

FILED

SEP 19 2017

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

No. 17-197

---

IN THE  
**Supreme Court of the United States**

---

ROGER FRENCH,

*Petitioner,*

v.

HONORABLE KARLA STARR, HONORABLE ROBERT N. CLINTON, AND HONORABLE ROBERT MOELLER, in their capacities as judges of the CRIT Tribal Appellate Court; HONORABLE LAWRENCE C. KING, in his capacity as the Chief and Presiding Judge of the Colorado River Indian Tribes Tribal Court; Dennis PATCH, in his official capacity as CRIT Tribal Council Chairman; and HERMAN "TJ" LAFFOON in his official capacity as a member of the CRIT Tribal Council,

*Respondents.*

---

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

**PETITIONER'S REPLY BRIEF**

---

ROGER FRENCH  
(appearing pro se)  
18001 Cowan Ste J  
Irvine, CA 92614  
Telephone: (949) 697-3246  
Email: rvrrat3@cox.net

September 20, 2017

---

## QUESTIONS PRESENTED

Whether Petitioner's citation to this Court's acknowledged Indian Reservation boundary dispute is somehow equivalent to contesting tribal ownership of the land sufficient to nullify the *Montana* rule and federal Indian law.

Whether this Court has set precedent in holding that a tribal court has jurisdiction over a nonmember in an eviction action where the land at issue may or may not be within the boundaries of the tribe's reservation.

Whether the State of California has a right to protect its citizens' constitutional rights where such rights are forfeited under tribal jurisdiction.

## TABLE OF CONTENTS

QUESTIONS PRESENTED .....	i
TABLE OF AUTHORITIES.....	iv
REPLY TO BRIEF IN OPPOSITION.....	1
I. Citing a Reservation Boundary Dispute is Not a Challenge to Indian Land Title .....	1
II. Respondents Attempt to Shoehorn this case into the Ninth’s Circuit’s ruling under <i>Water Wheel</i> Ignores the Differentiating Facts, the Plenary Power of Congress, and Federal Indian Law ....	3
A. Land Status Differentiates this matter from <i>Water Wheel</i> .....	3
B. The 1964 Act Differentiates this matter from <i>Water Wheel</i> .....	4
C. The Leases are with Fundamentally Different Lessors.....	4
D. This Case is not <i>Water Wheel</i> .....	5
III. California’s Challenge to the CRIT Reservation Boundary Location is Inextricably Tied to the Jurisdictional Question before the Court.....	6
IV. Respondents Sidestep Differentiating Facts in Asserting that Petition does not Raise Questions within Rule 10(c).....	7
A. The Lower Courts’ Refusal to Consider Congressional Authority is Indeed a Conflict with Relevant Decisions of this Court .....	7
B. The Lower Courts’ Refusal to Consider Land Status is Indeed a Conflict with Relevant Decisions of this Court.....	8

C. The Lower Courts' Application of Estoppel is Indeed a Conflict with Relevant Decisions of this Court .....	9
D. The Lower Courts Did Not Consider a <i>Montana</i> Analysis .....	10
E. The Lower Courts Did Not Consider Land Alienated under <i>Montana</i> .....	11
F. The Lower Courts Did Not Consider Regulatory Authority .....	12
V. CONCLUSION.....	12

## TABLE OF AUTHORITIES

## CASES

<i>Arizona v. California</i> , 373 U.S. 546 (1963) [ <i>Arizona I</i> ].....	6
<i>Arizona v. California</i> , 460 U.S. 605 (1983) ( <i>Arizona II</i> ) .....	12
<i>Arizona v. California</i> , 530 U.S. 392 (2000) [ <i>Arizona III</i> ].....	6
<i>Atkinson Trading Co. v. Shirley</i> , 532 U.S. 645 .....	8, 9
<i>Iowa Mutual Ins. Co. v. LaPlante</i> , 480 U.S. 9 (1987) .....	10
<i>Merrion v. Jicarilla Apache Tribe</i> , 455 U.S. 130 (1981) .....	10
<i>Metropolitan Water District v. United States</i> , Civ. No. 81-0678-GT(M) (Apr. 28, 1982) .....	12
<i>Montana v. United States</i> , 450 U.S. 544 (1981) .....	<i>passim</i>
<i>Nevada v. Hicks</i> , 533 U.S. 346 (2001) .....	8, 9
<i>Plains Commerce Bank v. Long Family Land and Cattle Co.</i> , 554 U.S. 316 (2008) .....	9
<i>South Dakota v. Bourland</i> , 508 U.S. 679 (1993) .....	11

