention the 1864 Congressional Act that provided for the better organization of Indian Affairs in California, “(the Four Reservations Act) (Act of Apr. 8, 1864, 13 Stat. 39), and specifically limited the number of Indian reservations the Executive Branch was authorized to create in California. (*See-Mattz v. Arnett* (1973- 412 U.S. 481, 489 (confirming that the Act limits the number of reservation that can be proclaimed within California)

There has never been a lawful determination that the West Bank land is eligible for CRIT’s management or Secretarial leasing on CRIT’s behalf. To the contrary, as a matter of law, the land is not, and cannot be reservation land under the jurisdiction of the Bureau of Indian Affairs (BIA). To the contrary, under federal law, the land is under the jurisdiction of the Bureau of Reclamation (BOR) and/or Bureau of land Management (BLM)<sup>1</sup>.

- What legal value is a cadastral survey which is limited in scope and character to surveys from 1856 to 1964 (some of which have been suspended by secretary’s memorandum or compromised by a federal grand jury and indictments)?
- What authority provides the BLM with the ability to determine for the CRIT a western boundary which includes jurisdiction of management of the disputed lands?

Central to the limited scope and character of the method of procedure for the Group No. 1584 survey is the “Benson Survey of 1879”. Emphasis on this survey raises many ethical and legal questions. In a publication, (**Engineering Field Notes, Engineering Technical Information System, Volume 22 September-October 1990**), an article by James R. Fields, Forest Land Surveyor for the United States discusses the Benson Surveys from 1879 until 1889. Mr. Fields describes the Benson surveys, as “Bar-room surveys”. Further he writes. “There are a substantial number of fraudulent original surveys, conducted between 1879 and 1889, that affect landownership in 10 western States.”

These fraudulent surveys did not go unchallenged. In 1887 a federal grand jury handed down 41 indictments for conspiracy to defraud the Government. Nevertheless, the “*Benson Syndicate*”<sup>2</sup>

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<sup>1</sup> The land was withdrawn by Public Land Order 7262 in 1997 under the Congressional Acts of 1902 and 1931. The Acts, specifically state, that State Law and Local Court jurisdiction apply. The BOR and BLM have a memorandum of understanding dated 1983. BLM is to manage the surface of the land for BOR.

<sup>2</sup> <http://www.amerisurv.com/content/view/3926/153/> Now, a bigger dilemma was to evolve from the loose governmental supervision. The new problem was of combined land and survey fraud. This operation extended throughout the 10 western states, courtesy of the infamous group known as the *Benson Syndicate*, led by John A. Benson (Figure 3). The mid-1880s brought the scandal to light and punitive action was initiated against the perpetrators. Strict enforcement of the contract provisions through independent check surveys was also a strong

as it was penned by newspapers of the day was able to defeat the Government on technical legal issues. Despite this effort, there still remain in 10 Western States a large number of Benson surveys that were approved. Thus the 1879 Benson Survey<sup>3</sup> included in Special Instructions Group No. 1584 should be viewed with great scrutiny and discretion. Mr. Fields article suggests the following criteria be added to any surviving and still approved Benson survey:

1. Are there ownership problems in the township?
  2. Has the township been subjected to a rigorous search by qualified people?
  3. Does the approved plat topography match the ground?
  4. Was the work done under the special deposit system?
  5. Was the work done between 1879 and 1886?
  6. Could the work have been done within the time shown on the approved notes?
  7. Does the pattern of combined ownership and found original corners warrant the use of an independent resurvey method?
- ***Stand Up For California!* Requests and urges the BLM to include the above criteria for consideration as a protective layer of review.**

The instructions on page 4, last paragraph before the new section on “Field Notes, Plats and Reports” reference the formation of a closure. What is meant by, “A closure will be formed on all lines of this survey”? Does this mean the BLM will begin the construction of a fence? If so, when?

