

West Bank Homeowners Association

Disputed Lands Adjacent to the Colorado River Indian Tribes Reservation

Legal Treatment and Law Enforcement Guideline

September 2003

1) Background Information

The West Bank Homeowners Association represents approximately 650 families who live on a full or part time basis along a 17 mile stretch of the bank of the Colorado River in California. This land is the subject of a boundary dispute spanning over 40 years. The Colorado River Indian Tribes (CRIT) contends that the 17 miles of disputed property is part of reservation land, whereas West Bank residents contend that the property on which they reside is located outside and west of the reservation's legal boundary.

The relationship between CRIT and West Bank appears best described as one of landlord-tenant. For many years West Bank residents legally occupied the disputed property under valid use permits issued by CRIT and/or the Secretary of the Interior, expressly allowing West Bank residents to occupy and enjoy their particular properties. Although CRIT apparently believes that many West Bank residents are in violation of their permits, CRIT has made no known effort to pursue any legal unlawful detainer action against any of the individuals currently residing within the disputed property.

2) Red Rooster Trailer Park

In November 2000, CRIT purported to evict the residents of the Red Rooster Trailer Park in the 17 mile stretch. Red Rooster was a trailer park managed by Bill Booth, a full-time resident and long term occupant within the disputed property. Several years ago CRIT and/or the federal government obtained a judgment for ejection against Mr. Booth, who nonetheless continued to occupy and manage the trailer park. Eventually, the CRIT police department and the Riverside County Sheriff's Department (RCSA) permanently removed Mr. Booth from his residence at Red Rooster.

In late October of 2000, CRIT took steps to permanently remove the remaining residents of the Red Rooster park, including some individuals who had used the site for more than 30 years. CRIT began the process by posting 7-day notices to vacate on resident trailers, notices which stated the residents were all **trespassing**. CRIT never obtained a court order (from either tribal court or federal court) to legally support this eviction action. After the time period elapsed, CRIT entered onto the Red Rooster property, deemed the residents to be criminal trespassers and contacted the RCSA. Upon RCSA's arrival CRIT informed police personnel that CRIT wanted permanent removal of any residents that did not leave voluntarily, and, if necessary, CRIT would make a citizen's arrest for criminal trespass.

Many Red Rooster individuals feared that they would be arrested by RCSA if they did not immediately vacate their residences. This fear resulted in Red Rooster being quickly vacated by its residents. Unfortunately, some residents had insufficient time to remove most of their personal property, including trailers, furniture, and other personal effects. CRIT blocked access to the site soon after the residents vacated, and CRIT may have burned much of the abandoned property.

3. Current Situation

West Bank residents fear that CRIT will soon attempt to evict West Bank residents from the disputed property without legal process, as it did at Red Rooster. Under California Law, however, it is illegal for CRIT to evict West Bank residents from the property without a valid court order, even assuming the true ownership of the property remains in dispute. If such an illegal eviction were attempted, CRIT would likely assert that West Bank residents are committing criminal trespass by not leaving, and threaten to make a citizen's arrest of residents that do not immediately vacate. Under California law West Bank's members cannot be guilty of criminal trespass.

Penal Code Section 602(1), concerning criminal trespass by an individual, provides that one is guilty of criminal trespass when:

Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands.

It appears that West Bank residents took possession of their property under a tenancy and cannot be deemed criminal trespassers under the meaning of Penal Code Section 602(1). A violation of this provision requires that the individual both enter and occupy real property or structures **without the consent** of the owner. As explained by a California court:

It is not a violation of Penal Code section 602, subdivision (1) to enter private property without consent unless such entry is followed by occupation thereof without consent. **Nor is it a violation to occupy without consent if the entry be made with consent.** People v. Wilkinson (1967) 248 Cal.App.2d Supp. 906, 909-910 (emphasis added)

Since most if not all of the West Bank residents originally came into possession of the property with the express permission of CRIT, it follows that they cannot be considered criminal trespassers under the meaning of Penal Code Section 602(1).

Moreover, even if the property owner withdraws consent, that alone cannot create a criminal trespass. In People v. Brown (1965) 236 Cal.App.2d Supp. 915, the court, in concluding that criminal trespass requires both the entry and occupancy be without the consent of the owner, addressed the consent withdraw argument and stated:

Respondent argues that section 602, subdivision (1) is applicable where entry of a building was with the consent of the owner if the owner later withdraws his consent, and that following that withdrawal a person on the premises may become a trespasser. The cases cited for the proposition that an invitation may be withdrawn at any time...**are both civil cases, and do not involve the issue of criminal trespass.** People v. Brown (1965) 236 Cal.App.2d Supp. 915, 920 (emphasis added).

Since West Bank residents originally entered the property with express consent, failing to vacate the property at CRIT's request does not violate Penal Code Section 602(1), at least until CRIT obtains a valid court order. As the West Bank residents are not criminal trespassers within the meaning of Penal Code Section 602(1), CRIT cannot legally make a citizen's arrest of a non-complying resident.

