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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

ROGER FRENCH, Plaintiff, vs. KARLA STARR; et al Defendants.	Case No. CV-13-02153-JJT **REPLY BRIEF IN OPPOSITION TO UNITED STATES AMICUS CURIAE**

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INTRODUCTION

The sole matter before this Court, setting aside the characterizations included within the U.S. *Amicus Curiae* (Amicus), is tribal jurisdiction over Plaintiff French, a non-tribal member. Period. It is not about making a determination of whether the land is tribal, non tribal, or whether a boundary dispute exists or does not. It is not about the difficulties and inconvenience to the federal government should French prevail here. Instead, the matter before this Court is whether to allow subjugation of a non-tribal member to a hostile domestic dependant sovereign in their courts where U.S. Constitutional rights do not apply, and claims of impartiality are pure fiction. It is about whether this Court should allow an Indian tribe to confiscate French's property without compensation. It is about whether an Indian tribe can utilize a one-way attorney fee law as a tool to discourage residents from challenging its iron rule, or strike fear in those non-members who may be subject to their tribal court jurisdiction. And most importantly, it is about whether to give the Colorado River Indian Tribes (CRIT) another green light to confiscate the property of similarly situated families throughout the disputed area through illegal "self help" evictions, intimidation, bullying, or even arson. *See* **Exhibit 6**.

The obvious question raised by the U.S. *amicus curiae* is why does the federal government feel the need to come to the rescue of this casino rich Indian Tribe, well represented by outside counsel and a host of tribal court judges, in a legal contest with a *pro se* party who occupied a tiny lot in the disputed area? Certainly, no one outside the Dept. of Justice can speak to their motives, but the facts below may provide some insight.

RELEVANT HISTORY

I. The Dept. of Interior Attempts to Enlarge the CRIT Reservation

From 1876 until 1958 every federal agency, including the Bureau of Indian Affairs, treated the Colorado River's west bank, where the water meets the land, as the western boundary of the reservation. This is confirmed on U.S. maps from 1913, 1941, and 1958. See the "**Holt Report**", Plaintiff's Separate Statement of Facts (hereinafter SOF) **Exhibit A**

(ECF No. 63-2) p. E.R. 47-50.

Also, from Special Master McGarr's Opinion and Order No. 14:

> No survey of the modified western boundary of the Reservation in the disputed area established by the 1876 Order was requested by the Commissioner of Indian Affairs or conducted by the General Land Office following its issuance. In response to an inquiry in January 1878, however, General Land Office Commissioner Williamson explained why no survey had been conducted of that area: '[s]ince the reservation is bounded by natural limits, to-wit, the west bank of the river, no actual survey of the meanders of the same has since been made.' That same year a survey of certain public lands in California in the vicinity of Riverside Mountain and below was carried out by W.F. Benson. **The approved survey plats show no Reservation land in the disputed area.** [Emphasis added]

See Plaintiff's SOF **Exhibit A** (ECF No. 63-2) p. E.R 49, and **Exhibit G** (ECF No. 63-8) p. E.R. 148.

However, during proceedings in *Arizona v. California,* 373 U.S. 546 (1963) [*Arizona I*] before Special Master Simon H. Rifkind ("Master Rifkind"), a dispute arose between the United States and the California Parties over the location of a portion of the western boundary of the Colorado River Indian Reservation. The United States claimed that a portion of the western boundary of the Reservation described in the Executive Order of 1876 established a ***fixed*** boundary along the actual location of the west bank of the river as it existed in 1876. California parties argued that the entire western boundary was ***riparian***, meaning the boundary moved with the river subject to the rules of erosion, accretion and avulsion. The argument centered upon the intent of the simple phrase "**west bank**" in the 1876 Executive Order.

