No. 15-15470

In the
UNITED STATES COURT OF APPEALS
For the Ninth Circuit

Roger French

Plaintiff and Appellant

vs.

Karla Starr, et al.,

Defendants and Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

D.C. No. 2:13-cv-02153-JJT

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

In spite of all previous court conclusions and evidence to the contrary, the Colorado River Indian Tribes (CRIT) and Appellees steadfastly hold to their claim that the 1969 Secretarial Order resolved the western boundary dispute and subsequently established that the land at issue is tribal trust land within the Reservation. And even though CRIT has signed documents acknowledging the boundary dispute, Appellees claim that the Act of April 30, 1964 (1964 Act), Public Law 88-302, 78 Stat. 188 (1964) in combination with the 1969 Secretarial Order authorized CRIT and the BIA to indeed lease lands in the disputed area, despite the specific language in the Act prohibiting such authorization. It is these two false claims this Court must accept as true in order to seriously consider the Tribes' assertion of the power to exclude non-Indians, which then leads to Appellees' assertions of tribal jurisdiction over non-Indian French.

This Reply Brief will present a portion of the preponderance of evidence that destroys these two false claims regarding the 1964 Act juxtaposed with the boundary dispute. It will also provide conclusive arguments on the inapplicability of estoppel, the lack of consensual relationship under *Montana*, the prejudicial error in the denial of California's amicus brief, the required consideration of California's interests in the jurisdictional analysis, the requirement to consider personal jurisdiction, the denial of due process before the tribal courts, and the illegality of CRIT's confiscation of French's realty improvements.

II. ARGUMENT

A. The 1964 Act, Section 5, Restricts the Secretary's Leasing Authority

Within their Answering Brief, Appellees allocate considerable discourse on their interpretation of the 1964Act. But the relevant section of the statute is simple and clear:

"**The Secretary of the Interior is authorized to approve leases of lands on**

> **the Colorado River Indian Reservation**, Arizona and California, for such uses and terms as are authorized by the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396a et. seq.), and the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415 et. seq.), … ***Provided, however,*** **That the authorization herein granted to the Secretary of the Interior shall not extend to any lands** lying west of the present course of the Colorado River and south of section 25 of township 2 south, range 23 east, San Bernardino base and meridian in California, **and shall not be construed to affect the resolution of any controversy over the location of the boundary of the Colorado River Reservation:** ***Provided further,*** **That any of the described lands** in California shall be subject to the provisions of this Act **when and if determined to be within the reservation.**" ER at 027-28, 164, 204-05 ¶1. [Emphasis added]

Therefore from this simple, straight-forward language, it is abundantly clear that any authorization of leases by the Secretary of the Interior requires a resolution of the boundary "controversy" and a final determination of the boundary's location in the area described (disputed area). In the matter before this court, the question of whether the Secretary has authority to approve leases in the disputed area is obvious: Has there been a final determination of the location of the boundary and the controversy resolved? ER at 027-28, 164, 204-05.

B. The Location of the CRIT Reservation Western Boundary is in Dispute

1. The U.S. Supreme Court Has Rejected the Secretarial Order

Appellees' arguments that the Secretarial Order was a final determination of the reservation western boundary have been rejected by the U.S. Supreme Court in *Arizona v. California*, 460 U.S. 605, 636 (1983) [*Arizona II*]. Answering Br. at 18, 30 n. 8, 34, 38. ER at 028-35, 053-056, 205-206 ¶¶ 2-4.

2. The Ninth Circuit Court Has Recognized the Boundary Dispute

In *Turley v. Eddy*, 70 Fed. Appx. 934 (2003), a case involving CRIT self help evictions of non-Indian disputed area residents and WBHA members, the Ninth Circuit Court of Appeals recognized the boundary dispute. The Ninth Circuit also dismissed arguments advocating the Secretarial Order, citing the same *Arizona v.*

California cases which Appellees claim "never questioned the validity of the 1969 Secretarial Order". Answering Br. at 34. ER at 209 ¶ 12.

