



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

FEB 24 2011

Honorable Mary Bono Mack
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Bono Mack:

Thank you for your letter of August 9, 2010, regarding the western boundary of the Colorado River Indian Reservation (Reservation). Because of the legal issues involved, Secretary Salazar asked me to respond to you on his behalf.


You requested that the Department of the Interior (Department) issue a written response that would directly address the issue raised by certain individuals who reside along the Colorado River. These individuals assert that the Reservation does not extend to the California side of the Colorado River. The Department's position on this issue has been, since at least January 17, 1969, and continues to be that the Reservation extends into California and includes a certain portion of the west bank of the Colorado River. Indeed, on January 17, 1969, Solicitor Edward Weinberg issued a legal opinion in which he determined that the western boundary of the Reservation included a portion of Riverside County, California. Secretary Stewart Udall concurred in the Weinberg Opinion and on the same day issued a memorandum instructing the Director of the Bureau of Land Management (BLM) to suspend certain surveys and reinstate others in order to fix the line of the western boundary of the Reservation. Upon assuming office, Walter J. Hickel, President Nixon's Secretary of the Interior, asked Solicitor Mitchell Melich to review the Weinberg Opinion. Based on Solicitor Melich's analysis, Secretary Hickel concluded that Secretary Udall's determination of the western boundary of the Reservation was final, official, and unqualified. Secretary Hickel expressed his support for Secretary Udall's decision in a June 2, 1970, letter to the Chairman of the Colorado River Indian Tribes, Adrian Fisher. In fact, Secretary Hickel declined to change any aspect of Secretary Udall's decision. After Secretary Hickel affirmed Secretary Udall's instructions to the BLM, the Bureau of Indian Affairs issued a *Federal Register* notice on November 25, 1970, to advise the public that Colorado River Indian Reservation included certain lands in California.

Significantly, the Department's determination of the location of the western boundary of the Reservation was incorporated in a stipulation that the United States and the Colorado River Indian Tribes (Tribes) signed as part of the settlement of the water rights dispute in *Arizona v. California*, 547 U.S. 150 (2006). The stipulation and settlement agreement were subsequently approved by the Supreme Court. Based on the Department's previous determination and the United States' stipulation and settlement agreement, the location of the western boundary of the Reservation has been firmly established. In addition, Attorney General Mukasey advised your office in a June 18, 2008, letter that the position of the United States on the location of the western boundary of the Reservation could not be changed because of the representations that were made to the Supreme

Court in *Arizona v. California*. While some individuals who occupy tribal trust land located within the boundaries of the Reservation have continued to assert that the property on the California side of the Colorado River is part of the public domain, it is not. Rather, it is tribal land held in trust for the Colorado River Indian Tribes by the United States.

I hope that the foregoing is the information that you require. For your convenience, I have enclosed copies of the Weinberg Opinion, Secretary Udall's memorandum of January 17, 1969, with instructions to BLM, a typed transcription of that same memorandum, Secretary Hickel's letter to Chairman Fisher, and a copy of the *Federal Register* notice dated November 25, 1970, which BIA issued to advise the public that certain lands in California were part of the Reservation. If you have any further questions regarding the western boundary of the Reservation, please contact Deputy Solicitor for Indian Affairs Patrice Kunesh at (202) 208-4423.

Sincerely,


Hilary C. Tompkins
Solicitor

Enclosures (5)

OPINIONS OF THE SOLICITOR

OF THE DEPARTMENT OF THE INTERIOR
RELATING TO INDIAN AFFAIRS
1917-1974

Volume II



UNITED STATES
DEPARTMENT OF THE
INTERIOR

signed to obtain the best price for the sellers. We conclude that there is no authority for the Secretary to permit the sale of Klamath tribal timber lands, under the act of August 13, 1954, *supra*, subject to a condition requiring the purchaser to manage the purchased timber properties under sustained-yield principles. Such a condition would result in a sale other than at "fair value."

EDMUND T. FRITZ,
Deputy Solicitor.

WESTERN BOUNDARY OF THE
COLORADO RIVER INDIAN
RESERVATION

January 17, 1969.

To: Secretary of the Interior

From: Solicitor

Subject: Western boundary of the Colorado River Indian Reservation from the top of Riverside Mountain, California, through section 12, T. 5 S., R. 23 E., S.B.M., California

This is in response to your request that we review and define the location of the western boundary of the Colorado River Indian Reservation from the top of Riverside Mountain, California, to its intersection with the line between the second and third tiers of sections in T. 5 S., R. 23 E., S.B.M., California (hereinafter referred to as from the top of Riverside Mountain through section 12, T. 5 S., R. 23 E., S.B.M., California).

The Colorado River Indian Reservation was established by the Act of March 3, 1865, 13 Stat. 541, 559. Subsequently, its boundaries were modified by the Executive Orders of November 22, 1873, November 16, 1874, May 15, 1876, and November 22, 1915. The unallotted lands of the reservation are held by the United States in trust for the Colorado River Indian Tribes. Act of April 30, 1964, 78 Stat. 188.

The Colorado River Indian Tribes have requested that the western boundary of the reservation be finally determined. Until such determination is made the leasing provisions of the Act of April 30, 1964, *supra*, do not extend to lands south of section 25, T. 2 S., R. 23 E., S.B.M., California.

The Executive Order which describes the portion of the boundary considered in this memorandum is as follows:

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, 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.

