THE ILLEGALITY OF CRIT "SELF HELP" EVICTIONS OF RESIDENTS FROM WEST BANK LAND WITHIN RIVERSIDE COUNTY: THE INTERACTION OF PUBLIC LAW 280 AND CALIFORNIA STATE LAW

I. Introduction

Over the past several years, Riverside County has allowed, and even assisted, several evictions from land on the West Bank of the Colorado River by agents of Colorado River Indian Tribes ("CRIT"). Among those evicted have been the owners and operators of Red Rooster Resort, Water Wheel Camp Recreation Area and the Blythe Boat Club ("BBC"), the last of which was marked by the forcible physical removal from the BBC site of Club executive Toni Hawley. CRIT agents physically dragged Ms. Hawley across a gravel lot and left her barefoot on a highway in 110 degree heat, requiring emergency medical care at a local hospital for severe burns.

CRIT continues to threaten other West Bank residents with eviction from their West Bank lands. All of these evictions have been executed by CRIT agents without complying with applicable California state law. The Riverside County Sheriff and County Counsel have sanctioned this activity although they know, or should know, that all of these evictions have been in violation of the applicable law.

Bluntly stated, there can be no lawful eviction of any non-Indian individual from land within the State of California – even if the property legally qualifies as "Indian land" or "Indian reservation land" – unless that eviction is conducted in strict compliance with California law. This requirement is being ignored by CRIT and Riverside County. Indeed, the County Sheriff and County Counsel are standing back and allowing -- and even assisting -- evictions that are patently illegal. Public Law 83-280 clearly requires compliance with California law and implementing orders from California courts. The County asserts that certain Public Law 280

exceptions apply. This claim is both wrong and incompetent, because the lands at issue are neither in trust nor restricted fee status.

II. Relevant Facts

The following facts are not in dispute and are documented by publicly available federal and state land records.

1. CRIT is an Arizona tribe claiming reservation status for land in California on the West Bank of the Colorado River.

2. CRIT has a tribal court system that has been prosecuting permanent evictions of non-Indians from the West Bank lands.

3. CRIT has been enforcing tribal court eviction orders by sending agents into California to perform forceful evictions of non-Indians.

4. None of the evictions executed by CRIT to date have been conducted in accordance with California law.

5. No land in California is held in trust for CRIT.

6. No land in California is held in restricted fee status by CRIT.

7. Bureau of Land Management records in Sacramento document that virtually all of the West Bank land at issue is in the public domain, and none is in tribal ownership.

8. Riverside County title records do not include recorded trust deeds for any West Bank lands.

9. Riverside County title records do not include recorded restricted fee deeds for any West Bank lands.

10. In 1974, the United States District Court of the Central District of California held in a quiet title action that certain West Bank lands, including the lands on which the BBC lies,

are held by the United States in trust for CRIT. However, the BBC was never served in, and was not a party to that action.

III. Public Law 280 requires that these evictions be conducted in accordance with California law.

The State of California and its political subdivisions have limited criminal and civil jurisdiction over Indian lands within the State by virtue of a federal law enacted some 59 years ago. That federal law is the Act of August 15, 1953, Public Law 83-280 (commonly known as "Public Law 280"), which delegated criminal and civil jurisdiction over certain disputes in Indian country to designated states. Public Law 280 was enacted during the Administration of President Eisenhower as one of several major actions to reduce Indian tribal independence and to give state governments unprecedented power over tribal affairs and tribal lands previously precluded by tribal sovereign immunity. While pending before Congress in 1953, this legislation was no secret. Indeed, California was one of several states that actively endorsed and lobbied to be included in the law.

Civil jurisdiction for such actions as tribal evictions of non-Indians from tribal land is provided for at Section 4 of Public Law 280, 28 U.S.C. § 1360, which states in pertinent part:

> **§1360. State civil jurisdiction in actions to which Indians are parties**
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> **(a)** Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:
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> | State of | Indian country affected |
> |---|---|
> | * * * * * | |
> | California | All Indian country within the State. |

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> **(c)** Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.
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> (Act of Aug. 15, 1953, ch. 505 §4, 67 Stat. 589; *amended* Aug. 24, 1954, ch. 910, §2, 68 Stat. 795; Pub. L. 85-615, §2, Aug. 8, 1958, 72 Stat. 545; Pub. L. 95-598, title II, §239, Nov. 6, 1978, 92 Stat. 2668; Pub. L. 98-353, title I, §110, July 10, 1984, 98 Stat. 342). [Emphasis supplied.]