Since the river often changed course prior to the completion of Hoover Dam in 1933, it was impossible to determine the exact location of the west bank as it existed in 1876. The Unites States proposed to approximate the location using section surveys done in 1874 and 1879 which called out a "meander line" as the extent of arable land. The area between this hypothetical approximation of the location of the west bank of the river on May 15, 1876 (the United States' and the Tribes' position) and its current location (the State Parties'

position) is referred to as the "disputed area". *See* 1958 map showing the proposed meander line, the "**Holt Report**", **Exhibit A** (ECF No. 63-2) p. E.R. 50.

After a full trial of the disputed boundary issue, Master Rifkind agreed with the California Parties and made the following conclusions of law. See Simon H. Rifkind, Special Master, REPORT, December 5, 1960, attached here as **Exhibit 5** (*id*. at 273):

1. The Executive Order of 1876 established the west bank of the Colorado River as the western boundary of the Colorado River Indian Reservation.

2. The Executive Order of 1876 established a boundary which changes as the course of the Colorado River changes, except when such changes are due to avulsion.

3. In the case of avulsion, the boundary remains at the west bank of the River as it existed immediately prior to the avulsive change.

5. The 1920 "Olive Lake Cut-off" was an avulsion and worked no change in the western boundary of the Colorado River Indian Reservation.

6. The 1943 "Ninth Avenue Cut-off" was an avulsion and worked no change in the western boundary of the Colorado River Indian Reservation.

Support for Master Rifkind's BOUNDARY DISPUTE - OPINION:

> The United States claims 1800 acres lying on the west side of the present channel of the River but east of the 1876 west bank (i.e. the lands in question lie roughly between the old channel and the present channel of the River). … Since "bank" is defined as the fast land that serves to confine the waters of the stream to its bed, the 1876 line does not represent the present west bank of the River. Hence the 1800 acres, which lie west of the present west bank of the River, are outside the boundaries of the Reservation… (*Id* at 275)
>
> There is substantial evidence that the Executive Order of 1876 did not intend to establish a fixed boundary and, certainly, a flexible boundary is not inconsistent with the purpose of the Order, which was to prevent the acquisition by non-Indians of land proximate to Indian land on the east side of the River. The evidence establishes that various officers and departments of the United States have considered the Colorado River itself and not the 1876 meander line to be the western boundary of the Reservation…. (*Id.* at 276)
>
> Finally, the understanding of the various officers and departments of the United States that the 1876 Executive Order did not establish a fixed boundary at the 1876 meander line was apparently shared by the defendant Palo Verde Irrigation District, which has, for various periods of time beginning in 1927, assessed lands within the disputed area for purposes of taxation. It is also worthy of note that no evidence was introduced to demonstrate that the United States has ever asserted title to the area in controversy prior to this litigation. (*Id.* at 277).

The Supreme Court's 1964 *Arizona I* decree did not address the reservation boundary, but granted water rights in accordance with the Master Rifkind's findings that the CRIR western boundary was ***riparian***. The Tribes were granted no additional water rights for the disputed area, but were granted water rights for 2,280 acres in California separated by avulsive actions at the Olive Lake and Ninth Avenue Cut-offs.

With the realization that the Master's findings could well lead to enlargement of the reservation for land lost to avulsion, Congressman for CRIT, Morris K. Udall, attempted to secure even more lands for the Tribes. However, instead of asserting additional lands lost to avulsion, the Congressman attempted to convince the Dept of Justice that CRIT should be entitled to lands possibly lost to a shifting of the river. But he had a significant problem with his supposition because a) Special Master Rifkind had determined that the western boundary was riparian, and b) the river had shifted both east and west in the 25 mile western boundary. On March 30, 1966, the Dept of Justice rebuffed Congressman Udall's assertions with:

> "…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." [Emphasis added].

See Plaintiff's SOF ¶19 **Exhibit P**, (ECF No. 64-8) p. 1, ¶ 2. *See also* the "**Holt Report**", **Exhibit A** (ECF No. 63-2) p. E.R. 51 ¶ 1.