U.S. GRANT

This opinion deals only with that portion of the above-described boundary from the top of Riverside Mountain through section 12, T. 5 S., R. 23 E., S.B.M., California.

As established by the Act of March 3, 1865, *supra*, and enlarged by the Executive Order of November 22, 1873, the Colorado River Indian Reservation was located in the Territory of Arizona and bounded on the west by the Colorado River. Lands in California were first added to the reservation by the Executive Order of November 16, 1874. The record discloses that this latter Executive Order enlarging the reservation was designed to make possible control of access to the reservation from the west and to avoid loss (transfer of land) caused by changes in the channel of the Colorado River. That segment of the west boundary of the

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reservation germane to this memorandum, i.e., from the top of Riverside Mountain to the west bank of the Colorado River, was described in the Executive Order of November 16, 1874, as a line "* * * [from the top of Riverside Mountain] in a Southeasterly direction to the point of beginning * * *."

When this segment of the boundary was surveyed in 1875 by Chandler Robbins, it was ascertained that this line severed a large tract of valuable land on the east side of the river which had been reserved for Indian use by the Act of March 3, 1865, *supra*, and the Executive Order of November 22, 1873. Because of this fact, the Indian Agent in charge of the reservation, by letter of January 31, 1876, requested the Commissioner of Indian Affairs to obtain an Executive Order changing the boundary line of the reservation between Riverside Mountain and the place of beginning, making the Colorado River the boundary line. Thereafter, by letter of May 10, 1876, from the Acting Commissioner to the Secretary of the Interior, it was recommended that the President be requested to issue an order changing this boundary line so that when it reached the west bank of the Colorado River it would follow said west bank down the river to a point opposite the point of beginning, thence to the place of beginning. Following a concurrence in the recommendation of the Commissioner of Indian Affairs by the Acting Secretary, the President issued the Executive Order of May 15, 1876. For many years the proper location of the west boundary of the reservation, as described in the Executive Order of May 15, 1876, has been in dispute.

During the trial of *Arizona v. California, et al.*, the United States claimed water rights for an extensive area of irrigable lands along the west side of the river. California resisted the claim of the United States for any lands south of section 25, T. 2 S., R. 23 E., on the grounds that there were no such lands within the boundary of the reservation. California's contention was based upon the fact that the west bank of the river, which was the call of the west boundary of the reservation in the Executive Order of May 15, 1876, established a boundary that would change with movements of the river. The United States contended, among other things, that this Executive Order established a permanent and unchanging boundary along the west bank of the river as it existed in 1876.

The Special Master ordered that the proper position of the boundary be litigated and, following

trial, the Special Master made Findings of Fact and Conclusions of Law which, in effect, held that the Executive Order of May 15, 1876, established a boundary which changes as the course of the Colorado River changes, except when such changes are due to an avulsion. He further held that two avulsive changes had severed lands from the reservation and placed these lands on the west side of the river. The effect of the Master's holding was to disallow any claim of the United States for water for lands south of section 25, T. 2 S., R. 23 E., which were located on the west side of the Colorado River except in the two areas the Master found to have been severed from the reservation and placed on the west side of the river by manmade avulsive changes in the river's course.

Before the Supreme Court, California excepted to the Findings of Fact and Conclusions of Law of the Special Master. In ruling thereon, the Supreme Court disagreed with the Special Master's decision to determine the disputed boundary of the Colorado River Indian Reservation. *Arizona v. California, et al.*, 373 U.S. 546, 601 (1963). The effect of the Supreme Court's decision was to leave the boundary question open for future determination.

LOCATION OF THE BOUNDARY BETWEEN RIVERSIDE
MOUNTAIN AND THE WEST BANK OF THE COLORADO
RIVER

The proper position of the first segment of the boundary from the top of Riverside Mountain to the west bank of the river presents little difficulty. The first question that arises is which of two peaks on Riverside Mountain is the top. Absent specific definition in the Executive Orders of November 16, 1874, and May 15, 1876, it is believed that the term "top of Riverside Mountain" should be given its commonly accepted meaning and, therefore, means the highest point of that mountain.

The "top of Riverside Mountain" was supposedly monumented during a survey in 1912, by R. A. Farmer; however, there is evidence that this corner was not placed on the highest point of the mountain and, therefore, does not represent the true corner of the reservation boundary. In these circumstances, the language of the Executive Orders of November 16, 1874, and May 15, 1876, must control and the erroneous Farmer survey should be suspended in the reach from Riverside Mountain to the Colorado River for reasons hereinafter stated.

It is concluded that the reservation boundary in this reach should follow a line from the highest point on Riverside Mountain on a direct bearing toward the place of beginning as described in the Executive Order of May 15, 1876, until it strikes the proper location of the west bank of the river as it existed in 1876. This line should terminate at the point it intersects the west bank. The Executive Order clearly stated the line should go to the west bank, not halfway down the bank, to the water's edge, or any other place. The bank of a river is the water-washed and relatively permanent elevation or acclivity at the outer line of the riverbed which separates the bed from the adjacent upland, whether hill or valley, and serves to confine the waters when they reach and wash the bank without overflowing it. *Oklahoma v. Texas*, 260 U.S. 606 (1923). It is, therefore, concluded that the call to the west bank must be taken to mean the line of ordinary high water as it existed in 1876.