Through Section (c), Public Law 280 plainly states that any tribal eviction activity in this case must be conducted in a manner that is consistent with state law. The CRIT self-help evictions are contrary to California Code of Civil Procedure § 712.010, which provides the following:

> After entry of a judgment [by a state court with jurisdiction over the property] for possession or sale of property, a writ of possession or sale shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the judgment is to be enforced. The application shall include a declaration under penalty of perjury stating the daily rental value of the property as of the date the complaint for unlawful detainer was filed. A separate writ shall be issued for each county where the judgment is to be enforced. Writs may be issued successively until the judgment is satisfied, except that a new writ may not be issued for a county until the expiration of the 180 days after the issuance of a prior writ for that county unless the prior writ is first returned.

This law has been ignored both by CRIT and by Riverside County.

IV. The exception at 28 U.S.C. § 1360(b) does not apply to the West Bank, because that land is neither held in trust or restricted fee status.

A. The West Bank land is not held in trust or restricted fee status.

Indian trust land is land in which legal title is held by the United States, and the Indian tribe holds the right to beneficial use of the land. Trust land may be created in only three ways:

(1) by treaty, (2) acts of Congress, and (3) by the Secretary of the Interior acting pursuant to Section 5 of the Indian Reorganization Act of 1934 ("IRA").[1]

First, the Supreme Court has held that title to land acquired by treaty is held in trust by the United States.[2] Second, Congress did legislatively create the Colorado River Indian Reservation in 1865, but only on the Arizona side of the Colorado River.[3] Finally, Section 5 of the IRA delegates authority to the Secretary of the Interior to acquire title to certain land and hold it in the name of the United States in trust for Indian tribes and individuals.[4]

Section 5 provides:

> The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

Department of Interior regulations reiterate that the Secretary must approve trust acquisitions:

> Land not held in trust or restricted status may only be acquired for an individual Indian or a tribe in trust status when such acquisition is authorized by an act of Congress. No acquisition of land in trust status, including a transfer of land already held in trust or restricted status, shall be valid unless the acquisition is approved by the Secretary.
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> 25 CFR § 151.

These regulations outline a detailed process for both on-reservation trust acquisitions[5] and off-reservation trust acquisitions.[6] Each of these processes requires opportunities for notice and comment by interested parties. Off-reservation acquisitions require notice to the state and

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1 25 U.S.C. § 465.

2 *See, e.g.*, *United States. v. Shoshone Tribe*, 304 U.S. 111 (1938) (Treaty of July 3, 1868 granted Shoshone Indian tribe "peaceable and unqualified possession" of the land, including timber and minerals, but United States retained title).

3 Act of March 3, 1865, 13 Stat. 541, 559.

4 25 U.S.C. § 465.

5 25 CFR § 151.10.

6 25 CFR § 151.11.

solicitation of input regarding the impact of the acquisition on state jurisdiction and taxation. CRIT never followed the detailed regulatory process for on-reservation or off-reservation trust acquisitions provided by the IRA and Department of the Interior regulations, so the land was never accepted into trust by the Secretary. Significantly, Riverside County has never explained its factual and legal basis for its assumption of trust status for any West Bank lands. It has not done so because no such basis exists. Federal title records concerning the West Bank lands demonstrate that none of the land is in trust status for any tribe, let alone CRIT.

B. BBC is not bound by any quiet title actions to which it was not made a party.

Riverside County relies on a 1974 United States District Court opinion, *United States v. Lonesome Valley Land Co.*, No. 72-1623-HP (April 23, 1974, C.D. Calif.) to assert that the entire West Bank is held in trust by the United States for the benefit of CRIT. However, actions to quiet title do not bind third parties unless they are named and served in the original action. The Blythe Boat Club was neither served nor in privity with defendants in that action, and accordingly is not bound by the *Lonesome Valley* opinion as a matter of law.

The Fifth Amendment guarantees that the federal government will not deprive any person of "life, liberty, or property without due process of law." Non-parties to actions under the Quiet Title Act are not bound by federal quiet title judgments because that result would deny them due process. In *United States v. Buck*, 281 F.3d 1336, 1345 (10th Cir. 2002), non-party movants alleged they had been denied due process due to a lack of notice of a quiet title action which ostensibly affected title to their land. The Tenth Circuit dismissed their claims, finding that, because the movants were not specifically named in the complaint, their legal rights were not affected by the quiet title judgment. In *Archer v. United States*, 268 F.2d 687 (10th Cir. 1959), the Tenth Circuit held that a quiet title action brought by the United States has no *res judicata* effect on property rights of non-parties. The court held that, because the quiet title action was a

quasi in rem action which affected the interests only of particular named parties, the rights of non-parties "cannot be determined by any decree entered herein." *Id.* Similarly, the Second Circuit noted in an ejectment action brought by the Oneida Nation against the State of New York that quiet title actions "do not operate *in rem* upon the land itself," and therefore principles of collateral estoppel by judgment are not implicated. *Oneida Indian Nation of Wisconsin v. New York*, 732 F.2d 261 (2d Cir. 1984).