3. CRIT Has Fully Recognized the Boundary Dispute

CRIT fully acknowledged the western boundary dispute in a 1997 tribal ballot. ER at 207-08 ¶ 8. CRIT recognized the boundary dispute by their signature on the 1999 *Arizona III* Stipulated Settlement. *Arizona v.California*, 530 U.S. 392 (2000) (*Arizona III*). ER at 031, 055-57, 206-07 ¶ 6. CRIT's Attorney General freely admitted the dispute in a letter to the Governor of California. ER at 207 ¶ 7. CRIT as a Tribe recognizes the dispute within their own Constitution. ER at 206 ¶ 5. Even the CRIT Tribal Council Chairman admitted the boundary dispute in deposition. ER at 209 ¶ 11.

4. The State of California has Affirmed the Boundary Dispute

The State of California's Amicus Curiae presented the boundary dispute in great detail before Judge Tuchi in this very case. ER at 020-40. Also, in no uncertain terms, the California Governor's office rebuffed efforts by CRIT for a class III gaming operation by citing the boundary dispute. ER at 210 ¶ 15.

5. The District Court Recognized the Boundary Dispute

In spite of arguments to the contrary by both CRIT and the United States, the District Court correctly found that the nature and location of the Colorado River Indian Reservation Western Boundary is still disputed and that "*no court has finally determined the western boundary of the Reservation*" (ER at 005, *ll*. 6 – 7), [French's] "*lot may or may not be within the boundaries of the Reservation*", (ER at 017, *ll*. 21 – 22), "*the location of the Reservation's boundary remains unresolved*", (ER at 018, *ll*. 3 – 4), and "*California addresses issues related to the boundary dispute*" (ER at 018, *ll*. 14) . Appellees then attempt to discredit the District Court's findings, claiming it is merely dicta. Answering Br. at 30 n. 8.

6. The Federal Government has Recognized the Boundary Dispute

In spite of Appellees statement "*To extent the federal government recognized any dispute, it was resolved in the Secretary's 1969 Order*", the U.S. has indeed recognized the boundary dispute as evidenced by their signature on the *AZ v CA* Settlement Agreement, which included an entire paragraph specifically to the "Disputed Boundary". Answering Br. at 30 n. 8. ER at 031, 055-57, 206-07 ¶ 6.

7. Appellees Denial of the Boundary Dispute is Futile

The United States Supreme Court found the Secretarial Order not a "final determination" of the reservation boundary. The U.S., the State of California, the U.S. Supreme Court, the Ninth Circuit Court of Appeals, the United States District Court, CRIT, and Plaintiff French all agree that at a minimum, there is a dispute over the CRIT Reservation western boundary. And since the boundary has never been finally determined, Appellees' claims that the lot at issue is located on tribal trust land are patently unsupportable. These futile assertions by Appellees denying the boundary dispute seem strangely analogous to Judge Clinton's comparison to some who still believe that the earth is flat. See Plaintiff's Br. (Dkt. #62) at 7-8.

C. The 1964 Act Negates any Contention of Tribal Jurisdiction

Having established that the controversy over the location of the CRIT Reservation western boundary has never been resolved, nor the location of the boundary finally determined, the 1964 Act clearly dictates that the Secretary of the Interior has no authority to approve leases anywhere within the disputed area, and had no authority to approve the lease over the lot at issue occupied by French. As extensively presented in French's Opening Brief, this Congressional statute, the 1964 Act, without question prevents tribal adjudicatory jurisdiction over French.

D. Tribal Jurisdiction via Estoppel Cannot be Reconciled within Federal Indian Law

In spite of French's irrefutable conclusion that the 1964 Act coupled with the existing boundary dispute prohibits CRIT from having any inherent authority to

exclude within the disputed area, Appellees' insist that CRIT indeed has the authority to exclude, and French's suggestion that a finding otherwise is "*tantamount to a determination that the western boundary area is not tribal trust property – a direct challenge to CRIT's title*". From this supposed "*direct challenge to CRIT's title*", Appellees' arguments on estoppel spring. Answering Br. at 29.