In determining the location of a boundary, when the United States has not conveyed its title to the abutting lands, it may survey and resurvey what it owns and establish and reestablish boundaries. *United States v. State Investment Co.*, 264 U.S. 206 (1924). The record discloses that all the lands outside the reservation boundary in this reach are owned by the United States and are under the jurisdiction of the Department of the Interior. The lands inside the boundary are owned by the United States in trust for the Colorado River Indian Tribes. No private ownerships are involved. In 1879, W. P. Benson established a meander corner common to sections 25 and 36, T. 2 S., R. 23 E., S.B.M., at a point on the west bank of the Colorado River which also fell on the line between the highest point on Riverside Mountain and the place of beginning. In these circumstances, as a matter of administrative convenience, it may be determined that the reservation boundary can and should be reestablished as a line between the highest point of Riverside Mountain and the meander corner common to the aforesaid sections 25 and 36. This line is sustained by adequate evidence of the proper location of the boundary as described in the Executive Order of May 15, 1876.

LOCATION OF THE BOUNDARY FROM SECTION 25,
T. 2 S., R. 23 E., THROUGH SECTION 12,
T. 5 S., R. 23 E., S.B.M.

From the point where the line from Riverside Mountain intersects the bank of the river, as de-

scribed above, the second segment of the boundary should follow downstream along the bank of the river at the line of ordinary high water as it existed at the time of the issuance of the Executive Order of May 15, 1876, to the south boundary of section 12, T. 5 S., R. 23 E., S.B.M., subject to the application of the doctrine of erosion and accretion and avulsion to any intervening changes. *Oklahoma v. Texas*, *supra*.

With regard to such intervening changes, when the banks of a river change gradually and imperceptibly, the process is called erosion and accretion and a riparian owner's boundary will remain the stream. In cases where a river suddenly abandons its old bed and seeks a new course, the change is termed an avulsion and a riparian owner's boundary will become fixed and permanent along the line of the former channel. *Nebraska v. Iowa*, 143 U.S. 359 (1892).

The Executive Order of May 15, 1876, which included lands located east of the west bank of the river, would operate as to all those lands not previously disposed of by the United States, as unquestionably the President had the power to reserve the lands by Executive Order. *Sioux Tribe of Indians v. United States*, 316 U.S. 317 (1942); *United States v. Midwest Oil Co.*, 236 U.S. 459 (1915). A portion of the west half of the riverbed, however, was owned at that time by the State of California because the Colorado River has been held to be a navigable stream in the reach here under consideration. *Arizona v. California, et al.*, 283 U.S. 423 (1931). The soil beneath navigable waters was not granted by the original states under the Constitution to the United States but was reserved to the States. *Pollard v. Hagan*, 44 U.S. (3 How.) 212 (1845). Upon the admission of a new State into the Union on an equal footing it acquires all the rights of the original States which, it has been held, includes title to the lands underlying navigable waters. *Mumford v. Wardwell*, 73 U.S. (6 Wall.) 423 (1867). The extent of the ownership acquired by the States upon admission is the soil below ordinary high-water mark. *Mobile Transp. Co. v. City of Mobile*, 187 U.S. 479 (1903). Thereafter, where a navigable stream is a boundary a riparian owner's title will extend to low or high-water mark or to the center of the stream according to the law of the State in which it is situated. *Packer v. Bird*, 137 U.S. 661 (1891). The United States like any other riparian owner takes such title to submerged lands as may be conferred by State action. *Donnelly v.*

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United States, 228 U.S. 243 (1913).

In 1873, California enacted a law, now codified as Civil Code § 830, which had the effect of granting to riparian owners on nontidal navigable waters ownership of the soil to low-water mark. It therefore follows that in those areas where the United States owned the uplands, it gained title under State law to the low-water mark. 43 Cal. Ops. Atty. Gen. 291 (1964); *Crews v. Johnson*, 21 Cal. Rptr. 37 (1962). It is concluded, therefore, that at the time of issuance of the Executive Order of May 15, 1876, the United States owned the area between ordinary high-water mark and low-water mark except in those areas where it may have previously disposed of lands abutting the ordinary high-water mark. The record discloses, however, that in 1876 the United States owned all the lands abutting the west bank of the Colorado River from the above-mentioned section 25, T. 2 S., R. 23 E., south through section 12, T. 5 S., R. 23 E.

In issuing the Executive Order of May 15, 1876, the United States effectively severed that portion of the lands between the high and low-water marks by including them in the reservation, thus, effectively segregating these lands from public lands lying to the west thereof. It must be concluded that the Executive Order was effective to reserve any lands within the river then owned by the United States as such order clearly intended that the river be included in the reservation.

Thereafter, accretions forming against this shoreline to the east thereof would be lands held in trust for the Colorado River Indian Tribes in those areas where the river has moved to the east by the normal process of erosion and accretion. Similarly, in those areas where the river has moved to the west by the normal process of erosion and accretion, any accretions forming on the east side of the river are owned by the United States in trust for the Colorado River Indian Tribes.

In possible conflict with the reservation boundary, as hereinabove set out, are three tracts of school lands, these being sections 36 in Tps. 2, 3, and 4 S., R. 23 E. While the Act of Congress which granted California its school lands was passed in 1853, 10 Stat. 244, 246, title to such lands does not pass until they are surveyed. *United States v. Morrison*, 240 U.S. 192 (1916). Moreover, title to the school lands thus granted was expressly subject to reservations created prior to survey. 10 Stat. 244, 246. These three sections 36 were surveyed in 1879.