Apparently, Congressman Udall found a more sympathetic ear in his brother Stewart Lee Udall[1], who issued the infamous Secretarial Order just three days before leaving office on January 17, 1969. The attempted annexation of California land into the reservation directly affected the ownership of 10 resorts, a farm (Clark's Ranch), the Blythe Boat Club (property held since 1947), and 240 individual families occupying varying size lots in several communities along the 17 mile disputed area.

To solidify the effects of the Secretarial Order, the U.S. then initiated quiet title actions against almost all property owners north of Sec 12, T. 5S, R23E, S.B.M.. Two owners eventually signed 50-year leases (Clark and Tuttle). One resort owner signed a 32-year lease (Water Wheel). Most of the remaining owners were forced out. None had the financial resources for a fight with the federal government. *See* Defendant's SOF **Exhibit R**, (ECF No. 56-8) p. 26. This was described within the West Bank Homeowners Association's Motion for Leave to File Brief Amicus Curiae within *Arizona III*:

> Solely on the basis of an administrative order tainted by a governmental object of self-relief, quiet title actions were instituted in the United States District Court for the Central District of California against those persons whose fee title originated from land patents granted by the state of California. None of the defendants could afford a protracted legal battle against the United States and the Tribes, and as a result there was no trial on the merits of the secretarial order in those cases. Other occupants who had been paying rent to the Bureau of Land Management were suddenly at the mercy of the Tribes. The Bureau of Indian Affairs claims unfettered authority on behalf of the Tribes and it has terminated the occupation permits of at least one hundred and ten of the Association's members. *West Bank Homeowners Association v. Acting Phoenix Area Director, Bureau of Indian Affairs,* Interior Board of Indian Appeals, Docket No. IBIA 97-8-A.

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[1] Stewart Lee Udall and Morris K. Udall are great grandsons of John D. Lee who was executed for his participation in the Mountain Meadows Massacre, characterized as the most heinous mass murder in U.S. history. Of note here is that the Indians that were involved but unjustly blamed for the murders were southern Paiutes, the ancestors of the present day Chemehuevi, one of the two primary tribes to relocate to the CRIT reservation. Interviewed within a documentary, Stewart Lee Udall characterized the massacre and his great grandfather's role as a "Greek tragedy". See *Ken Burns Presents: The West*, a film by Stephens Ives (1996).

See Plaintiff's SOF ¶25 **Exhibit T** (ECF No. 65-3)**.**

Simultaneous with these quiet title actions in the northern section of the western boundary, the U.S. filed an action against the parties owning land in the southern section of the western boundary within the Olive Lake cutoff area, *U.S. v. Aranson*, 696 F.2d 654 (9th Cir.) *cert. denied* 464 U.S. 982 (1983), to reclaim lands lost due to an avulsive act in 1920. The action was based upon a riparian interpretation of the term "west bank". *See* Plaintiff's SOF ¶¶ 9, 10, **Exhibits A**, (ECF No. 63-2) p. E.R 37, **G**, (ECF No. 63-8) p. E.R. 142, and **N** (ECF No. 64-6).

The cumulative effect of these efforts by the federal government were to provide the Tribes an additional 4,000 acres of land that had never been occupied by any of the CRIT tribes[2], for a reservation that already included 270,000 acres. And even more outrageous, those effects would provide a basis for CRIT to confiscate significant business and property assets of others without any compensation whatsoever. One has to wonder what could possibly be the justification for these actions by a government "of the people".

II. The U.S. Supreme Court Repeatedly Rejects the Secretarial Order

A. *Arizona II*

In 1978, the United States filed a motion to modify the 1964 *Arizona I* decree to provide additional water rights to the Tribes' on the theory that the ex-parte 1969 Secretarial Order had "finally determined" the northern two-thirds of the disputed area western boundary. Here the Tribes sought to use the ***meander line*** theory to obtain additional water rights. The motion evolved into *Arizona v. California*, 460 U.S.605 (1983) [*Arizona II*].