But Appellees' arguments on estoppel are meaningless because Federal Indian case law has established specific criteria for tribal adjudicatory jurisdiction over non-Indians, and estoppel is clearly in opposition and irrelevant to all present criteria, including the Ninth Circuit's *Water Wheel* criteria. *Water Wheel Camp Recreational Area, Inc. v. LaRance,* 642 F.3d at 805-19. Also overriding all of Appellees' estoppel arguments is the reality that Federal Indian law requires inquiry into the status of land for the determination of tribal adjudicatory jurisdiction. Therefore the federal court itself must make determinations on whether the land in question is on the Reservation and whether the land is tribal land on the Reservation. And it is that reality that renders Appellees' estoppel arguments irrelevant in this matter. See Opening Br. at 4-10.

Furthermore, French's presentation of the 1964 Act in conjunction with the boundary dispute is clearly not "*a direct challenge to CRIT's title*". Appellees' estoppel arguments that French is "*challenging the Tribe's ownership of the property*" are thus rooted not on French's assertion, but their concluded ramifications of facts presented. Answering Br. at 25. This convoluted argument is without merit, as French has firmly established that his assertions are not "*a direct challenge to CRIT's title*", but rather a citation to well established facts.

1. <u>Estoppel from Challenging Landlord's Title in Eviction Actions</u>

Appellees' advocate estoppel to prevent French from presenting the 1964 Act in conjunction with the boundary dispute, claiming that "*a tenant in possession is estopped from contesting the landlord's title in an ejectment action*". Answering Br.

at 27. However, French is no longer "a tenant in possession", nor has CRIT established that they are the "landlord" at issue, nor has CRIT established that French is contesting "landlord's title", nor is the issue before the court "an ejectment action". Therefore the principle cited by Appellees is inapplicable to this jurisdictional matter in every manner possible.

Appellees claim that "*French entered the Property as CRIT's tenant*". Answering Br. at 28. But the reality is that French entered the property as a tenant of the United States Department of the Interior, where his constitutional rights were preserved and guaranteed. And it is those rights that Appellees would have this Court remove by finding that French's Permit forced him to yield his constitutional rights to a hostile domestic dependant sovereign. Moreover, it is clear from the Permit and the Assignment that the landlord in this agreement is not CRIT, but instead the Secretary of the Interior, unaffecting French's constitutional rights. ER at 212 ¶ 24.

2. Asserted Estoppel by Contract and Contact Cannot Apply

Appellees' argue that estoppel by contract and conduct should be applied here because French's Permit designated the land as "within the Colorado River Indian Reservation", and he paid "rent to the BIA for ten years". Answering Br. at 26. But again the threshold issue for the application of estoppel is that there is a challenge to the landlord's title in defense of an ejectment action, which does not represent the circumstances within this jurisdictional matter. Also, the application of contract estoppel based upon "*facts recited in a contract are "conclusively presumed to be true*"" (Answering Br. at 28) is not applicable here where the improperly authorized Permit (per the 1964 Act) which mistakenly misrepresents the status of the land for which the Permit was issued, is void *ab initio* and entirely without any legal effect under any stated legal theory. Plaintiff's Br. (Dkt. #62) at 13-14.

E. Assertions of Collateral Attack on the Secretary's Order Ignore the

Evidence, California's Brief, and the Issues Before this Court

In Appellees claims that French is somehow challenging both the Secretarial Order and CRIT's title by citing facts that the location of the Reservation western boundary is in dispute, they claim such is equivalent of an impermissible "collateral attack" on the Secretary's order. Answering Br. 38. The U.S. DoJ made similar assertions in their Amicus Curiae. U.S. Amicus (Dkt. #72) at 8.