Further, it appears that the RCSD cannot legally effectuate a citizen's arrest purportedly made by CRIT for trespass. Assuming that West Bank residents are in violation of their permit agreements, they are no more than hold-over tenants and subject only to civil remedies. An arrest of hold-over tenants would violate the Fourth Amendment as an arrest without probable cause. Probable cause for arrest exists when the facts known to the arresting officer would lead a man of ordinary care and prudence to believe and conscientiously entertain an honest and strong suspicion that the person is guilty of a crime.@ People v. Adams (1985) 175 Cal.App.3d 855, 861. Since a hold-over tenancy is not a crime, RCSD could not have a strong suspicion that West Bank residents are guilty of a criminal act for failing to vacate the premises without a valid court order.

RCSD therefore should not arrest, or threaten to arrest, West Bank residents for criminal trespass if CRIT attempts a citizen's arrest similar to the manner that took place at Red Rooster Trailer Park. Instead, the RCSD personnel should inform CRIT representatives that a citizen's arrest is not appropriate in this

situation and that CRIT should pursue standard civil remedies to legally evict West Bank residents from the disputed property.

4) Attorney General Opinion

In 1997, the California Attorney General issued an opinion under similar facts. In that opinion the Chemehuevi Indian Tribe adopted an ordinance that made it unlawful for any person to enter upon the reservation land if excluded by the Tribal Council. Among other issues, the Attorney General was asked if a violation of the exclusion order was a misdemeanor under Penal Code Section 602.

The Attorney General determined that the violation of the exclusion order would not constitute a misdemeanor under the terms of Penal Code Section 602(1). Under Public Law 280, Congress expressly granted California broad criminal jurisdiction over offenses committed by or against Indians within all Indian country within the State. Accordingly, California's criminal statutes apply to Indian reservations in the state, and tribal code provisions do not constitute the criminal law of the state and have no force and effect in California. Furthermore, such tribal code provisions are not enforceable by a county sheriff either within or without the reservation. 80 Ops. Cal. Atty. Gen. 46, 6.

5) Nevada v. Hicks

Nevada v. Hicks (2001) 121 S.Ct. 2304, a case decided by the United States Supreme Court on June 25, 2001, appears to have a significant impact on CRIT tribal court jurisdiction over West Bank residents, especially in the event that CRIT relies on a tribal court order in an attempt to evict West Bank residents. In essence, it undercuts the legal ability of CRIT's tribal court to issue eviction orders against the West Bank residents.

The issue in Hicks was whether state sovereign immunity barred tribal court jurisdiction over actions alleging tribal-law claims and civil rights claims against state officials. On two occasions, Nevada wardens seized mounted bighorn sheep heads from the reservation residence of a tribal member pursuant to a state-issued search warrant contingent upon tribal court approval. The state officials seized the bighorn heads wrongfully, and returned them to Hicks in damaged condition.

Hicks, a tribal member, sued the wardens under the Indian Civil Rights Act in tribal court. Nevada argued that it was immune from suit in tribal court, and, with the tribal court suit pending, Nevada filed an action in federal court against the tribal court for declaratory and injunctive relief, seeking again to assert its sovereign immunity. The federal court held that the tribal court had subject matter jurisdiction over Hick's claims against the nonmember wardens. The Supreme Court disagreed.

As to the sovereign immunity issue, the Supreme Court held that the tribal court did not have jurisdiction to adjudicate the wardens' alleged tortious conduct in executing a search warrant for an off-reservation crime. Furthermore the fact that Hicks resided on tribal land did not automatically confer tribal court jurisdiction over nonmember conduct on that land. As the Court stated, [t]he land's ownership status is only one factor to be considered, and while that factor may sometimes be dispositive, **tribal ownership is not alone enough to support regulatory jurisdiction over nonmembers.** @ Id. at 2310 (emphasis added).

More importantly, and in regards to the jurisdictional reach of tribal courts over nonmembers, the Supreme Court stated [t]ribal courts, it should be clear, cannot be courts of general jurisdiction in this sense, for a tribe's inherent adjudicative jurisdiction over nonmembers is at most only as broad as its legislative jurisdiction. @ Id. at 2314. In other words, absent a federal law providing tribal-court jurisdiction over a particular cause of action, tribal courts lack jurisdiction to adjudicate such claims.

The Hicks case seems to provide a significant limitation of tribal court jurisdiction over nonmembers. In the context of the West Bank/CRIT dispute, it follows that a tribal court order purporting to evict individual West Bank residents would likely be invalid on its face. Therefore, RCSD should not attempt to enforce a tribal court order that in any way limits the property rights of West Bank residents.

6) Conclusion

In summary, although RCSD should continue to keep the peace and enforce all criminal laws at the disputed property, RCSD does not have the legal authority to arrest, or effectuate a citizen's arrest, of West Bank residents for criminal trespass if evicted by CRIT without legal process. An arrest of West Bank residents under this situation is tantamount to RCSD participating in an illegal eviction and would not only severely impact West Bank property interests and violate Fourth and Fifth Amendment rights, but would also result in CRIT dominion and control, and possibly ultimate destruction, of much of West Bank residents' personal property.