[2] Although a small number of Chemehuevi had on occasion traveled south from their camp near the present day site of the Chemehuevi reservation along the west bank to the base of Riverside Mountain and into the Palo Verde Valley in the 19th century, they never claimed any such land as their own. Being outnumbered by the Mohave and with a history of hostilities between them, the Chemehuevi stayed on the west side of the river to avoid confrontation with the Mohave on the east side.

The Supreme Court referred *Arizona II* back down to the District court with:

> "In our 1963 opinion, when we set aside Master Rifkind's boundary determinations as unnecessary and referred to possible future final settlement, we in no way intended that ex-parte secretarial determinations of the boundary issues would constitute "final determinations" ……" and "…it is clear enough to us, and it should have been clear enough to others, that our 1963 opinion and 1964 decree anticipated that, if at all possible, the boundary disputes would be settled in other forums".

The Supreme Court did **not** grant additional water rights requested by the Tribes. The Court also made it clear that the Secretarial Order was insufficient to establish a resolution of the boundary dispute. *Arizona II* was dismissed on sovereign immunity at the District Court. However, in 1989, the Supreme Court granted the State Parties' motion to reopen the 1964 Decree to resolve the boundary dispute. That case became *Arizona v. California,* 493 U.S. 886 (1989) [*Arizona III*]. *See* Plaintiff's SOF ¶2 (ECF No. 63) **Exhibit H**, (ECF No. 63-9) p. E.R. 169, n.5**.**

B. *Arizona III*

The Supreme Court assigned the case to Special Master Frank J. McGarr. McGarr was particularly critical of the ***meander*** line theory proposed by the United States, especially in light of the United States' successful litigation of *Aranson* using the ***riparian*** argument. The Master ruled on January 18, 1996:

> "The Tribes and United States rely heavily on an Order issued by the Secretary of the Interior on January 17, 1969 which is based on an opinion from the Solicitor of the Department of the Interior issued that same day.. [T]he reasoning underlying the Secretary's Order is not sound. It misinterprets the definition of bank and the nature of accretions. Moreover, the Secretary's conclusion that the 1876 Order created a fixed boundary is directly contrary to the 1876 Order's intent to create a riparian boundary."

The United States claimed that the Act of April 30, 1964, Pub. L. No. 88-302, 78 Stat. 188 (1964) (Pub. L. No. 88-302), authorized the Secretary to determine the Reservation boundary. The Master refuted that claim:

> "The Tribes' argument that the 1964 Act implicitly authorized the Secretary to determine the Reservation's boundary is unfounded…. To the contrary, the 1964 Act states, "the authorization granted herein… shall not be construed to affect the resolution of any controversy over the location of the boundary of the Colorado

> River Reservation"… In light of this explicit statement, it is clear that the 1964 Act did not authorize the Secretary to resolve the boundary dispute".

See Plaintiff's SOF ¶¶ 3, and 4 (ECF No. 63), **Exhibit H** (ECF No. 63-9) p. E.R 168-70.

Special Master McGarr's language in his Memorandum Opinion and Order No. 14 (1993) is simple and clear:

> "..we must regard the 1876 Executive Order as free of ambiguity and in its plain meaning, controlling here. It is further evident that despite some resourceful arguments to the contrary, the phrase "west bank" meant in 1876 what it means today; that is that line formed where the water meets the land"…" So unless "west bank" means something other than the western shore of the river where the water meets the land, the river and not a fixed line is the boundary of the reservation."

The Special Master also took special note that the United States "*uncovered no maps prepared prior to the presentation of the United States' evidence in Arizona I showing the disputed area to be part of the Reservation.*" He also noted private ownership of land in the disputed area:

> "As of 1990 the land ownership records of Riverside County, California for the lands within the disputed area show them as in private ownership, except for lands within the so-called Olive Lake cutoff" area, to which title was quieted in the Tribes in 1983. …The record in Arizona and in these proceedings contains no evidence that the Bureau of Indian Affairs or any other federal agency had ever asserted jurisdiction over the disputed area on behalf of the Colorado River Indian Tribes or that any claim of ownership of the lands in question had ever been made to the private occupants of those lands on behalf of the Tribes prior to the United States' claims in Arizona I, except for the Olive Lake cutoff area…."