All three were fractional sections abutting the meander line run as part of the survey.

It is the general rule that a meander line is not a line of boundary but one used to delineate the sinuosity of the bank or shore as a means of ascertaining the quantity of land in a fractional lot, the boundary line being the water itself. *St. Paul and Pacific R. Co. v. Schurmeier*, 74 U.S. (7 Wall.) 272 (1869). Thus, the Department has held on numerous occasions that grants by the United States of lands shown on plats of survey as adjoining navigable waters are not limited to the meander line but extend to the water line. *Harvey M. La Follette*, 26 L.D. 453 (1898). *John J. Serry*, 27 L.D. 330 (1898). *Gleason v. Pent*, 14 L.D. 375 (1892). *Louis W. Pierce*, 18 L.D. 328 (1894). While this rule has been applied in cases involving the issuance of a patent, the certification of lands (such as school lands) is equivalent to patent and divests the Department of all jurisdiction over the lands or title thereto. *Frasher v. O'Conner*, 115 U.S. 102 (1885). *Smith v. Portage Lake and Superior Ship Canal Co.*, 11 L.D. 475 (1890). *State of California v. Boddy*, 9 L.D. 636 (1889).

Against this background, it can be expected that the State or its successors in interest might claim title to accretions to these three school sections. However, as above noted, title to these lands was expressly subject to reservations created prior to the survey thereof. Inasmuch as the Executive Order of May 15, 1876, effectively segregated the shoreline from these fractional sections 36 by including it in the reservation, it is concluded that accretions to this shoreline are lands held in trust for the Colorado River Indian Tribes and that they did not attach to the three fractional sections 36 as surveyed in 1879. For these reasons, correction surveys approved in 1964 which apportioned accretion lands to sections 36, Tps. 3 and 4 S., R. 23 E., should be suspended and the accretion surveys of these townships approved in 1962 should be reinstated in their entirety.

There are also three parcels of School Indemnity Lands in sections 1 and 12, T. 5 S., R. 23 E., selection of which was approved in 1926. All three parcels abutted the meander line as surveyed by O. P. Calloway in 1874. Congress had previously authorized Lieu Selections in California. 14 Stat. 218, 220. However, such Lieu Selections are limited to other lands of equal acreage. 26 Stat. 796. It may also be anticipated that the State or its successors in interest would claim accretions to these Indemnity

parcels. The record discloses that, at the time California made its selection of these fractional lots, substantial accretions had previously formed between the meander line abutting these parcels and the course of the river. Since California was in any event limited to lands of equal acreage in making its Lieu Selections, it cannot be said that approval of these School Indemnity Lands carried accretions which had previously formed. To hold otherwise would mean that California acquired lands in excess of that which was permitted by law. This then, is an additional reason why the accretions would not have passed with title to the fractional lots. Of course, the rationale with regard to accretions to the school sections hereinabove discussed is equally applicable to the School Indemnity Lands in that the inclusion of the shoreline in the reservation prior to disposal of the fractional lots effectively segregated such shoreline from the abutting lands which the State eventually selected.

As mentioned above, the proper location of the boundary in the reach from section 25, T. 2 S., R. 23 E., through section 12, T. 5 S., R. 23 E., is the line of ordinary high water along the west bank of the river at the time of issuance of the Executive Order of May 15, 1876, subject to application of the doctrine of erosion and accretion and avulsion. Absolute certainty as to the location of the bank in 1876 is probably not possible to achieve. However, in fixing the boundary, all that is required is such certainty as is reasonable as a practical matter, having regard to the circumstances. *Arkansas v. Tennessee*, 269 U.S. 152 (1925). The record discloses that the reach of the bank of the river from section 25, T. 2 S., R. 23 E., through T. 4 S., R. 23 E., was meandered in 1879 and that portion of the right bank in sections 1 and 12, T. 5 S., R. 23 E., was meandered in 1874. These meander lines were reestablished in a dependent resurvey made by the Bureau of Land Management in 1958.

As noted above, in 1876 the United States owned all the lands abutting the river on the west from the above-mentioned section 25, T. 2 S., R. 23 E., south through section 12, T. 5 S., R. 23 E. Also, the

record indicates the present course of the river in this reach is now along or east of its position as surveyed in 1874 and 1879, except in two insignificant respects. The record also discloses that the lands presently lying between the meander lines of 1874 and 1879 and the right bank of the river were formed by accretion. Since the bulk of the lands abutting these meander lines on the west are presently owned by the United States and those lands in non-federal ownership located to the west of the meander lines are not entitled to accretions as against the United States in any event, these meander lines may be adopted as the boundary of the reservation as a matter of administrative convenience. Only lands of the United States under the jurisdiction of the Department of the Interior are involved. Considering the nature of surveys in isolated areas and the limits of accuracy which could be achieved with equipment available nearly 100 years ago, it is concluded that these lines are adequate evidence of the proper location of the reservation boundary as they are reasonable as a practical matter, having regard to the circumstances. *Arkansas v. Tennessee, supra*.

