

BRIEF SUMMARY OF COLORADO RIVER LAND DISPUTE

In the recent *Water Wheel* case, Federal Court Judge David Campbell held that the CRIT Tribal Court had jurisdiction over the *Water Wheel* Corporation only because he was forced to assume that the land was "held in trust" for CRIT. This was not a legal conclusion - only a non-binding assumption. As a matter of federal law, the land is not held in trust or reservation land for CRIT. This *assumption* was made solely due to CRIT's threat to have the case dismissed due to its sovereign immunity. Judge Campbell did not express any opinion on the merits of the tribal court findings. He ruled against the CRIT tribal and appellate courts findings of jurisdiction over Robert Johnson and he did not authorize any eviction or other actions against *Water Wheel*. Just like in the *Water Wheel* litigation, CRIT has asserted its sovereign immunity to prevent a legally binding determination in all cases where the proper location of its reservations' boundary was litigated. See *Metropolitan Water, Gilbert McClendon, Turley, et al v. Eddy et al*.

Without the legally incorrect *assumption* about the boundary of the CRIT Reservation, CRIT would have lost every aspect of the *Water Wheel* case. As it now stands, the ruling of jurisdiction over the corporation only has little practical impact. Notwithstanding this decision, CRIT has vowed to aggressively pursue legal action against California residents in the disputed area even though it has never proven its claim to this land. In fact, CRIT is already attempting to have other California residents litigate in CRIT's controlled tribal court. Non-Tribal members who become litigants in Tribal Court should be aware that their due-process rights are not guaranteed in tribal court. After all, CRIT hires the judge, and it is only he/she who determines what law will and will not be considered in any tribal court litigation.

In spite of many years of CRIT attempts to obscure the issues, the controlling law in this chronic dispute is clear. The California Indian Reservation Act of April 8, 1864, 13 Stat. 39, precludes the existence of the CRIT Reservation in California without specific congressional

authorization. The 1864 Act is still controlling law. It has not been overturned or modified by any subsequent litigation or legislation. The Act of March 3, 1865, 13 Stat. 541, 559, established the CRIT Reservation in the territory of Arizona only. Executive Orders purported to expand the reservation into California. However, they do not override the 1864 Act. Congress did not authorize the Executive Orders and they conflict with the 1864 Act. They are not a valid legal basis that supports the CRIT Reservation's extension into California.

Public Law 88-302, 78 Stat. 188, prohibits the Secretary of the Interior from exercising any authority on behalf of CRIT in the disputed boundary area until a final boundary determination is made. No such final determination has ever been made. Public Law 88-302 denied CRIT the legal authority for conducting leasing or other activities in the disputed area, including the land where *Water Wheel* is located.

On January 17, 1969, the Secretary of the Interior, Stewart L. Udall, issued an opinion purportedly defining the upper two-thirds of the disputed boundary area as a fixed line along the location of an 1876 meander line. The 1969 Order is referred to as the Secretarial Order. This meander line was at the base of certain "high bluffs" that were a significant distance from the river's edge in 1969. The Secretarial Order is CRIT's only authority for its control over the disputed boundary area. The Secretarial Order conflicts with the 1864 Act and was not authorized by Congress. Further, the Secretary of the Interior does not have the authority to define the reservation to include land in California. The United States Supreme Court has also ruled that the Secretarial Order was not a binding determination of the boundary issue.

In 1996, Special Master Frank McGarr in Arizona III held: "...the reasoning underlying the Secretarial Order is not sound. It misinterprets the definition of bank and the nature of accretions. Moreover, the Secretary's conclusion that the 1876 Order created a fixed boundary is directly contrary to the 1876 Order's intent to create a riparian boundary." The Secretarial Order should not be given any weight or assumed authority. The 1864 Act did not authorize the Secretary to define the reservation to include land in California. In addition to the 1864 Act and the United States Supreme Court's ruling, the preponderance of the prevailing legal authority is against the Secretarial Order.

Until a competent court rules on the issues pertaining to the boundary,

this dispute will not be resolved. California residents should not be denied their due-process rights, threatened, intimidated or compelled to take any action based on CRIT's assertions about the boundary. Until a proper court ruling is rendered, CRIT's assertions about the boundary are only its opinion-nothing more.