# *Stand Up For California!*

**"Citizens making a difference"**
**www.standupca.org**

**P.O. Box 355**
Penryn, CA 95663

October 14, 2008

Riverside County Board of Supervisors
County Administrative Center
4080 Lemon Street -4th Floor
Riverside, California 92501

**RE: Colorado River Indian Tribes – "Disputed Area"**
**Impacting the authority, jurisdiction, civil and legal obligations of Riverside County**

Dear Chairman Wilson and Honorable Members of the Riverside County Board of Supervisors:

Riverside County is home to 10 tribal governments, second only to San Diego County with 17 tribal governments and two additional tribal groups seeking federal recognition. Riverside County better than most, recognizes that tribal governments in California are aspiring to expand their economic bases, expand their land bases and increase their jurisdiction, this is understandable. New development often requires County services and intergovernmental cooperation with Tribes. Some of the Riverside County Tribes have recognized the need to develop meaningful agreements, which pay for the costs of County or City services and share in a decision process over smart growth and development. This is progress.

However, some Tribes are abusing authority and jurisdiction and asserting tribal sovereignty beyond its legitimate scope. *Stand Up For California!* writes today to alert Riverside County to the aggressive actions of the Colorado River Indian Tribes ("CRIT") which interfere with the authority, jurisdiction, civil and legal obligations of Riverside County. Because of our association with *Colorado River Resident for Justice,* our organization has identified some areas of concern and suggestions for future actions the County may wish to consider.

## <u>Areas of Concern and Suggested Actions:</u>

*Stand Up For California!* urges you to consult with the California Department of Justice regarding this 'Arizona Tribe' and its lack of jurisdiction in California. Moreover, *Stand Up For California!* urges your Board to consider seeking special outside legal counsel in this matter because (1) The County may be in non-compliance of the California Environmental Quality Act (CEQA) due to a policy of delegating issuance of building permits, conducting building inspections and control over the ability of the residents to obtain electrical service in the 'disputed area', (2) The County may find they need the State or State Agency assistance in the collection of past due and current possessory and sales taxes amounting to millions upon millions of dollars from the CRIT and (3) The CRIT may be in material breach of the Settlement agreement signed January 1999, as part of a Stipulation and Agreement in the Third *Arizona v.*

*California* United States Supreme Court Case. This breach may provide an opportunity to the County of Riverside in the collection of back taxes and enforcement of its authority over the disputed area.

The residents along the Colorado River residing in the County of Riverside depend upon local government to protect their civil and property rights. Clearly, a well researched County is well armed and can be very effective in developing solutions. We hope that you will give the above concerns, suggestions and the following discussion your thoughtful and serious consideration.

## Discussion

### I: County Non-Compliance of CEQA:

City and County governments are obligated to adhere to the California Environmental Quality Act whenever approving projects for construction or issuing permits. It appears that Riverside County may be in non-compliance with the California Environmental Quality Act. It appears Riverside County has allowed CRIT to have authority over the issuance of building permits, conduct building inspections and control the ability of County residents to obtain electrical service. This County policy is contrary to the United States Supreme Court ruling restricting CRIT from engaging in leasing and other commercial activities in the disputed area. It would be in the County's best interests to review the genesis of this policy and its political and legal context.

It should be noted that recent Memoranda of Understanding between Tribes, Cities and Counties when CEQA was not adhered to by the local governments, have resulted in judicial invalidation. (*Citizens to Enforce CEQA vs. City of Hesperia, No Casino in Plymouth vs. City of Plymouth, Amador County vs. City of Plymouth and Citizens for Local Gov't Accountability vs. Palm Springs RDA*: Settlement Payment, *Parchester Village vs. City of Richmond and East Bay Regional Park District and citizens for East Shore Parks vs. City of Richmond: Settlement Agreement Brokered by AG. Lockyer*[1])

### II: Taxation in "Disputed Area":

Riverside County has a noteworthy amount of Indian lands held in varying types of land status. Riverside County Tribes have reservation patents, individual allotment lands in trust and in fee, trust allotments that have transferred back to fee lands and been sold to non-Indians, then sold to Indians and transferred back to trust, and some Tribes in recent time have consolidated allotment lands in trust in the name of the tribal government. **Important to Riverside County are tribal lands held in "fee" by individual Indians or a tribal government. As a matter of settled law, these lands must comply with local ordinances, regulations and state laws, and specifically taxation.**

Federal lands, such as lands in the name of the Bureau of Land Management are "public domain lands", these lands may be exempt from property tax but businesses developed on federal land, are subject to California income tax, possessory and sales tax. CRIT receives millions of dollars

[1] Proposed Casino Settlement, Henry K. Lee, 1-21-06, SF Chronicle

of lease revenue from property in the "disputed area" and pays no California income taxes. CRIT does not bear any of the costs for municipal services. The County of Riverside pays for law enforcement, fire and emergency services for citizens in the "disputed area" and CRIT pays no part of these costs.[2] With millions of dollars of sales taxes, income taxes and other fees at stake, the County must adopt a policy that reflects the State's consistent position on this land. California taxpayers, particularly those in Riverside County, are entitled to clear and well-defined written policy based on controlling legal authority and consistently enforced.