In summary, it is concluded that in those areas where the United States has not conveyed its title to the lands abutting the reservation, it may survey and resurvey what it owns and establish and reestablish boundaries. *United States v. State Investment Co., supra*. The United States may make or correct its surveys and such are not assailable in the courts, except in a direct proceeding. *Cragin v. Powell*, 128 U.S. 691 (1888). Therefore, in the above-mentioned areas, it is concluded the determination of the reservation boundary as herein made is not subject to collateral attack. As to those areas where the lands abutting the reservation boundary are in non-federal ownership, it may be expected that litigation will be necessary to extinguish claims of others which are adverse to those of the Colorado River Indian Tribes.

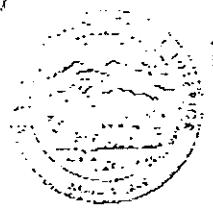
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DEPARTMENT OF INTERIOR
OFFICE OF SOLICITOR
LOS ANGELES

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

RECEIVED
JAN 23 1969

[Handwritten signatures and initials]

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EX 101

Memorandum

To: Director, Bureau of Land Management
Through: Assistant Secretary, Public Land Management

From: Secretary of the Interior

Subject: Western boundary of the Colorado River Indian Reservation from the top of Riverside Mountain, California, through section 12, T. 5 S., R. 23 E., S.B.M., California

I have this date received a memorandum from the Solicitor regarding the proper location of the boundary of the Colorado River Indian Reservation in the subject reach. A copy of his memorandum is attached. Acting upon the conclusions expressed in the memorandum, I have determined that certain surveys of record in your Bureau should be suspended and other surveys reinstated so as to correctly show the interest of the Colorado River Indian Tribes in certain lands.

The presently monumented boundary of the reservation in the reach between Riverside Mountain and the Colorado River is shown on the plat of survey for T. 2 S., R. 23 E., S.B.M., approved November 20, 1913. I have concluded that this survey did not correctly locate the boundary line in this reach because it did not conform to the call of the Executive Order of May 15, 1876, that the boundary should be a direct line from the top of Riverside Mountain, California, toward the place of beginning to the west bank of the Colorado River. I have determined that the above-mentioned plat of survey should be suspended. The proper position of the reservation boundary should be a line from the highest point on Riverside Mountain to the meander corner common to fractional sections 25 and 36, T. 2 S., R. 23 E., S.B.M., as shown on the plat of survey of this township approved May 22, 1879, and reestablished by the dependent resurvey of the same township reflected on the plat of survey accepted July 22, 1958.

I have also determined that the proper location of the reservation boundary from section 25, T. 2 S., R. 23 E., S.B.M.; through section 12, T. 5 S., R. 23 E., S.B.M., is along the meander lines shown on the plat of survey in Tps. 2, 3 and 4 S., R. 23 E., S.B.M., approved May 22, 1879, and T. 5 S., R. 23 E., S.B.M., approved December 23, 1874, all as reestablished by the dependent resurvey of these townships reflected on the plat of survey accepted July 22, 1958.

In 1961, accretion surveys of lands now lying between the aforementioned meander lines of 1874 and 1879 and the west bank of the Colorado River were undertaken in Tps. 3 and 4 S., R. 23 E., S.B.M., and T. 5 S., Rs. 23 and 24 E., S.B.M. Plats thereof were accepted on May 21, 1962. By your letter of January 27, 1964, to the State Director at Sacramento, California, you ordered that the plats of survey in Tps. 3 and 4 S., R. 23 E., S.B.M., be suspended as to the sections 36 in those townships. Thereafter, correction surveys of those sections 36 were undertaken which apportioned to them certain accretion lands. Plats of these correction surveys were accepted on October 28, 1964.

In light of the conclusion that the reservation boundary in the subject reach is along the meander lines established in 1874 and 1879, accretions to this boundary are lands of the United States held in trust for the Colorado River Indian Tribes. Thus the correction surveys, accepted October 28, 1964, apportioning accretion lands to the sections 36 are incorrect and should be suspended. Also the 1962 accretion surveys in Tps. 3 and 4 S., R. 23 E., S.B.M., should be reinstated in their entirety.

Please take such action as may be appropriate to reflect the conclusions herein stated, including suspension and reinstatement of plats. Also please note the official records accordingly so that henceforth such records will indicate the proper location of the boundary of the Colorado River Indian Reservation in the subject area.

sgd: Stewart L. Udell

Attachment

cc: Commissioner of Indian Affairs (2)
Regional Solicitor, Los Angeles (2)

IN REPLY REFER TO:

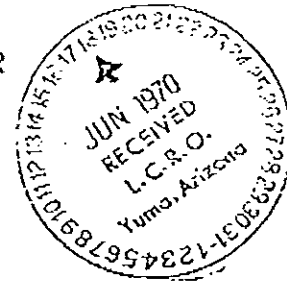


UNITED STATES DEPARTMENT OF THE INTERIOR OFFICE OF THE SOLICITOR

WASHINGTON, D.C. 20240

JUN 15 1970

Table with columns: Date, Initials, To



MAY 25, 1970

Memorandum

To: The Secretary

From: Solicitor

Subject: Request of Colorado River Indian Tribes for review of Secretarial order and Solicitor's opinion pertaining to western boundary of Colorado River Indian Reservation

On January 17, 1969, Secretary Udall issued an order by which he determined the western boundary of the Colorado River Indian Reservation from the top of Riverside Mountain, California, through section 12, T. 5 S., R. 23 E., S.B.M., California. That order referred to a memorandum of the same date to the Secretary from Solicitor Weinberg. The Colorado River Indian Tribes, by Resolution No. R-19-69, and the Commissioner of Indian Affairs have requested that:

- 1. The "Benson Line," established by the survey made by W. F. Benson and approved on May 22, 1879, be recognized and established officially and unqualifiedly as the western boundary of the Reservation to the extent it pertains to that boundary;
2. The Solicitor's memorandum of January 17, 1969, be reconsidered; and
3. The part of the January 17 order pertaining to lands lying south of T. 4 S., R. 23 E., S.B.M., California, be vacated.