French responded to the DoJ's amicus providing evidence of the DoJ's self-serving motives for its attempt to persuade this Court to find tribal jurisdiction over him. ER at 060-63. French also provided the history of the U.S. Supreme Court's rejection of the Secretarial Order. ER at 048-57. The State of California also provided that history. ER at 025-33. And French provided context for the unnecessary intrusion of the U.S. DoJ in this matter. ER at 048 (Introduction).

This sideshow should end in the undeniable realization that French's citing the boundary dispute, a well established fact, is not a challenge to anything. Opening Br. at 12.

F. Consensual Relationship Test Under *Montana* Must Fail

Appellees' contend that jurisdiction is confirmed by a *Montana* analysis because of an asserted consensual relationship between CRIT and French ("Alternately, French's Consensual Relationship with the Tribe is Sufficient to Confer Jurisdiction under *Montana*"). *Montana v. United States*, 450 U.S. 544(1981). Answering Br. at 44. ("Tribal Courts had jurisdiction even under *Montana*, which provides that tribes "may regulate… the activities of nonmembers who enter consensual relationships with the tribe", even if those activities occur on non-Indian fee land"). ("Leases are a paradigmatic "consensual relationship" under *Montana*"). Answering Br. at 45.

However, even if a "consensual relationship" between French and CRIT could be established by a void and cancelled Permit between French and the U.S. Dept. of

Interior, such could not possibly implicate the "**tribe's sovereign interests**" as is required in accordance with *Plains Commerce v. Long Family Land & Cattle Co., Inc.*, 554 U.S. 316, (2008).

Further refinement of this criterion in *Plains Commerce* is described in Cohen's Handbook of Federal Indian Law (Nell Jessup Newton et al. eds., 2005) at 241:

> …pursuant to *Montana*'s first exception, tribal regulatory **authority over a consenting nonmember** "must stem from the tribe's inherent sovereign authority to **set conditions on entry, preserve tribal self-government, or control internal relations")**; *id.* at 341 [Emphasis added]

Clearly CRIT does not have the sovereign authority to (1) set conditions on entry due to the 1964 Act, nor (2) is leasing land to nonmembers necessary to preserve tribal self-government, nor (3) is leasing land to nonmembers necessary to control internal relations. Therefore, *Montana*'s first exception, consensual relations, cannot be affirmed within this matter as dictated by *Plains Commerce*. The irrefutable conclusion is that the consensual relationship test under *Montana* does not apply to French. *See also* Opening Br. at 20, Plaintiff's Br. (Dkt. #62) at 10-12, Plaintiff's Reply Br. (Dkt. #75) at 8-10.

G. Granting of California's Amicus Brief Should Indeed be Reconsidered

According to Appellees, "There are no grounds for this Court to reconsider the denial of the State's brief as moot." Answering Br. at 54. They further make the case that a) such denial by the District Court is not prejudicial, b) the brief only "addresses issues related to the boundary dispute, and not the grounds on which this court has decided this matter", and c) there has been no harm to French resulting from the denial of the State's interests. Answering Br. at 52-53.

California submitted its Brief in response to the District Court's granting of an amicus filed brief by the United States "asserting that a 1969 Order of the Secretary of the Interior (1969 Secretarial Order) resolved the boundary" and argued "that the

statute of limitations for challenging the 1969 Secretarial Order has run, and therefore, the 1969 Secretarial Order is unchallengeable and definitively resolves the dispute." While California vehemently challenged the assertions expressed by the U.S., the State also expressed its concern with State's residents being denied "access to the State judicial system to resolve disputes, such as the one before this Court here, involving Plaintiff French." ER at 024-25.

As to Appellees' claim that the District Court's rejection of California's brief was not prejudicial, it must be considered in the context of the District Court's granting the U.S. Amicus, especially in light of the prior litigation in *AZ v. CA*. ER at 024-33, 036-040. Considering the list of California's interests enumerated within their Amicus (ER at 24-25, 040), it is clear that the denial by the District Court was indeed prejudicial to French as well as to all California citizens. In the interests of justice, this deplorable and irresponsible action by the District Court should be corrected by this Court's reconsideration of California's amicus curiae.

