

# West Bank Homeowners Association

P. O. Box 970 Blythe, California 92226

TEL: (760) 921-3339

email: westbank@cox.net

May 12, 2011

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

RE: Colorado River Disputed Area  
DoI Solicitor's letter of 2/24/2011

Dear Congresswoman Bono Mack:

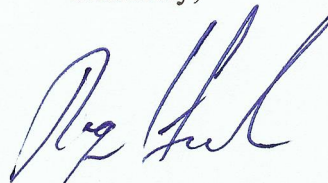
We feel a sense of obligation to respond to the Department of the Interior Solicitor's letter of February 24, 2011 (attached). This letter was in response to your request to both the Department of the Interior (DoI) and the Department of Justice (DoJ) on behalf of residents in the disputed area. Your letter requested a legal determination of the western boundary of the Colorado River Indian Reservation, and also requested that each Department "directly address" issues cited by the homeowners. My understanding from your staff is that part of these issues were presented in a letter from the West Bank Homeowners Association (WBHA) dated August 1, 2010 (attached) included with your request.

Predictably, the response by the Solicitor ignored the *Aranson* hypocrisy and continued the mischaracterization of the "western boundary". Particularly egregious is the continued assertion that the 1969 Secretarial Order defined the western boundary when in fact **the '69 Secretarial Order only pertained to a portion of the western boundary**. The Solicitor takes the misrepresentation even further by claiming that "Based on the Department's previous determination and the United States' stipulation and settlement agreement, the location of the western boundary of the Reservation has been firmly established". This assertion naturally ignores the southern portion of the western boundary not included within the '69 Secretarial Order, and assumes that the reader is ignorant of the language in the agreement that clearly defers the boundary dispute.

The reason for the omission of the southern portion of the western boundary (8 miles) is presented in the WBHA letter of August 1, 2010. The Department of the Interior knows that it must avoid responding to the *Aranson* hypocrisy; otherwise, they expose that the Tribes success in the case effectively nullifies the '69 Secretarial Order. The DoI has ignored our requests to address the *Aranson* ruling in the past, and therefore the continued avoidance by DoI/DoJ is no surprise to us now.

We appreciate your efforts to assist us with the executive branch of the federal government. However, it also appears that the corruption and dishonesty at the DoI will continue.

Sincerely,



Roger L French





# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

IN REPLY REFER TO:

FEB 24 2011

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

Dear Representative Bono Mack:

Thank you for your letter of August 9, 2010, regarding the western boundary of the Colorado River Indian Reservation (Reservation). Because of the legal issues involved, Secretary Salazar asked me to respond to you on his behalf.

You requested that the Department of the Interior (Department) issue a written response that would directly address the issue raised by certain individuals who reside along the Colorado River. These individuals assert that the Reservation does not extend to the California side of the Colorado River. The Department's position on this issue has been, since at least January 17, 1969, and continues to be that the Reservation extends into California and includes a certain portion of the west bank of the Colorado River. Indeed, on January 17, 1969, Solicitor Edward Weinberg issued a legal opinion in which he determined that the western boundary of the Reservation included a portion of Riverside County, California. Secretary Stewart Udall concurred in the Weinberg Opinion and on the same day issued a memorandum instructing the Director of the Bureau of Land Management (BLM) to suspend certain surveys and reinstate others in order to fix the line of the western boundary of the Reservation. Upon assuming office, Walter J. Hickel, President Nixon's Secretary of the Interior, asked Solicitor Mitchell Melich to review the Weinberg Opinion. Based on Solicitor Melich's analysis, Secretary Hickel concluded that Secretary Udall's determination of the western boundary of the Reservation was final, official, and unqualified. Secretary Hickel expressed his support for Secretary Udall's decision in a June 2, 1970, letter to the Chairman of the Colorado River Indian Tribes, Adrian Fisher. In fact, Secretary Hickel declined to change any aspect of Secretary Udall's decision. After Secretary Hickel affirmed Secretary Udall's instructions to the BLM, the Bureau of Indian Affairs issued a *Federal Register* notice on November 25, 1970, to advise the public that Colorado River Indian Reservation included certain lands in California.