See Plaintiff's SOF **Exhibit G** (ECF No. 63-8), p. E.R. 136, 138, 149, 150.

ARGUMENT

I. The U.S. Has Acknowledged the Reservation's Disputed Boundary

A. *Arizona v. California* Stipulation and Agreement

The United States has recognized and acknowledged that the western boundary dispute is unresolved by its agreement and signature in a 1999 stipulated settlement. *See* Plaintiff's SOF ¶6, **Exhibit, D,** (ECF No. 63-5) p. E.R. 177-78. See A*rizona v*

California, 493 U.S. 886 (1989) [*Arizona III*] Stipulation and Agreement:

> C. **Disputed Boundary**. 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, Western boundary of the Colorado River Indian Reservation from the top of Riverside Mtn., Cal., through section 12. T. 5S., R. 23E., S.B.M., Cal., No. 90-1-5-668, 41-54 (1969 Secretarial Order). 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 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 State of California disagrees, and expressly reserves the right to challenge the validity, correctness, and propriety of the 1969 Secretarial Order.** [Emphasis added].

Yet, the United States asserts that this clear acknowledgment of a disputed boundary somehow is insufficient to establish the existence of a boundary dispute other than for water rights. Amicus at 9. However, there is no indication in the Stipulation and Agreement of such a restrictive context. There is no indication anywhere within the U.S. Supreme Court Special Master McGarr Orders that the boundary considerations were exclusively limited to water rights. In fact there is a preponderance of evidence in the *Arizona* trilogy that water rights are inextricably tied to the amount of land within the reservations, thus negating any credibility to the United States' argument.

The Supreme Court's 1964 *Arizona I* decree provided for "appropriate **adjustment by agreement or decree of this Court in the event that the boundaries of the respective reservations are finally determined**." *Arizona v. California*, 376 U.S. 340 at 344 (1964). [Emphasis added]

The Court reaffirmed the requirement of granting additional water rights for the Reservation only for lands found to be located therein in its 1979 Supplemental Decree:

> [T]he quantities [of water] fixed in [the 1964 decree sections setting forth the water rights of each of the five Tribes] shall continue to be subject to appropriate adjustment by agreement or decree of the Court **in the event the boundaries are finally determined.**" *Arizona v. California*, 439 U.S. 419 (1979) at 421.

Special Master McGarr also acknowledged the link between lands and ancillary water rights stating "It is true that boundaries determine acreage and acreage determines

water rights…" Report and Recommendation of the Special Master, July 28, 1999, at page 11.

The U.S. attempt to hide its clear acknowledgment of a boundary dispute by pleading a limited context cannot be seriously considered. There is simply no evidence to show that the Courts limited the boundary dispute to anything other than a boundary dispute.

B. Dept. of Justice Advises CRIT that *Arizona III* May Shift the Reservation Boundary

During a special meeting with U.S. Dept. of Justice Attorney Patrick Berry on April 23, 1992, the CRIT tribal council was informed by the Dept. of Justice that land on the California side of the river, which was the subject of the *Arizona v. California* litigation, might be affected by the ruling in the case, and that the boundary could well be shifted. As U.S. Attorney Berry explained to the tribal council "*the land at issue sits on the California side of the river; which is now the subject of the Arizona v. California litigation, and the boundary phase of that trial can definitely affect your Reservation, depending on what the Supreme Court finds. If the boundary is shifted because of Arizona v. California, that will complicate matters, because this land will still be Federal land, but it will fall outside of the Reservation.*" *See* Excerpts from Colorado River Indian Tribes Special Tribal Council Meeting Council Chambers April 23, 1992, **Exhibit 4**, p. 11.