On June 4, 1969, you asked us to review the Secretarial order and the Solicitor's memorandum as requested by the Tribes and the Commissioner. The following are the results of our review and our recommendations.

First, Secretary Udall's January 17, 1969 order accomplished exactly what is desired by the Tribes with respect to the "Benson Line;" it declared, officially and unqualifiedly, that the "Benson Line" is the western boundary of the Reservation. By that order, Secretary Udall:

"determined that the proper location of the reservation boundary from section 25, T. 2 S., R. 23 E., S.B.M., through section 12, T. 5 S., R. 23 E., S.B.M. is along the meander lines shown on the plats of survey in Tps. 2, 3 and 4 S., R. 23 E., S.B.M., approved May 22, 1879, and T. 5 S., R 23 E., S.B.M., approved December 23, 1874, all as established by the dependent resurvey of these townships reflected on the plats of survey accepted July 22, 1958.

The "Benson Survey," the survey of 1879, extended as far south as the line between T. 4 S. and T. 5 S., and was adopted by Secretary Udall. This order adopting the "Benson Line" was a final order of the Secretary, and its language was clear and precise, without equivocation or qualification. Accordingly, there is nothing for you to do (indeed, there is nothing more you can do) to grant the first request of the Tribes.

The second request of the Tribes, for a reconsideration of the Solicitor's memorandum, indicates their real concern. That concern stems from certain language in the memorandum suggesting that the reservation boundary may be established along certain meander lines (notably those of the 1879 Benson survey) "as a matter of administrative convenience."

We have thoroughly reviewed the January 17 memorandum and the briefs submitted by the Tribes. We do not believe, for two reasons, there is any necessity to revise or change that memorandum. First, it does not find "administrative convenience" as the only (or even the paramount) basis for establishing the "Benson Line" as the Reservation's western boundary. We read the memorandum as also stating that the proper, as distinguished from "administratively convenient," location of the western boundary is along the "Benson Line."

Second, and of controlling importance, the Secretarial order is not founded on "administrative convenience" at all, but rather is founded on the Secretary's finding that the "proper location" of the western boundary is along the "Benson Line." It is hornbook law that Secretary Udall's order, and not the Solicitor's memorandum is the controlling document and the one which must be looked to in determining whether the Reservation's western boundary was definitely and finally located in this reach of the river. Significantly, the order omitted the memorandum's "administrative convenience" language. We do not believe, therefore, that there is any basis for the Tribes' concern or any necessity to alter the Solicitor's memorandum.

With respect to the Tribes' third request, no basis has been advanced by the Tribes or the Commissioner of Indian Affairs for vacating that part of the Secretarial order pertaining to the survey of 1874 and the western boundary in T. 5 S., R. 23 E., S.B.M. Accordingly, because the order was a final determination of Secretary Udall, we recommend that you not vacate or suspend the January 17 order in the reach of the river south of Township 4 South.

The attached order to the Director, Bureau of Land Management, and letters to representatives of the Tribes are in accord with this memorandum and are for your signature.

15/

Solicitor

Attachments

Transcription

Memorandum

Jan. 17, 1969

To: Director, Bureau of Land Management
Through: Assistant Secretary, Public Land Management

From: Secretary of the Interior

Subject: Western boundary of the Colorado River Indian Reservation
from the top of Riverside Mountain, California through
section 12, T. 5 S., R. 23 E., S. B. M., California

I have this date received a memorandum from the Solicitor regarding the proper location of the boundary of the Colorado River Indian Reservation in the subject reach. A copy of his memorandum is attached. Acting upon the conclusions expressed in the memorandum, I have determined that certain surveys of record in your Bureau should be suspended and other surveys reinstated so as to correctly show the interest of the Colorado River Indian Tribes in certain lands.

The presently monumented boundary of the reservation in the reach between Riverside Mountain and the Colorado River is shown on the plat of survey for T. 2 S., R. 23 E., S. B. M., approved November 20, 1913. I have concluded that this survey did not correctly locate the boundary line in this reach because it did not conform to the call of the Executive Order of May 15, 1876, that the boundary should be a direct line from the top of Riverside Mountain, California, toward the place of beginning to the west bank of the Colorado River. I have determined that the above-mentioned plat of survey should be suspended. The proper position of the reservation boundary should be a line from the highest point on Riverside Mountain to the meander corner common to fractional sections 25 and 36, T. 2 S., R. 23 E., S. B. M., as shown on the plat of survey of this township approved May 22, 1879, and reestablished by the dependent resurvey of the same township reflected on the plat of survey accepted July 22, 1958.

I have also determined that the proper location of the reservation boundary from section 25, T. 2 S., R. 23 E., S. B. M., through section 12, T. 5 S., R. 23 E., S. B. M., is along the meander lines shown on the plats of survey in Tps. 2, 3 and 4 S., R. 23 E., S. B. M., approved May 22, 1879, and T. 5 S., R. 23 E., S. B. M., approved December 23, 1879, all as reestablished by the dependent resurvey of these townships reflected on the plats of survey accepted July 22, 1958.