H. California Indeed has a Competing State Interest under *Montana*

Appellees claim "There Is No Competing State Interest Here, and Thus a *Montana* Analysis Is Not Required". Answering Br. at 43. They further attempt to differentiate the current matter from *Nevada v. Hicks*, 533 U.S. 353, 359-60 (2001), by pointing out that French is not a California state official as was the circumstance in *Hicks*. However, the consideration in *Hicks* was whether a tribe's authority to exclude was sufficient to assert regulatory jurisdiction. In *Hicks*, the U.S. Supreme Court found that with a competing State interest, the authority to exclude was insufficient to assert regulatory jurisdiction and therefore a *Montana* analysis was required. Here where the District Court found that CRIT has the authority to exclude and the State of California has expressed its interests on this very jurisdictional issue through its amicus brief, the reasoning in *Hicks* cannot be separated from the same issues before this Court. Therefore, *Hicks* certainly applies

to this case and a *Montana* analysis is thus required.

I. Personal Jurisdiction is Required for Tribal Court Jurisdiction

Appellees claim "As French did not raise this argument to the Tribal Courts or the district court, he cannot raise it here." Answering Br. at 50. However, irrespective of raising the issue of personal jurisdiction to the District Court, the requirement for personal jurisdiction must be affirmed as a condition for tribal jurisdiction over a non-member as affirmed in *Water Wheel:*

> To exercise its inherent civil authority over a defendant**,** a tribal court must have both subject matter jurisdiction – consisting of regulatory and adjudicative jurisdiction – **and personal jurisdiction**. [Emphasis added] *Water Wheel,* 642 F.3d. at 809.

Therefore, any requirement that an argument on personal jurisdiction be presented within the District Court is irrelevant due to Federal Indian law requiring such evaluation and inquiry. Appellees' attempts to convince this Court to sidestep personal jurisdiction requirements cannot be held credible.

J. French's Denial of Due Process

Appellees claim "French's Repeated Failure to Articulate Particularized Facts Defeats His Due Process Claims". However, French's violations of due process claims are extensive throughout the tribal appellate court record, and also within the District Court records. Plaintiff's Br. at 17 ll.4-15, ER at 149, 213, 277. A sampling of French's articulation from Plaintiff's Separate Statement of Facts in Support of Motion for Summary Judgment (Dkt #63) (ER at 213) :

> Article III § 3 of the CRIT Constitution guarantees all persons including French the procedural and substantive due process rights under the United States and California Constitutions. French pointed out this fact repeatedly in the tribal appellate court record. *See* Brief of Appellant, **Exhibit C**, p.21¶ C ("Although CRIT claims that its judicial system provides due process of law to all who come before it, without establishing whether the U.S. Constitution is incorporated into the CRIT Constitution, the **Tribal Court clearly has not provided due process of law consistent with the U.S. Constitution**"), p. 30 ¶ C ("French was not

Afforded Due Process of Law in Accordance with his Constitutional Rights as an American Citizen"), and p. 44 ¶ VIII B ("CRIT Constitution Provides equal Protection and Due Process"). *See also* Appellant's Petition for Rehearing attached hereto as **Exhibit U**, Dkt. No. 123, p. 1 ¶¶ 1, 2, 3, p. 3¶ 6 ("[T]his Court erred in concluding that "*French had no liberty or property interest sufficient to require due process of law*.."""), p. 4 ¶ 7, p. 6-10 ("U.S. Constitution and California State Constitutions Apply to French as Argued").