Therefore it is abundantly clear that the Dept. of Justice was well aware that boundary findings in the *Arizona* litigation were not restricted to a water rights context. It is also clear that the Dept of Justice recognized a boundary dispute, in spite of statements to the contrary argued in their *amicus curiae*.

II. CRIT Seeks Damages from the U.S. for Mishandling the Disputed Area

A. *Colorado River Indian Tribes v. The United States*, Claims Court 699-88L

In 1988, the Tribes sued the United States in U.S. Claims Court to recover damages

from the United States, claiming a "breach of trust" for failure to collect rents due from the Red Rooster resort located in the disputed area. Subsequently, an agreement was reached whereby the Claims Court action would be stayed if the United States brought an action to eject and collect damages from the Red Rooster owners, Burson and Booth. Those actions were filed in 1991, *U.S. v. Burson*, et al., and *U.S. v. Booth*, et.al. The matters were stayed during *Arizona III* pending a resolution of the boundary dispute. Once the *Arizona III* Stipulation and Agreement was signed, which deferred a resolution of the boundary dispute, the U.S. Claims Court on April 4, 2001, awarded CRIT $62,000 for damages resulting from non-payment of rent by the Red Rooster owners. *See* **Exhibit 1**, CIVIL DOCKET FOR CASE #: 1:88-cv-00699-CCM, Dkt No. 46. The irony here is that CRIT burned down the Red Rooster resort before the final judgment of the Claims Court was entered and filed. *See* the "**Holt Report**", **Exhibit A** (ECF No. 63-2) p. E.R. 55 ¶ 5

Counsel for the Tribes succinctly described the dilemma the United States has created for itself when he told the Claims Court judge during a status hearing: "*To be candid, I think the tribes are concerned about putting the United States in a position where it might in this case be denying liability because of the ownership status of the land, while at the same time in Arizona v. California it's claiming the land is held in trust for the benefit of the tribes.*" Claims Court, April 28, 1995 status hearing transcript at 4. *See* **Exhibit 2**, Motion of the West Bank Homeowners Association for Leave to File Brief *Amicus Curiae* and Brief *Amicus Curiae* of the West Bank Homeowners Association, p. 10.

This conflict is also described by a CRIT attorney with "*There also exists considerable concern that any outcome in this case, particularly unfavorable to the Tribes, could negatively affect Arizona v. California*". *See* **Exhibit 3**, Office Memorandum from Dyan Flyzik to the Tribal Council of June 9, 1994, p. 2 ¶3.

B. CRIT Contemplates Additional Actions Against the U.S. Even When Being Represented by the U.S.

Further conflict is presented in discussion between U.S. attorney Pat Berry and CRIT attorney Steve Bloxham in a special meeting with the CRIT tribal council on April 23, 1992:

> Council member Dennis Patch questioned why the Tribe would want to start another lawsuit at this time.
>
> Attorney Berry stated, "Well, you would join us."
>
> In-House Attorney Bloxham stated, "We could be co-plaintiffs, in other words."….
>
> Council member Dennis Patch questioned what would happen if the Tribe joined the United States at some point in time, if it determined that the BIA would have to pay.
>
> Attorney Berry stated, "Well, it is my understanding you still have your lawsuit in the Claims Court against the United States." …
>
> Council member Dennis Patch noted that if the Tribe was a co-defendant, it would limit the Tribe on what it could do, or a conflict.
>
> In-House Attorney Bloxham stated, "Yes, in a sense, but **I don't think that it would affect a claim for damages against the Bureau for what we claim they should have, but did not do, in the past**. But, you're right, that tribal involvement in a lawsuit sometimes…it has its upside and its downside. For instance, something that I think we can discuss, we're suing the United States Government for its actions in *Arizona v. California* round one. I think everyone would agree that if we had been directly represented in *Arizona v. California*, round one, that we would not be able to be suing the United States Government for what they did….
>
> Attorney Berry stated, "Well, I don't think you couldn't sue."…
>
> In-House Attorney Bloxham stated, "Basically, we would not have a feasible lawsuit as we currently do against the United States Government if we had been represented, so tribal direct representation does have its consequence, where we can't go blame the Bureau for…or the BIA or the Justice Department for what they do, if we're also there; at least, generally speaking. I still sometimes toy with the theory that we still might be able to have a cause of action against them depending on how they handle things, **even if we're both in the suit**."…
>
> In-House Attorney Bloxham stated, "But, I don't think that being involved in this suit directly against Burson and Booth would have a direct impact or a negative impact on **our ability to proceed against the United States for past damages for what we allege they should have, but did not pursue, during the '70's and "80's."**

