West Bank Homeowners Association

P. O. Box 970 Blythe, California 92226 TEL: (760) 921-3339 email: westbank@cox.net

August 1, 2010

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

RE: Colorado River Disputed Area
DoJ letter of June 16, 2008

Dear Congresswoman Mack:

I have recently become aware of a letter addressed to both you and Congressman Dreier from the U.S. Department of Justice concerning your request to provide clarification of a portion of the western boundary of the Colorado River Indian Tribes (CRIT) reservation. The West Bank Homeowners Association (WBHA) is cited in the letter correctly as one of the affected parties in this dispute. The determination included in the DoJ letter remains consistent with the position asserted by the Department of the Interior since the infamous '69 Secretarial Order. However, there are gross deceptions and distortion of facts that I would like to address here.

The single most offensive factual distortion in the letter is the contention that the '69 Secretarial Order established a meander line western boundary for the full 25 miles of "west bank" from Riverside Mountain to the La Paz Arroyo. The fact is that Secretary Udall only used the Benson Survey for the northern 2/3 of the western boundary. The southern 1/3 (8 miles) is not the meander line, not the Benson Survey, but riparian according to the Dept. of the Interior. The reason for this deception is explained below.

The second most offensive deception: while the DoJ reiterates the position of the U.S. in its quote from the AZ v CA 1999 stipulation, they purposely omitted the phrase "but not the other parties to this Stipulation and Agreement". They also chose not to include the next sentence:

> **"The State of California disagrees, and expressly reserves the right to challenge the validity, correctness, and propriety of the 1969 Secretarial Order."**

Also offensive is that the DoJ refuses to recognize that in all three decisions rendered in the ***AZ v CA*** series, the U.S. Supreme Court ruled that for the purpose of water rights, the boundary was found to be riparian for the entire length of the western boundary defined in the 1876 Executive Order. The tribes received **no water rights for the disputed area** as a result.

The DoJ continues to avoid the most important element of this argument, the one that clearly shows the corruption within the Department of the Interior: The ***Aranson*** case.

In ***Arizona I***, the tribes received water rights for California lands within the western boundary that were lost due to avulsive changes in the river, finding that the 1876 Executive Order established a riparian boundary (not the meander line, not the Benson survey). Since the boundary was riparian, the tribes were entitled to water rights for these 2200 acres. Once obtaining the Supreme Court ruling for water rights to these two "cut-off" areas, the U.S. in 1972 filed action to quiet title to those same lands (***U.S. v Aranson***). The tribes won ***Aranson*** and the residents were ejected. The effect is that the U.S. Dept of Justice claimed that the boundary was riparian for the lower 1/3 to quiet title against occupants, yet today still maintains the exact

opposite argument to support the '69 Secretarial Order for the upper 2/3. It is obvious that the simple phrase in the 1876 Executive Order "west bank" could not possibly mean both riparian here and a fixed line over there. The ***Aranson*** inconsistency was noted by both Special Master Rifkind and Special Master McGarr in ***Arizona I*** and ***Arizona III***, respectively.

Please see enclosed a copy of a letter from the DoJ to Congressman Morris K. Udall dated March 30, 1966. At that time the tribes had been awarded water rights for the avulsive lands in ***Arizona I***. The letter to Udall recognizes that the cut-off lands, located in the lower 1/3 of the western boundary, "are properly a part of the reservation." But more importantly, it addresses the supposition by Congressman Udall that possibly more land should be added to the reservation due to a meander line theory. While the DoJ assured Udall that the issue would be properly addressed by the Dept of Interior, it was clear that "**the western boundary of the Reservation was intended to be a shifting water line or a fixed topographical feature".** Note that even the Dept of Justice recognized that the boundary was one or the other, and **certainly not both**.

The U.S. Supreme Court has ruled in all three ***AZ v CA*** cases that the boundary was **riparian** for the purposes of water rights. The U.S. Supreme Court ruled in ***Aranso***n that the boundary was **riparian**. The continued assertion that the Secretarial Order established a fixed line is contrary to four Supreme Court rulings, indefensible, dishonest, and reprehensible.

Members of the West Bank Homeowners Association are once again grateful for your efforts to help with the absurd situation that the U.S. government has imposed upon the residents and allowed to persist for 40 years. With CRIT now starting to assert their jurisdiction with the exercising of self help, it is essential that we finally get assistance from the U.S. Congress. Your continued help now would be even more appreciated.

