West Bank Homeowners Association

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November 23, 2004

Honorable Mary Bono
44th District, California
707 Tahquitz Canyon Way Ste 9
Palm Springs, CA 92262

RE: Colorado River Disputed Area
Office of the Inspector General
Letter of Oct 19, 2004

Dear Representative Bono:

We would like to thank you once again for your support and assistance with issues concerning our membership. Anne Bryant has been most helpful. In particular we wish to thank you for making a request to the Dept of the Interior's Office of the Inspector General on our behalf.

From the letter of response referenced above, the Inspector General (IG) has unfortunately missed the point and then obfuscated the facts. Perhaps we did not fully understand the role of the IG, or we presented our case in a manner in which the IG could not assist. This letter will attempt to clarify our position in that context. We will also address factual inaccuracies in the IG's letter regarding the AZ v CA settlement.

It is our contention that the 1969 Secretarial Order that transferred the lands in question to the Colorado River Indian Tribes (CRIT) was an **abuse of the Secretary's authority**. Besides violating the U.S. Constitution, Article IV, Section 3, Clause 2, the Secretarial Order violates laws passed in 1919 and 1927 that reserved to **Congress alone** the authority to establish and modify reservation boundaries (43 U.S.C. Section 150 and 25 U.S.C. Section 398d). In addition, by the Act of April 30,1964 78 Stat. 188, Congress expressly prohibited the Interior Secretary from making these specific lands part of the CRIT Reservation.

The Dept of the Interior, through the Bureau of Indian Affairs (BIA), now argues that the 1969 Order did not change the Reservation boundary but merely reaffirmed where it had always been. But Special Master Frank McGarr, specifically appointed by the Supreme Court to determine the location of the CRIT boundary, clearly showed they were wrong. **We contend that the 1969 Secretarial Order was a deliberate attempt to circumvent the will of Congress.**

In the 8 years prior to the 1969 Order, the residents negotiated and litigated with the Federal and State governments over ownership of this land. Congress even passed a bill granting title to some residents, but President Johnson vetoed it. In all that time never once was it ever intimated, suggested, or proposed that it was Tribal land. Then suddenly, as one of Secretary Stewart Udall's last acts before leaving office, he decreed it to be part of the CRIT Reservation. What was his reasoning? Where are the departmental notes and memos detailing the justification for this decision? Was there any undue or improper influence put upon Secretary Udall? These are only some of the questions we have that seem most appropriate for the Inspector General to consider.

FACTUAL INACCURACIES in the INSPECTOR GENERAL'S LETTER

1. **<u>The IG falsely implies that the boundary issue was settled in AZ v. CA</u>:**

   "*When the parties reached a proposed settlement concerning CRIT's water rights and the Supreme Court accepted it (upon the recommendation of Special Master McGarr),* ***this effectively put an end to the boundary issue*** *because the parties agreed not to adjudicate the boundary location.*"

   What is particularly insidious about the IG's statement above is the implication that the boundary dispute was somehow settled in the case. However, even a casual reading of the Settlement clearly shows quite the opposite. The Settlement recognizes the boundary dispute and clearly indicates that the matter is being deferred:

   > *"C. <u>Disputed Boundary</u>. The parties agree not to seek adjudication in this phase of the litigation of the validity, correctness, or propriety of the January 17, 1969 Order of the Secretary of the Interior…"*

The ***Memorandum in Support of Joint Motion to Recommend Approval of Stipulation and Agreement*** is even more telling on the issue. Excerpts below:

> ***I. <u>BACKGROUND</u>***
>
> *.. the settling parties have agreed on a settlement of the matter that resolves the water rights issues that are before the Master. See Stipulation and Agreement ("Agreement"). Except as between the United States and the Tribes, the issue of* ***the question of the proper location of the Reservation boundary is not addressed by the Agreement****. Likewise, the Agreement does not address the ownership of the west half of the bed of the Colorado River. The parties reserve all arguments regarding such matters. The Agreement is submitted to the Master for his review in order that he include a recommendation for its approval in his report to the Court. The settling parties anticipate that* ***the West Bank Homeowners Association****, which unsuccessfully sought to intervene in the litigation, may attempt to object to the Agreement.*
>
> ***II. <u>THE NATURE OF THE AGREEMENT</u>***
>
> ***….****3. The settling parties* ***reserve their respective positions with regard to the location of the Reservation boundary*** *and title to the west half of the bed of the Colorado River.*
>
> ***III. <u>CONCLUSION</u>***
>
> *The settling parties have worked diligently to resolve the* ***water rights issues*** *in this litigation. In resolving those issues, the settling parties have* ***carefully avoided the peripheral issues****. The Agreement is an appropriate resolution of the water rights issues presented in this dispute and should be approved.*

The Settlement Agreement certainly did not "*effectively put an end to the boundary issue*" as the Inspector General contends.

2. **<u>The Inspector General is even more dishonest in this statement</u>:**

   "The Stipulation and Settlement Agreement, which was signed by the United States and CRIT, states that lands described in the January 17, 1969, Solicitor's Opinion are part of

the Colorado River Indian Reservation and are held in trust by the United States for the CRIT."

The Settlement does not state that lands are part of the reservation. It states, *"The United States and the Tribes,* ***but not the other parties to this Stipulation and Agreement****, agree that the lands described in the 1969 Secretarial Order, are included within the Reservation…"*

The remainder of the paragraph reads: *"The state of California disagrees, and expressly reserves the right to challenge the validity, correctness, and propriety of the 1969 Secretarial Order. The United States and the Tribes reserve any and all defenses they may have, including, but not limited to, exhaustion of administrative remedies and lack of subject matter jurisdiction, in the* ***event the 1969 Secretarial Order is challenged****."*

The statement above from the Inspector General is factually inaccurate. The Settlement does not state that lands are part of the reservation. The Settlement obviously recognizes a boundary dispute.

We expect the dishonesty at the Dept of the Interior to continue as it has for decades. The Bureau of Indian Affairs, the Office of the Solicitor, and the Office of the Inspector General are all in lock step repressing efforts to expose the abuse of power by then Secretary Udall, and defending the 1969 Secretarial Order, an order which is in clear violation of U.S. and Congressional laws. However, we are hopeful that someday someone in the federal government will correct the action by Secretary Udall, and show the Dept of the Interior that they will not be allowed to circumvent the will of Congress.

Any efforts on your part to help in this regard will be sincerely appreciated by our membership.

Sincerely,

Roger L. French
President