[Emphasis added] *See* **Exhibit 4**, Excerpts from Colorado River Indian Tribes

Special Tribal Council Meeting Council Chambers April 23, 1992, p.25-26.

III. United States Motives for the *Amicus Curiae*

A. Stated Reasons for the United States *Amicus Curiae*

The U.S. claims that it has filed the *amicus curiae* brief in support of Defendants' Motion for Summary Judgment because:

(1) "The United States has a significant interest in defending the federal government's determinations regarding tribal lands from improper collateral attack" (Amicus p. 1)

As plainly stated repeatedly in French's Briefs, there is no collateral attack on the federal government's determination of tribal land in this case. However, the Secretary's determination is clearly disputed by the State of California and other parties as recognized by the U.S., CRIT, the State of California, and the courts. *See* Plaintiff's SOF ¶ 6, **Exhibit D** (ECF No. 63-5) p. E.R. 177-78.

(2) The United States has "a significant stake in protecting the trust status of these lands" (Amicus p. 1)

The trust status of the land is not at issue before the Court. This case only involves a determination of tribal adjudicatory jurisdiction over a non-member. The pertinent question before the court is whether the CRIT western boundary has been "finally determined". Since a finding of the nature of the boundary is not before the Court, the trust status is not before the Court. Therefore, the protection of trust status by the United States is inapplicable and irrelevant in this matter.

(3) Adjudication of the merits of the case would "open the door to time-barred lawsuits, allowing dozens of similarly-situated permittees on CRIT's Reservation to litigate the validity of a decades-old trust decision" (Amicus p. 1)

The United States is advocating a position whereby the Court should ignore the merits of French's case and instead consider the consequences of a ruling in French's favor that might embarrass or inconvenience the United States. Such an assertion by the federal government that exposes the unintended consequences of its past deeds shows

not only contempt for the rule of law, but a direct assault on the fundamental principles specified within the U.S. Constitution, and civil rights established within.

(4) This case "involves the federal interest in protecting the jurisdiction of tribal courts" (Amicus p. 1)

The United States also has an interest in providing constitutional rights to non-tribal members like French, the guarantee of due process before impartial courts, and protection of private property, especially where that property is confiscated and destroyed under the pretext of tribal jurisdiction without federal review. *See* **Exhibit 6**.

(5) A "finding that the tribal court lacks jurisdiction … would risk imposing inconsistent obligations on the parties, the United States, and third parties" (Amicus p. 14)

The United States provides no federal or case law that in any manner suggests that criteria for determination of tribal jurisdiction over a non-member should include a "risk imposing inconsistent obligations on … the Unites States or third parties". Even such a suggestion is counter to every principle prescribed in the United States Constitution.