<i>Strate v. A-1 Contractors</i> , 520 U.S. 438 (1997) .....	8, 9, 10, 11
<i>Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.</i> , 460 U.S. 533, 103 S.Ct. 1343, 75 L. Ed. 2d 260 (1983) .....	8
<i>United States v. Aranson</i> , 696 F.2d 654 (9 <sup>th</sup> Cir. 1983) .....	6
<i>Water Wheel Recreational Area, Inc. v. La Rance</i> , 642 F.3d 802 (9 <sup>th</sup> Cir. 2011) .....	<i>passim</i>

## CONSTITUTIONAL PROVISIONS

U.S. Const. Art. III, § 1 .....	8
U.S. Const. Art. VI, cl. 2 .....	8

## STATUTES

Act of April 30, 1964, Public Law 88-302, 78 Stat. 188 .....	<i>passim</i>
---	---------------

## RULES

Fed. R. Civ. P. 19 .....	3, 4, 13
Supreme Court Rule 10(c) .....	<i>passim</i>

## REPLY TO BRIEF IN OPPOSITION

Pursuant to Supreme Court Rule 15.6, Petitioner addresses the following new points raised in Respondents' Brief in Opposition.

### I. Citing a Reservation Boundary Dispute is Not a Challenge to Indian Land Title

Within the Brief in Opposition, Question Presented, Respondents claim that Petitioner is "contesting the ownership of land by the United States in trust for the Colorado River Indian Tribes (CRIT)". This misrepresentation of the facts purportedly supports the lower courts application of estoppel to ignore Supreme Court precedent to then find tribal jurisdiction over Petitioner, a non-tribal member. However, the fact is Petitioner has only cited a reservation boundary dispute that subsequently triggers a Congressional statute, the Act of April 30, 1964, Public Law 88-302, 78 Stat. 188, which specifically prohibits the Secretary of Interior from exercising any authority on behalf of the Reservation in the disputed area until a final boundary determination is made.

Petitioner has not contested the ownership status of the land as asserted by Respondents because the statute's relevant condition only requires an unresolved boundary. California here has confirmed that the Reservation boundary dispute has not been resolved, and therefore the statute must be considered in the question of tribal jurisdiction over a nonmember.

Respondents' implication that citing the

acknowledged reservation boundary dispute is somehow a challenge to title is unfounded, ill-reasoned, and a mischaracterization of the facts presented. There is simply no challenge to title by Petitioner that would support treating the land as tribal trust land in the jurisdictional analysis per this Court's precedent within *Montana v. United States*, 450 U.S. 544 (1981). Therefore, Respondents question presented is irrelevant because it misrepresents the facts in the record.

But what is relevant to Respondents' false assertion of Petitioner "contesting CRIT's title to the property" is Respondents' failure to address any of Petitioner's citations to this Court's precedent in the determination of tribal jurisdiction over nonmembers, including:

- The Plenary Power of Congress (Pet. at 15-17)
- The Required Consideration of Land Status (Pet. at 17-21)
- The Required Consideration of a *Montana* analysis and the *Montana* Rule (Pet. at 25-29)
- The Land is Alienated under *Montana* (Pet. at 29-32)
- The Absence of Regulatory Jurisdiction (Pet at 32-34)
- California's Interests (Pet. at 34-37)



Respondents' silence on the relevant federal Indian law is deafening.

**II. Respondents Attempt to Shoehorn this case into the Ninth's Circuit's ruling under *Water Wheel* Ignores the Differentiating Facts, the Plenary Power of Congress, and Federal Indian Law**

Within the Brief in Opposition, Question Presented, Respondents claim to have cited Supreme Court precedent in a holding of tribal court jurisdiction over an eviction action. Yet further examination shows that the only Supreme Court cases cited in this context were in reference to the tribal and lower courts' analysis under *Water Wheel*. (*Water Wheel Recreational Area, Inc. v. La Rance*, 642 F.3d 802 (9th Cir. 2011)). But the application of those cases was based upon a fact set that is entirely inconsistent with the matter before the Court. As much as Respondents would like to convince the Court otherwise, this case is not *Water Wheel*.