Significantly, the Department's determination of the location of the western boundary of the Reservation was incorporated in a stipulation that the United States and the Colorado River Indian Tribes (Tribes) signed as part of the settlement of the water rights dispute in *Arizona v. California*, 547 U.S. 150 (2006). The stipulation and settlement agreement were subsequently approved by the Supreme Court. Based on the Department's previous determination and the United States' stipulation and settlement agreement, the location of the western boundary of the Reservation has been firmly established. In addition, Attorney General Mukasey advised your office in a June 18, 2008, letter that the position of the United States on the location of the western boundary of the Reservation could not be changed because of the representations that were made to the Supreme



Court in *Arizona v. California*. While some individuals who occupy tribal trust land located within the boundaries of the Reservation have continued to assert that the property on the California side of the Colorado River is part of the public domain, it is not. Rather, it is tribal land held in trust for the Colorado River Indian Tribes by the United States.

I hope that the foregoing is the information that you require. For your convenience, I have enclosed copies of the Weinberg Opinion, Secretary Udall's memorandum of January 17, 1969, with instructions to BLM, a typed transcription of that same memorandum, Secretary Hickel's letter to Chairman Fisher, and a copy of the *Federal Register* notice dated November 25, 1970, which BIA issued to advise the public that certain lands in California were part of the Reservation. If you have any further questions regarding the western boundary of the Reservation, please contact Deputy Solicitor for Indian Affairs Patrice Kunesh at (202) 208-4423.

Sincerely,



Hilary C. Tompkins  
Solicitor

Enclosures (5)

COMMITTEE:  
**ENERGY AND COMMERCE**

SUBCOMMITTEES:  
**COMMERCE, TRADE AND  
CONSUMER PROTECTION  
ENERGY AND AIR QUALITY  
COMMUNICATIONS,  
TELECOMMUNICATIONS,  
AND THE INTERNET**



**Mary Bono Mack**  
**Congress of the United States**  
45th District, California

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August 9, 2010

The Honorable Ken Salazar  
Secretary of the Interior  
U.S. Department of Interior  
1849 C Street, NW  
Washington, DC 20240

Dear Secretary Salazar:

I write to seek your Department's position on a matter of importance to constituents of the 45<sup>th</sup> Congressional District of California, which I have the honor of representing in Congress.

In 2008, I wrote to then Attorney General Michael B. Mukasey about certain individuals living along the western portion of the Colorado River in Riverside County, California to ascertain a legal determination for the western boundary of the Colorado River Indian Tribe (CRIT) reservation (see attachment A). The United States Department of Justice (USDOJ) Office of Legislative Affairs responded with such a determination on June 16, 2008 (see attachment B).

Despite this response from the USDOJ, residents living along the Colorado River continue to dispute the CRIT's rights with respect to the boundary (see attachment C).

With this background in mind, it is my hope that you will directly address this issue in a written statement. I am also providing a copy of this inquiry to the Department of Justice, given their extensive history regarding this matter, but, do request a direct response from your Department.

Should you have any further questions or require further information on the history of this situation, feel free to contact Paul Cancienne in Congresswoman Bono Mack's office at (202) 225-5330. Thank you in advance for your consideration.

Sincerely,

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MARY BONO MACK  
Member of Congress



COMMITTEE:  
ENERGY AND COMMERCE

SUBCOMMITTEES:  
COMMERCE, TRADE AND  
CONSUMER PROTECTION  
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Mary Bono Mack  
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45th District, California

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August 9, 2010

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Attorney General Holder:

I write to seek your Department's position on a matter of importance to constituents of the 45<sup>th</sup> Congressional District of California, which I have the honor of representing in Congress.

In 2008, I wrote to then Attorney General Michael B. Mukasey about certain individuals living along the western portion of the Colorado River in Riverside County, California to ascertain a legal determination for the western boundary of the Colorado River Indian Tribe (CRIT) reservation (see attachment A). The United States Department of Justice (USDOJ) Office of Legislative Affairs responded with such a determination on June 16, 2008 (see attachment B).

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Sincerely,

MARY BONO MACK  
Member of Congress

M.C.



# 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



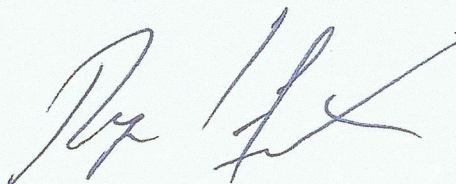
opposite argument to support the '69 Secretarial Order for the upper 2/3. It is obvious that the simple phrase in the 1876 Executive Order “west bank” could not possibly mean both riparian here and a fixed line over there. The *Aranson* inconsistency was noted by both Special Master Rifkind and Special 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 *Aranson* 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 26<sup>th</sup> District  
Senator Dianne Feinstein, California  
Stanley Sniff, Riverside County Sheriff-Coroner  
Bryan Bowker, Bureau of Indian Affairs  
Cheryl Schmit, Stand Up for California