The denial of due process in this case and its significance was presented in French's Petition for Rehearing before the CRIT Court of Appeals (ER at 149) :

> The specific points of law and facts that French believes this Court has overlooked or misapprehended are:
>
> 1. That the Court did not find, as required, that the entire Tribal Court proceedings and any actions taken with respect to French are governed by the United States Constitution and the Constitution of the State of California
> 2. That French is entitled to equal protection under the law under the United States Constitution and the Constitution of the State of California as all Colorado River Indian Tribes ("CRIT") members are entitled to such protections.
> 3. That the CRIT Constitution has specifically incorporated and adopted the United States Constitution and the Constitution of the State of California, as provided at Article III, Section 3 which states: "all rights secured to the citizens of the United States of America by the Federal or State Constitutions shall not be impaired or abridged by this constitution and by-laws." This conclusion is further supported by Article VI, Section 1, which states in pertinent part: "The tribal council of the Colorado River Indian Tribes may exercise the following powers subject to any limitations imposed by the Statutes **or the Constitution of the United States** . . . ." [Emphasis added.] Finally, the CRIT Constitution at Article XII, Section 1 provides: "The judicial power of the courts of the Colorado River Indian Tribes shall extend to all cases and matters in law and equity arising under this constitution and bylaws...subject to any limitations, restrictions, or exceptions imposed by or under the authority of the Constitution or the laws of the United States."

Thus this denial of due process leads to CRIT's necessary assertions that its one-way attorney fee law (CRIT Tribal Property Code Section 1-36(i)) does not violate

equal protection afforded by the Fourteenth Amendment to the United States Constitution. Answering Br. at 49-50. But French included extensive arguments in opposition, clearly defeating CRIT's arguments supporting the one-sided attorney fee provision. ER at 272-76, 291.

K. The Forfeiture of French's Permit Did Not Allow CRIT's Confiscation of His Realty Improvements

Appellees claim that CRIT had the right to take possession of all buildings and improvements on the property after the BIA had determined that French had forfeited the Permit by failing to pay rent. Answering Br. at 10.

But what Appellees fail to recognize is that the BIA's forfeiture of the Permit letter demanded that French remove all realty improvements and "restore premises to their original state". SER at 1:540-41. ER at 133. Thus the BIA did not allow CRIT to confiscate the realty improvements for their own benefit as was directed by the CRIT tribal court. Therefore, by the forfeiture demands under the direction of the Secretary of the Interior, the CRIT tribal court had no legal authority to force French to leave his realty improvements as occurred.

This confiscation was fully explained within French's Opening Brief before the CRIT Tribal Appeals Court (ER at 289-90):

> "The permanent improvements to the property obviously had value to the Tribes as evidenced by the conditions imposed upon French for his orderly departure from the property after the issuance of the Writ of Restitution. Those conditions were summarized in an email from CRIT attorney Winter King to French attorney Thomas Slovak on September 24, 2011 … CRIT proposed as follows:
>
> > "We would like your assurance that Mr. French intends only to remove his personal, removable property, and does not intend to remove, destroy, or damage any of the improvements to the property or the property itself prior to vacating the premises. If we learn that any such damage or removal is occurring, we will ask the Tribal Police to execute the write immediately, and we will amend our claim for damages accordingly."

> Clearly, CRIT recognized a significant value to the realty improvements French was to leave on the property. Clearly, CRIT wanted the value of those assets for their own benefit. Clearly, French was threatened if he chose to remove, damage, or destroy those assets.
>
> In addition to the demands by CRIT for the realty improvements, the Tribal Court judge also indicated that the permanent improvements were to remain (Trial Transcript P. 102):
>
> > "The court will take notice that he left the property pursuant to the court's order the writ of restitution. The writ of restitution indicated that he was to leave and **personal property he could take, but everything else had to remain**." [Emphasis added]
>
> Yet the Tribal Court assigned no value to those assets to offset damages. Or alternatively, the Tribal Court merely used its authority to take French's property without compensation to him, for the benefit of CRIT. Such a decision by a Court of Law is certainly unjust, unwarranted, and unacceptable to any system of jurisprudence attempting or parading itself as providing an impartial judicial system. French again can only speculate on the Tribal Court's motives for this ruling."

The irrefutable conclusion is that the CRIT Tribal and Appellate Courts defied the BIA's specific demand of "restoration of the premises as provided for in Article 6(c)" [of the Permit], and instead confiscated French's realty improvements for CRIT's benefit. ER at 133.