In 1961, accretion surveys of lands now lying between the aforementioned meander lines of 1874 and 1879 and the west bank of the Colorado River were undertaken in Tps. 3 and 4 S., R. 23 E., S. B. M. and T. 5 S., Rs. 23 and 24 E., S. B. M. Plats thereof were accepted on May 21, 1962. By your letter of January 27, 1964, to the State Director at Sacramento, California, you ordered that the plats of survey in Tps. 3 and 4 S., R. 23 E., S. B. M., be suspended as to the sections 36 in those townships. Thereafter, correction surveys of those sections 26 were undertaken which apportioned to them certain accretion lands. Plats of these correction surveys were accepted on October 28, 1964.

In light of the conclusion that the reservation boundary in the subject reach is along the meander lines established in 1874 and 1879, accretions to this boundary are lands of the United States held in trust for the Colorado River Indian Tribes. Thus the correction surveys, accepted October 28, 1964, apportioning accretion lands to the sections 36 are incorrect and should be suspended. Also the 1962 accretion surveys in Tps. 3 and 4 S., R. 23 E., S. B. M., should be reinstated in their entirety.

Please take such action as may be appropriate to reflect the conclusions herein stated, including suspension and reinstatement of plats. Also please note the official records accordingly so that henceforth such records will indicate the proper location of the boundary of the Colorado River Indian Reservation in the subject area.

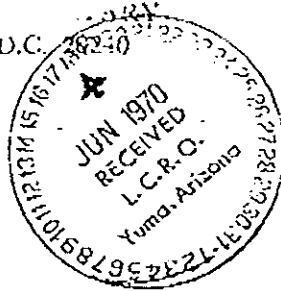
(sgd) Stewart L. Udall

Attachment

cc: Commissioner of Indian Affairs (2)
Regional Solicitor, Los Angeles (2)

SECRET

WASHINGTON, D.C.



Dear Mr. Fisher:

In response to Resolution No. R-19-69 of the Colorado River Indian Tribes, I requested the Solicitor to review Secretary Udall's January 17, 1969 order concerning the western boundary of the Colorado River Indian Reservation and the memorandum of that date by Solicitor Weinberg. The Solicitor has done so, and I am enclosing for your information a copy of his memorandum to me.

Secretary Udall's order was a final, official and unqualified declaration that the "Benson Line" was the proper location of the western boundary of the Reservation in the area referred to in the Tribes' resolution. Because that order was final, official and unqualified, there is nothing more for me to do to establish the "Benson Line" as the reservation's western boundary.

Secretary Udall also thoroughly considered the Reservation's western boundary in T. 5 S., R. 23 E., S.B.M. California, and the boundary in this area similarly was final, official and unqualified. For this reason, I do not believe vacating part of Secretary Udall's order as you request would be proper.

I am sending a copy of this letter and of the Solicitor's memorandum to me to the Tribes' counsel, Mr. Frederic L. Kirgis.

Please convey my best wishes to all the members of the Colorado River Indian Tribes.

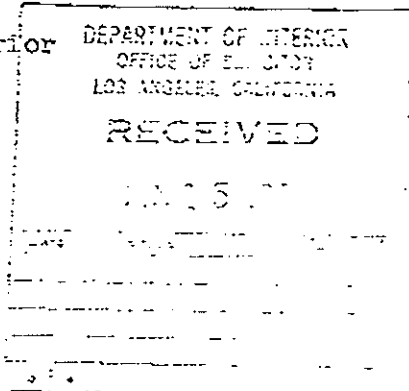
Sincerely yours,

Walter D. Hickel

Secretary of the Interior

Enclosures

Mr. Adrian Fisher, Sr.
 Chairman, Colorado River Indian Tribes
 Colorado River Indian Reservation
 Route 1, Box 23-B
 Parker, Arizona 85344





United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



6/2/70

Memorandum

To: Director, BLM
Through: Assistant Secretary-Public Land Management

From: Secretary of the Interior

Subject: Suspension of Secretary's Order of January 17 and Solicitor's memorandum of the same date respecting: Western boundary of the Colorado River Indian Reservation from the top of Riverside Mountain, California, through section 12, T. 5 S., R. 23 E., S.B.M., California

Because the order of Secretary Udall, dated January 17, 1969, concerning the western boundary of the Colorado River Indian Reservation is a final and definite order, action pursuant to that order should no longer be suspended. Accordingly the instructions set forth in my June 4, 1969, memorandum to you are revoked.

Walter J. Hickel
Secretary

DEPARTMENT OF INTERIOR
OFFICE OF SECRETARY
103 ANNEX, WASHINGTON

RECEIVED

JUN 15 1970

Date _____

(b) New commercially available automatic data processing equipment (ADPE) does not generally qualify as a facility to be furnished by the Government.

(c) The Senior ADPE policy official of the Department of the Army from whom approval shall be obtained pursuant to § 13.301(h) (2) of this title is the Assistant Secretary of the Army (Financial Management).

(d) Requests for approval for acquisition of ADPE to be acquired on a non-competitive basis shall be forwarded to the Assistant Secretary of Defense (Comptroller) through the Office, Assistant Vice Chief of Staff, Department of the Army, Attention: CSAVCS-M, and shall include the justification specified in § 15.205-48(d) of this title.

§ 603.302 Securing approval for facilities projects.