On the “Special Instructions – Group No. 1584”, page 5 item “Modification of Instructions” there is an opportunity to amend the current instructions. Clearly, the instructions as written are inapplicable. **The land in question is in the “disputed area” and will require Congressional**

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factor in bringing about higher standards of work. (Editor's note: Look for a future article on Benson, who is arguably the biggest crook in the history of American surveying.)

<sup>3</sup> Additional links on Benson Syndicate:

<http://www.californiasurveyors.org/csaforum/showthread.php?p=14779>

<http://www.amerisurv.com/content/view/3926/153/>

[http://www.absoluteastronomy.com/topics/Benson\\_Syndicate](http://www.absoluteastronomy.com/topics/Benson_Syndicate)

<http://www.amerisurv.com/content/view/3926/>

**Legislation or litigation**<sup>4</sup> to resolve the proposed intent of providing the CRIT with a “manageable boundary” for its western reservation boundary.

It is without doubt that the “disputed area” screams of ownership problems. Currently before the Interior Board of Indian Affairs is an appeal, that names interested parties, which include the State of California, the BOR, and the BLM, who have the potential of becoming indispensable parties.

Our organization hopes that you give thoughtful consideration to this request. The citizens who reside in the “disputed area” are tense due to recent actions of the CRIT. Thus, there is heightening public concerns for a response from your office. If you have additional questions or

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<sup>4</sup> *Arizona v. California*, 469 U.S. 605, 630-631 (1983): "The disputes about the boundaries of the Colorado River and the Fort Mojave Reservations are still with us. And since the time our original decree was entered in 1964, disputes about the boundaries of the other three reservations have emerged. It is thus necessary to decide whether any or all of these boundary disputes have been "finally determined" within the meaning of Article II(D)(5), and, if so, whether the Tribes are entitled to an upward adjustment of their water rights. We begin with a summary of each of the boundary issues. We describe first the Colorado River Reservation boundary dispute. Master Rifkind agreed with California that the disputed portion of the western boundary of the reservation ran along the west bank of the Colorado River as it moved from time to time, subject to the ordinary rules of accretion, erosion, and avulsion. The Master rejected the United States' claim that the boundary was fixed at the point where the west bank of the river existed on May 15, 1876, the date of the relevant Executive Order revising the boundaries of the reservation. Because we found it unnecessary to resolve the question, this dispute remained open for later settlement. On January 17, 1969, the Secretary of the Interior, relying on an opinion of the Department's Solicitor, issued an order directing that approximately the northerly two-thirds of the disputed boundary was to follow the meander lines of 1879 and 1874, and was not to follow the changing west bank of the Colorado River. This order issued unilaterally and without a hearing, added some 4,400 acres to the reservation. Later, the United States, on behalf of the Tribes, obtained final judgment in title disputes with private parties quieting title in the Tribes to various parcels in the area added to the reservation. Also, in the course of establishing the western boundary, the Secretary corrected what he deemed to be an error in an old survey. He approved the corrected plat adding 450 acres to the reservation on December 18, 1978."

**The Court concluded:** "We cannot agree with the Special Master that the reservation boundaries extended by secretarial order have been 'finally determined'. . . ." *See Arizona v. California*, 469 U.S. at 636 (1983) and accompanying footnote 26 (stating "[t]he only other court judgments relevant to this case are those obtained by the United States on behalf of the Colorado River Tribes. These judgments quieted the Tribes' title to certain parcels of land totally within the area added to the reservation by the secretarial order of January 17, 1969. *See supra* at [460 U. S. 631](#). Accordingly, in view of our holding that the secretarial orders do not constitute "final determinations," the Colorado River Tribes will have to await the results of further litigation before they can receive an increase in their water allotment based on the land determined to be part of the reservation by these latter judgments"). Link to the *Arizona v. California*: <http://supreme.justia.com/us/460/605/case.html#T26>

wish for clarification of this request or reasoning of the questions that is asked, please do not hesitate to contact me. We hope that you find this information helpful.

Sincerely,



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