Are the lands in the "disputed area" part of the CRIT Reservation? In all three *Arizona v. California* Supreme Court cases the State of California asserted that the disputed land was not part of the CRIT Reservation. The California Attorney General also opined that this land was not in the CRIT Reservation. (*See* – Attorney General's Opinion Number 63-90, November 18, 1963. *See also – U. S. v. Aranson*, 696 F. 2d 654 (9th Cir.) cert. denied 464 U. S. 982 (1983).

The Stipulation filed with the Settlement Agreement makes clear that the CRIT Tribal Court jurisdiction cannot extend to land that has not been determined to be *"within the boundary"* of the CRIT Reservation. If there is no Court jurisdiction, it follows that there is no police powers or taxation; there is no tribal governance over the lands. (*See attachments* – memorandum in Support of Joint Motion to Recommend Approval of Stipulation and Agreement, and the Stipulation and Agreement)

***For further review please see:***
**Tribal sovereignty does not exempt a tribe from tax on non-trust lands.**

- Clearly, the authority of state or local government to impose property taxes on property of nonmembers situated on tribal lands, i.e., within a reservation, under *Utah & Northern Railway v. Fisher*, 116 U.S. 28 (1885) and *Thomas v. Gay*, 169 U.S. 264 (1898).

- As for Indians on fee-patented lands located within the boundaries of a reservation, the Supreme Court in *County of Yakima v. Confederated Tribes and Bands of Yakima Indian Nation*, 502 U.S. 251 (1992), said states and local governments may assess property taxes on those lands. This is for trust allotments that have passed out of restrictive status into fee.

- In *Cass County v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103 (1998), the Court went further and said the above rule applies even if the Tribe re-acquires the parcel in fee that has passed out of allotment or trust status. As long as the Tribe owns it in fee, it is taxable by the state or local governments as real property. Of course, once the Tribe has the re-acquired lands placed back into trust under 25 U.S.C. sec. 465, they will be exempt from real estate taxes.

[2] Payments in Lieu of Taxes (PILT) are federal payments to the local governments that help offset losses in property taxes due to nontaxable federal lands within their boundaries. (Public Law 94-565, dated 10-20-1976, Amended PL 97-258, Sept. 13, 1982) In 2007, Riverside County received $1,907,243 PILT, 2008 is not yet available.

**III: Material breach of the Settlement agreement signed January 1999, as part of a Stipulation and Agreement in the Third *Arizona v. California* United States Supreme Court Case:**

Leases issued by the CRIT on Federal fee land may not conform to the California Evidence Code section 622 or the Federal Uniform Rules of Evidence Act. It is imperative that the lease agreement contain recitals that are in fact true, and include statements of the 1999 Settlement Agreement as well as the limits of the CRIT jurisdiction and governance over non-Indian citizens and County lands. Instead, leases have been issued that clearly overstate the CRIT authority.

**Evidencing further disregard by CRIT of the Settlement Agreement that was signed by Chairman Eddy, the Tribe has recently announced the proposed development of a law enforcement sub-station on California lands. Until the issues of the land disputes are satisfactorily resolved, this appears to be an assertion of tribal governance beyond its legitimate scope and if supported by the Bureau of Indian Affairs, federal interference with the sovereignty of the State of California.**

Without a doubt, this announcement should be of great import to County government, the County Sheriff, and the District Attorney of Riverside. The management of lands and economic growth under the governance of Riverside County is not insignificant or a responsibility without consequences. Further, the County is responsible for protecting property and civil rights and ensuring the health, safety and welfare of California residents residing along the Colorado River who are the County's constituents.

**In Conclusion:**

California participated as a defendant in the first *Arizona v. California* case 373 U.S. 546 decided June 3, 1963 (Arizona I) and in subsequent sequels to the case, Arizona II (465 US 605, 1983) and Arizona III (531 US 1, 2000). **In 48 years, after extensive litigation and expending millions of dollars of taxpayer money, California has not swayed in its position that an Act of Congress is necessary to create a reservation in California.** Tribes may be able to acquire new trust lands through a fee-to-trust process which provides public notification and opportunity of comment from affected jurisdictions. But the creation of a reservation can only be accomplished with an Act of Congress. To date, there is NO Congressional Act that has ever included the "disputed area" in the CRIT Reservation.

There is no question about the position of the State of California on the location of the boundary of the CRIT Reservation. However, there does seem to be a question about the position of Riverside County regarding these lands. This issue deserves more than a cursory investigation as it drastically affects the quality of life of County residents and millions upon millions of dollars owed in County services and State income tax.

Accordingly, we are supplying you with the accompanying information and urge you to interact with the California Department of Justice pursing further information on this subject. Again, you may also wish to consider hiring an outside legal counsel with a specialty in Indian Law and

Land Law to help sort through federal issues impacting the authority and jurisdiction of the County of Riverside to *clarify the limits* of CRIT authority and jurisdiction.

Please do not hesitate to contact us for further information. In our immediate safekeeping are federal documents and research through the Bureau of Land Management on the "disputed area" that we are most willing to share with you.

Sincerely,

Cheryl Schmit – Director
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Attachments:

Prior Letters and their attachments

CC:

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Honorable Jerry Brown, Attorney General of California

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