Sincerely,

Roger L. French
President

cc: Congressman David Dreier, California 26th District
Senator Dianne Feinstein, California
Stanley Sniff, Riverside County Sheriff-Coroner
Bryan Bowker, Bureau of Indian Affairs
Cheryl Schmit, Stand Up for California

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 16, 2008

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

Dear Congresswoman Mack:

This responds to your letter of February 22, 2008, regarding the location of the western boundary of the Colorado River Indian Reservation ("Reservation"). We are sending a similar letter to Congressman Dreier, the other signatory of your letter. The long-standing position of the United States, as set forth in an order of the Secretary of the Department of the Interior and in filings before the U.S. Supreme Court, is that the Reservation extends past the west bank of Colorado into the State of California.

An Executive Order of May 15, 1876, established the boundaries of the Reservation. In 1879, W.F. Benson undertook a meander survey of the lower Colorado River ("Benson Survey"). In 1969, Secretary Udall determined that the western boundary of the Reservation was a fixed line, rather than a boundary that varied with the movement of the Colorado River. Order of Secretary Udall to the Bureau of Land Management, January 17, 1969. Secretary Udall also found that the Benson Survey constituted the western boundary of the Reservation.

The United States in filings before the U.S. Supreme Court confirmed this understanding of the western boundary of the Reservation. In *Arizona v. California*, the United States and the Colorado River Indian Tribes ("CRIT") filed a stipulation on March 4, 1999, concluding that "the lands described in the 1969 Secretarial Order, are included within the Reservation set aside by the Executive Order of May 15, 1876 and are held in trust by the United States for the benefit of the Tribes." The Supreme Court ultimately affirmed a settlement of the water rights of CRIT and did not adjudicate the Reservation boundaries. See *Arizona v. California*, 530 U.S. 390, 419 (2000).

According to the 1969 Order of Secretary Udall, the western boundary of the Reservation runs "from the top of Riverside Mountain, California, through section 12, T. 5 S., R. 23 E. S.B.M., California." The lands leased by the members of the West Bank Homeowners Association ("WBHA"), therefore, lie within the Reservation. In addition, if the Water Wheel Resort lies within the Benson Survey line, it too is within the Reservation. Moreover, arguments regarding the western boundary of the Reservation do not alter the fact that neither the members

of the WBHA, nor the Water Wheel Resort, if it lies within the Benson Survey line, possess title to the lands at issue. See *Arizona v. California*, 530 U.S. at 419 n.6 (denying WBHA request to intervene on the grounds that the Association and its members "do not own land in the disputed area"). In the unlikely event that the lands at issue do not constitute part of the Reservation, they nevertheless belong to the United States. As a result, regardless of the location of the Reservation's western boundary, Water Wheel Resort (if located within the Benson Survey line) and the members of WBHA occupy land to which the United States holds title, either in trust for CRIT or in its own right. If these entities and their members wish to continue to occupy this land, they must have a valid lease and make payments pursuant to that lease.

If we can be of further assistance regarding this or any other matter, please do not hesitate to contact this office.

Sincerely,

Keith B. Nelson
Principal Deputy Assistant Attorney General

[redacted]

Department of Justice
Washington

March 30, 1966

Honorable Morris K. Udall
House of Representatives
Washington, D. C.

Dear Congressman Udall:

The Attorney General has asked me to reply to your letter of March 22, 1966, in which you request the comments of this Department on the material enclosed with your letter relating to the controversy over the location of the western boundary of the Colorado River Indian Reservation.

At the present time we are awaiting a report from the Department of the Interior as to the advisability of initiating an action to establish the western boundary of the Reservation. As paragraph 3 of the draft enclosed with your letter indicates, there appears to be no substantial question with respect to those lands which are west of the present channel of the river as a result of avulsive changes in the course of the river - these so-called "cut-off" lands are properly a part of the Reservation. However, it is not so clear that any of the other lands west of the river might properly be considered as a part of the Reservation. Paragraph 4 of the draft enclosed with your letter states, "I believe there is case law to the effect that an established meander line in instances of this type and particularly where an Indian reservation is involved, is itself the boundary irrespective of subsequent movements of the water line and where the intent to establish a fixed boundary is apparent." Of course, the question here is the factual one as to whether there was an intent to create a fixed boundary, and if so, where; the decided cases with respect to meander lines in general seem to be unanimous in holding that the water line, not the meander line, is the boundary of land surveyed by the government, and that the water line remains the boundary, absent an avulsive change. Railroad Company v. Schurmeir,

74 U.S. 272, 286 (1868); Jefferis v. East Omaha Land Co., 134 U.S. 178 (1890). Consequently, information must be developed as to whether the western boundary of the Reservation was intended to be a shifting water line, or a fixed topographical feature. This is the specific matter which the Department of the Interior is now investigating; I am sure that the evidences of an intention to establish a fixed boundary, as set forth in paragraph 4 of the enclosure to your letter, will not be overlooked by that Department.

I shall advise you as to what action is eventually taken in this matter.

Very truly yours,

Edwin L. Weisl, Jr.
Assistant Attorney General