L. Congressional Intent for The 1964 Act, Section 5

Appellees claim the 1964 Act "confirms the trust status of the Property and consequently, CRIT's power to exclude nonmembers". Answering Br. at 2. This position may hold within the Reservation's undisputed boundaries, but clearly nowhere else, and certainly not within the disputed area. But why did Congress feel the need to include Section 5 in the 1964 Act? The answer deserves consideration here to help understand Congressional intent and to better apply the statute to this case. From "Plight of the Residents" in *Colorado River Indian Reservation Western Boundary Dispute* by the West Bank Homeowners Association (included within the

Holt Report and unchallenged in the record)[1] (ER at 234):

> It was not until the years during *Arizona I* that the Federal Government questioned the rights of persons who had settled along the river in the disputed area. The residents began to receive letters from the Department of the Interior – Bureau of Reclamation on or about November 22, 1961. They were asked to provide details concerning the date their occupancy began, a description of the property they claimed, their source of water, and any other pertinent data regarding their occupancy. This information was required if they wanted to be considered for the "Permit Program" for "temporary use of land in the Lower Colorado River area".
>
> The people affected by this new policy had formed a group known as the "Colorado River Resort and Resident Association" (CRRRA), and listed its address as River Bend Lodge, now known as Aha Quin. Its members held property interests in some fashion along the river from Blythe to Headgate Dam. Everybody in the area was forced to state their claim for permit purposes, or else lose any right to occupy the land. The permit applications required the residents to waive all claims and rights of ownership they may have had, or face eviction by the federal government.
>
> The CRRRA eventually changed their name to the Pioneer Land Settlers. As the Pioneer Land Settlers struggled onward, they obtained significant help from members of Congress (Exhibit 5). Legislation was passed in 1966 to help this group, but it was vetoed by President Johnson. The President also vetoed another bill in late 1968 saying it would give "unprecedented defense to 19 individuals and corporations in a court battle with the federal government for 2,100 acres near Blythe, California". (Exhibit 6)
>
> Legislation was introduced a third time on March 4, 1969, by Senator George Murphy on behalf of the Pioneer Land Settlers. The proposed law would give the people a chance to present their case before a Court of Claims Hearing Official. The Hearing Official would be able to consider the humanitarian as well as the legal issues in making his recommendation. (Exhibit 7) The bill never became law.
>
> As the U.S. and CRIT were attempting to expand the reservation based on a

"fixed meander line boundary" during *Arizona I*, simultaneous with CRIT's

[1] Appellees claim CRIT divided the Rymer subdivision into individual lots. This claim is false as the Rymers fully sectionalized the property and issued quit claim deeds far before the 1969 Secretarial Order. Answering Br. at 8. ER at 110.

Congressman Morris Udall attempting to persuade the Dept of Justice of the same theory (ER at 051-52, 024-26, 028-31, 035-40), Congress was acutely aware of the threat to the property and constitutional rights of the residents and resort owners as a consequence of the proposed statute without specific language to protect their interests. It is clear that Congress with the insertion of Section 5 in the 1964 Act, attempted to preserve those property and constitutional rights. Similarly, the first sentence of the 1964 Act prohibits confiscation of existing "improvements placed on the land by assignees", again showing Congressional intent to preserve property rights. (ER at 163, 209 ¶13). Unfortunately, Congress has indeed failed. Or has it?

III. CONCLUSIONS

Upon thoughtful consideration of Appellees' arguments in their Answering Brief and all evidence before this Court, French concludes that for the foregoing reasons, neither the CRIT Tribal Court nor the CRIT tribal officials have jurisdiction over him. Therefore French respectfully requests this Honorable Court reverse and vacate the District Court's Order of February 12, 2015, and grant him relief as requested in his Complaint for Declaratory and Injunctive Relief (Dkt. #6). ER at 308-10.

Respectfully submitted this 16th day of September, 2015,

Roger French, Appellant

s/

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