(b) PEMA and R&D financed facilities projects involving expenditures of less than \$1 million shall be approved in accordance with AR 37-120 and AR 700-90.

PART 606—PROCUREMENT FORMS

11. Section 606.551 is revised as follows:

§ 606.551 Commercial warehousing and related services for household goods.

(a) DD Form 1162, Basic Agreement for Storage of Household Goods and Related Services, shall be used in accordance with instructions in Chapter 10, AR 55-356.

(b) DD Form 1164, Service Order for Household Goods, shall be used to place orders under Basic Agreements in accordance with instructions in Chapter 10, AR 55-356 (see also §§ 591.452-1 and 597.1651 of this chapter).

PART 608—PROCUREMENT OF CONSTRUCTION AND CONTRACTING FOR ARCHITECT-ENGINEER SERVICES

-12. Sections 608.508-1 and 608.508-2 are revised, as follows:

§ 608.508-1 Nonavailability in the United States.

Letter requests for Secretarial approval shall contain the information required by § 596.103-2(c) or § 596.805-2 (a), as applicable and shall be forwarded through the cognizant head of procuring activity to the addressee in § 591.150(b) (6) of this chapter.

§ 608.508-2 Unreasonable costs or impracticability.

Letter requests for Secretarial approval shall contain the information required by § 18.509-3 of this title and § 596.805-2(a) of this chapter when applicable and shall be forwarded through the cognizant head of procuring activity to the addressee in § 591.150(b) (6) of this chapter.

[REV. 4, APP. SEPT. 1, 1970] (Secs. 2301-2314, 3012, 70A Stat. 127-133, 157; 10 U.S.C. 2301-2314, 3012)

For the Adjutant General,

R. B. BELNAP,
Special Advisor to TAG.

[F.R. Doc. 70-15825; Filed, Nov. 24, 1970; 8:46 a.m.]

Title 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

SUBCHAPTER L—LEASING AND PERMITTING

PART 131—LEASING AND PERMITTING

Certain California Lands Determined To Be Within Colorado River Reservation

NOVEMBER 12, 1970.

This notice is published in the exercise of rule making authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2. The authority to issue regulations is vested in the Secretary of the Interior by sections 161, 463, and 465 of the Revised Statutes (5 U.S.C. 301; 25 U.S.C. 2 and 9).

The following amendment is made to Title 25—Indians, Part 131 to extend the application of this Part 131 to those lands which the Secretary of the Interior has determined, pursuant to the Act of April 30, 1964 (78 Stat. 188), to be within the Colorado River Reservation. The additional lands to which this Part 131 is extended are described as lying west of the present course of the Colorado River and south of sec. 25 of T. 2 S., R. 23 E., to the south line of sec. 12 of T. 5 S., R. 23 E., San Bernardino base and meridian in California. Since the Secretary of the Interior did, on January 17, 1969, make the determination that the above-described lands are within the Colorado River Reservation, which determination was again recognized by the Secretary of the Interior on June 2, 1970, and since the Act of April 30, 1964 (78 Stat. 188), provides that when any of the lands in California are determined to be within the reservation they shall be subject to the provisions of said act, advance notice and public procedure thereon are impracticable and unnecessary and are, therefore, dispensed with under the exceptions provided in section (d) (3) of 5 U.S.C. 553 (Supp. III, 1965-67). Accordingly, the amendment will become effective upon publication in the FEDERAL REGISTER.

Section 131.18 is amended by deleting from the first proviso the words, "section 25 of Township 2 South" and substituting therefor, "section 12 of Township 5 South." As so amended the first proviso of § 131.18 reads as follows:

§ 131.18 Colorado River Reservation.

* * * *Provided, however,* That application of this Part 131 shall not extend to any lands lying west of the present

course of the Colorado River and south of sec. 12 of T. 5 S., R. 23 E., 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; * * *

LOUIS R. BRUCE,
Commissioner.

[F.R. Doc. 70-15843; Filed, Nov. 24, 1970; 8:47 a.m.]

Title 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

SUBCHAPTER G—PREVENTION, CONTROL, AND ABATEMENT OF AIR POLLUTION

PART 81—AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES

Metropolitan Fort Smith Interstate Air Quality Control Region

On May 20, 1970, notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 7740) to amend Part 81 by designating the Fort Smith (Arkansas)—Muskogee (Oklahoma) Interstate Air Quality Control Region, hereafter referred to as the Metropolitan Fort Smith Interstate Air Quality Control Region.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments, and a consultation with appropriate State and local authorities pursuant to section 107(a) of the Clean Air Act (42 U.S.C. 1857c-2(a)) was held on July 7, 1970. Due consideration has been given to all relevant material presented with the result that Haskell, Latimer, McIntosh, Muskogee, Okmulgee, and Pittsburg Counties, in the State of Oklahoma, have been deleted from the region; Adair and Cherokee Counties, in the State of Oklahoma, have been added to the region; and the name has been changed to the Metropolitan Fort Smith Interstate Air Quality Control Region.

In consideration of the foregoing and in accordance with the statement in the notice of proposed rule making, section 81.63, as set forth below, designating the Metropolitan Fort Smith Interstate Air Quality Control Region, is adopted effective on publication.

§ 81.63 Metropolitan Fort Smith Interstate Air Quality Control Region.

The Metropolitan Fort Smith Interstate Air Quality Control Region (Arkansas-Oklahoma) consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):