California law also makes clear that quiet title judgments do not bind third parties of record. Ca. Code Civ. Proc. §764.045 states,

> Except to the extent provided in Section 1908, the judgment does not affect a claim in the property or part thereof of any person who was not a party to the action if any of the following conditions is satisfied: (a) The claim was of record at the time the lis pendens was filed or, if none was filed, at the time the judgment was recorded. (b) The claim was actually known to the plaintiff or would have been reasonably apparent from an inspection of the property at the time the lis pendens was filed or, if none was filed, at the time the judgment was entered. Nothing in this subdivision shall be construed to impair the rights of a bona fide purchaser or encumbrancer for value dealing with the plaintiff or the plaintiff's successors in interest.

Because neither federal or California law allow quiet title judgments to have any *res judicata* effect on third parties not named or served, *Lonesome Valley Land Co.* does not bind the Blythe Boat Club owners.

C. The West Bank lands are in the public domain.

The 1848 Treaty of Guadalupe Hidalgo transferred Mexican land to the United States, pursuant to which California was admitted to the Union as a state. All land not privately owned, including Indian land, became public land upon the admission of the Republic of California to the United States. The California Board of Land Commissioners, created by the Act of March 3, 1851, 9 Stat. 631, "An Act to ascertain and settle the private land claims in the State of California," certified Mexican land claims and created a statute of repose under which

uncertified land reverted to the public domain. California Indian tribes did not present their claims to California land before the Commission. President Fillmore appointed a separate 3-person commission to negotiate treaties with California Indians, pursuant to the Act of September 30, 1850 (9 Stat. 544). That commission negotiated 18 treaties, but those treaties were never ratified by Congress. The United States Court of Claims, in *The Indians of California v. United States*, 98 Ct. Cl. 583 (1942), heard the claims for compensation by those California Indians presenting unratified treaties as evidence of their claim to California land. The Court of Claims held that "whatever lands [California Indians] may have claimed became a part of the public domain of the United States." *Id.* at 592.

Claims by California tribes based on aboriginal title were not exempt from the Commission's certification process. As a result, lands such as the West Bank lands at issue are now held in the public domain.

D. California retains jurisdiction over disputes relating ownership and possession of non-trust land within the CRIT reservation.

Because the West Bank land is not in trust, the State of California retains jurisdiction, whether the land lies within or outside of the CRIT reservation boundary. In its letter dated August 9, 2012, Riverside County mistakenly reads Section (b) of Public Law 280, 28 U.S.C. § 1360(b), concluding that the provision "expressly prevents states from addressing property disputes on tribal land." In fact, Section (b) limits state jurisdiction only over trust and restricted fee land, not "tribal land." Section (b) provides as follows:

> **(b)** Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to

> adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.
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> [Emphasis supplied.]

Land within reservation boundaries that is neither held in trust nor restricted fee status clearly remains subject to state jurisdiction for the purposes of 28 U.S.C. § 1360. As a result, the Section (b) limitation does not apply to this dispute because the West Bank of the Colorado River, as noted above, has never been accepted in trust by the United States for the benefit of CRIT, and is not held in restricted fee status. Outside legal counsel for Riverside County clearly believes that CRIT "owns the land," relying on decisions of the CRIT trial and appeals courts, but not the title records of the United States or even those of his own client.[7] Moreover, an Indian tribe's determinations of its own reservation boundaries are not binding on the State. Rather, such boundaries must be determined by treaty, an act of Congress or adjudication in federal court, and they are not. Accordingly, even if the West Bank lands are finally determined to lie within the Colorado River Indian Reservation, Public Law 280 requires that the tribe seek eviction orders in California state court. CRIT has studiously avoided state court, because tribal attorneys know, or should know, that (a) there is no evidence that the Tribe owns the land and (b) Riverside County records document neither CRIT trust status nor fee ownership. To the contrary, federal records document that the land is in the public domain.

V. Conclusion

Public Law 280 provides that tribal actions in eviction matters must be consistent with California state law. If CRIT believes that it can establish a right to evict, the only way it can do so legally is to go to state court for orders confirming tribal land status and implementing the Tribal Court orders. Where tribal actions are inconsistent with applicable state law, state law

[7] Letter from Christopher D. Lockwood to Antoinette Leyba-Hawley, August 9, 2012.

prevails and the tribal ordinances and actions are both irrelevant and illegal. Read *in pari materia,* the federal and state laws require this. Not only is CRIT violating these applicable laws, but Riverside County is both sanctioning and encouraging illegal activity by intentionally allowing these violations to occur.

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