

## WHAT THE FEDERAL COURT DID, AND DID NOT, DO ON THE WATER WHEEL LITIGATION

### *A response to CRIT's deceptive, intentionally misleading, self-serving and inaccurate interpretation of District Court Judge David Campbell's ruling*

There have been some substantial and apparently intentional misrepresentations by CRIT about the decision rendered by Judge Campbell in the *Water Wheel* Litigation in Arizona federal court, and those misrepresentations have led to major misunderstandings by the general public and media.

The decision states that the Tribal Court never had jurisdiction over Robert Johnson and CRIT has no legal right to attempt to enforce those orders against him. Indeed, the Court specifically warned CRIT that it cannot take any action against him personally, directly rejecting statements by tribal attorneys that CRIT had the legal right to enforce the Tribal Court orders against Johnson without regard to any action by the Federal Court. CRIT's position that it has personal jurisdiction over Johnson (and others in his same position) has been repudiated by the Federal Judge, who stated that any orders against Johnson are "null and void." With this ruling, CRIT lost any practical ability to collect its multi-million dollar judgment that its tribal court had concocted against *Water Wheel* and Robert Johnson.

Without considering the status of the land on the West Bank, the decision found that *Water Wheel* had consented to Tribal Court jurisdiction through the Lease and its long-term occupancy of the land ostensibly pursuant to the Lease. That jurisdictional ruling was based purely on the assumption that the land is both in trust and reservation status. The court did not confirm any ownership interest in CRIT.

The decision specifically did not find that the West Bank land is "Indian Land." Under the strict provisions of federal law, *Water Wheel* and Robert Johnson could contest tribal court jurisdiction only by not challenging the land status for the purposes of the case. Judge Campbell noted that there is continuing dispute over the legal status of the land, but also acknowledged that he could only hear the jurisdictional challenge if land status was not challenged and he assumed, for purposes of this decision only, that it was "held in trust" for CRIT. Whether the land on the West Bank claimed by CRIT is in trust and/or reservation status has never been decided and is still unresolved as a matter of federal law. This is another of the many cases where CRIT has hid behind its sovereign immunity and refused to litigate the ownership status of the land and then made intentionally false statements about the court's conclusions.

*Water Wheel* was not determined to be a tenant which refused to abide by the terms of the Lease. The Federal Court merely found that the CRIT Tribal Court had jurisdiction to hear and decide the suit for eviction from lands within CRIT's reservation. If the land is subsequently found to be outside the reservation, the Tribal Court jurisdiction and judgment against *Water Wheel* will be null and void

The Federal Court did not affirm the outrageous findings of the Tribal Court – it merely affirmed that there was jurisdiction over *Water Wheel*. Whether the judgment and orders were lawful and reasonable was never before the Federal Court. To the contrary, the Judge was deeply disturbed by the finding of jurisdiction over Johnson despite the facts showing that all of his actions were solely on behalf of the *Water Wheel* Corporation and not taken as an individual.

The decision does not grant CRIT legal rights to enforce leases and legal agreements regarding any land in California. It merely found that the Tribal Court had jurisdiction over *Water Wheel* in this case because of (a) a consensual relationship established over many years and (b) the assumption that that the underlying property is in trust or reservation status.

The decision does not say that the existence of a Lease resolves any question as to CRIT Tribal Court jurisdiction. Indeed, the Court carefully did not make such a statement or finding. CRIT's claims that all jurisdiction matters are now resolved are simply wrong, just as was the tribal statement to the Federal Court that it has the right to enforce the Tribal Court orders against Robert Johnson without regard to anything the Federal Court might order – a claim which the Court firmly rejected.

CRIT has no current ability or right to execute on its Tribal Court judgment and orders. The federal decision does not authorize any execution on the judgment and orders, but merely finds that there was Tribal Court jurisdiction over the Lessee if the land is in trust or reservation status. Any execution of judgment will have to be ordered by a California state court. If CRIT goes to state court, the question of land status can be litigated by *Water Wheel* in defense of an action to secure orders of eviction since lack of "Indian Land" status would be an absolute defense to CRIT's claims.

The court held that CRIT must prove that a “nonmember” of the tribe must have a voluntary, consensual relationship in order to be forced to litigate in tribal court. Even if a nonmember has extensive dealings with a tribe, if these dealings are not voluntary, the tribe has no jurisdiction over these persons. This will make it extremely difficult for CRIT to force nonmembers to litigate in CRIT's tribal court. CRIT has no “inherent” ability to exclude nonmembers from California land. Other than a voluntary, consensual relationship with CRIT, which the court held did not exist with Robert Johnson, the court refused to address how CRIT may exclude Robert Johnson or any other nonmember from California land. This is an important clarification of the consensual relationship test and when CRIT may attempt to force nonmembers to litigate in CRIT's controlled, biased tribal court. Never sign any documents that grant the controlled CRIT tribal court the ability to hear disputes. If you do, there will not be any due-process rights and CRIT will always look out for its personal and financial interests to the detriment of the rights of non-tribal members.

CRIT hid behind its sovereign immunity to avoid a legal review of the land status. Only because CRIT refused to stand before the Court and waive its sovereign immunity for the purposes of finally securing a legal ruling as to the legal status of the West Bank land was the Court unable to decide that issue. ***CRIT has never defended its broad claims to ownership of this land.*** Nothing in the *Water Wheel* litigation adds any support to CRIT claims over any California land. To the contrary, CRIT strongly urged the federal court to dismiss this action based on its sovereign immunity. CRIT's controlled tribal court even refused to hear any arguments about the ownership status of the land. It is time for these issues to finally be heard in the courts and a CRIT action in state court to obtain orders of eviction will open that door.

*Any controversy over the impact of the federal court decision could have been eliminated if CRIT has brought this action in a fair, unbiased and neutral federal or state court.* CRIT insisted on the “home court” advantage it knew it could obtain in its tribal court where it hired the judge and the judge determined what laws would and would not apply.

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