B. Unstated Reasons for the United States *Amicus Curiae*

CRIT has filed suit against the United States in Federal Claims Court multiple times for its supposed mishandling of issues related to the disputed area. *See CRIT v. United States*, **Exhibit 1**, CIVIL DOCKET FOR CASE #: 1:88-cv-00699-CCM. *See also Fort Mohave Indian Tribe and Colorado River Indian Tribes v. United States*, 64 F.3d 677 (Fed Cir. 1995). The Unites States responded to *CRIT v. United States* by filing suit directly against disputed area resort owners Booth and Burson. Although the U.S. was successful in obtaining judgments against the former owners, damages were reduced due to the federal statute of limitations of 6 years, and reduced further due to the disallowance of interest, attorney fees, and costs. CRIT insisted that the damages should have been assessed against the Bureau of Indian Affairs for all of these claims, and it was the Bureau that was responsible for the mishandling of the property and failure to collect rents. *See* **Exhibit 4**, p. 25 ¶6.

Unlike the Red Rooster matter with Booth and Burson, the stakes in this case could be much more significant as inferred by the United States reference to "dozens of similarly-situated permittees on CRIT's Reservation". Amicus p. 1. But what may be of most concern to the United States is a potential challenge to tribal court rulings in *CRIT v. Blythe Boat Club,* and even *Water Wheel Camp Recreational Area Inc v. LaRance,* 642 F.3d 802 (9th Cir. 2011), which could result in another filing by CRIT against the United States. However such a claim could be of a multi-million dollar level since the damages in *Water Wheel* alone were $4 million. The attorneys at the Dept. of Justice are not stupid; the United States motives are really quite apparent.

If CRIT were to file another such claim against the United States for "breach of trust" in the disputed area, it would again put the United States in the awkward position of having to consider a defense that would include the uncertain status of the land, exactly as presented by French in this case. The scenario could very well play out in the Federal Claims Court exactly as it did in *CRIT v. United States*. *See* **Exhibit 2** p. 10. Without a doubt, the United States is attempting to circumvent such a conundrum by the filing of its *amicus curiae* against French in this Court.

IV. United States Attempts to Hide the Elephant in the Room

Beyond any reasonable argument to the contrary, the fact remains that the nature of the Colorado River Indian Reservation western boundary has not been "finally determined". Therefore, as described in Pub. L. No. 88-302 and in numerous findings by numerous U.S. courts, the disputed area is just that, disputed. The Unites States here hopes to twist the citing of this simple fact into a challenge to the land status to invoke Fed. R. Civ. P. 19. However, there is no challenge to the land status as that challenge was successfully brought by the State of California and other parties, which resulted in the disputed boundary and the disputed area. The United States, try as it might, cannot change the history of the CRIT western boundary, nor can it hide the elephant in the room.

CONCLUSION

Although the United States freely admits that "*In 1983, the Supreme Court… ruled that the Secretary's 1969 and 1970 reservation boundary determinations were not "final determinations*", it maintains that this Court "*should decline to consider the validity of the Secretary's boundary determination and affirm the exercise of jurisdiction by the Tribal courts based on the Tribe's inherent right to exclude*". *See* Amicus p. 5, 17. However to do so, the Court would have to ignore Pub. L. No. 88-302. This Court cannot exercise true justice by turning a blind eye to the language and clear intent of the very law that was passed by the United States Congress to prevent the abuse advocated by the U.S. in its *amicus curiae*.

This Court should instead consider the case law applicable to tribal jurisdiction over non-members, the reality of the dispute over the nature of the CRIT western boundary and the resulting disputed area, Pub. L. No. 88-302, and precedent established in *Montana v. U.S.* 450 U.S. 544 (1981): "*Montana* thus described a general rule that, absent a different congressional direction, Indian tribes lack civil authority over the conduct of nonmembers on non-Indian land within a reservation." *Strate v. A-1 Contractors*, 520 U.S. 438 (1997) at 446.

Unlike the tribal courts that exist to serve their tribal government, French is naïve enough to believe and hope that this Court exists to serve the ends of justice rather than the will of the federal government.

DATED: October 13, 2014

s/

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CERTIFICATE OF SERVICE

I, hereby certify that on October 13, 2014, I electronically filed the foregoing with the Clerk of the U.S. District Court using the CM/ECF System which will send notifications of such filing to all persons on the CM/ECF list for this matter, as indicated below:

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