**A. Land Status Differentiates this matter from *Water Wheel***

Petitioner does not concede that the land at issue is tribal trust land. *Water Wheel* initially challenged the status of the land before the tribal courts, but waived that challenge before the district court when threatened with the application of Fed. R. Civ. P. 19 (Rule 19). By contrast, Petitioner presents the courts' own findings: "*no court has finally determined the western boundary of the Reservation*", [French's] "*lot may or may not be within the boundaries of the Reservation*", and "*the location of the Reservation's boundary remains*

*unresolved*'. Pet. App. at 8a, 26a. Petitioner has avoided the Rule 19 challenge by framing the jurisdictional challenge under the *Ex parte Young* doctrine, thus avoiding the pitfall of *Water Wheel*.

The *Water Wheel* decision was thus based upon an assumption that the land is CRIT tribal trust land, and that the status of the land would not be considered in the determination of tribal jurisdiction over *Water Wheel*, a nonmember entity. Here, there is no such concession of CRIT tribal trust land, which provides a substantially different fact set for analysis under this Court's precedents for tribal jurisdiction over a nonmember, including the *Montana* progeny.

**B. The 1964 Act Differentiates this matter from *Water Wheel***

Since the *Water Wheel* courts would not consider the reservation boundary dispute under Rule 19 constraint, it did not consider the 1964 Act prohibiting Secretarial approval of leasing in the disputed area. Here, where the lower courts have recognized the boundary dispute, the 1964 Act must be considered. This substantially different fact set further differentiates this matter from *Water Wheel*.

**C. The Leases are with Fundamentally Different Lessors**

The *Water Wheel* lease was issued by CRIT. By contrast, Petitioner's permit was issued by the United States Department of Interior. Therefore the nature of the leases could not possibly be more fundamentally different. This is especially crucial

when considering the matter of constitutional rights, including due process<sup>1</sup>, which are preserved under an agreement with the U.S. government, but are forfeited under an Indian tribe's jurisdiction.

#### D. This Case is not *Water Wheel*

Respondents claim that "The facts of *Water Wheel* are remarkably similar to the facts here", characterizing *Water Wheel* as a "decision involving nearly identical facts and concluding that tribal courts generally have jurisdiction to adjudicate eviction actions to remove non-members from tribal land." But in spite of Respondents claims of *Water Wheel* being "remarkably similar" and "nearly identical facts", the truth here is the cases have no legal similarity whatsoever once the differentiating facts are considered. Summarizing the differentiating facts above, here the Court cannot reasonably treat the land as tribal trust land in the jurisdictional analysis consistent with the *Montana* progeny, nor can it ignore a congressional statute, the 1964 Act, nor can it ignore the tenancy agreement between Petitioner and the U.S. government where constitutional rights are preserved, not forfeited. Therefore, contrary to Respondents' claim, the facts presented for judicial review here could not be further removed from the facts considered in *Water Wheel*.

---

<sup>1</sup> Petitioner's arguments on the tribal courts' denial of due process were ignored by the lower courts. Pet. at 15.

### III. California's Challenge to the CRIT Reservation Boundary Location is Inextricably Tied to the Jurisdictional Question before the Court

Within the Brief in Opposition, Respondents claim Petitioner has misrepresented California's interest in the matter, apparently trying to separate California's position on the boundary location from her jurisdictional position. Since California's interpretation of the 1876 Executive Order describing the CRIT Reservation western boundary is entirely consistent with two U.S. Supreme Court Special Masters (*Arizona v. California*, 373 U.S. 546 (1963) [*Arizona I*], *Arizona v. California*, 530 U.S. 392 (2000) [*Arizona III*]), and CRIT's position in *United States v. Aranson*, 696 F.2d 654 (9<sup>th</sup> Cir. 1983), it is certainly clear to California that the Reservation does not extend into the disputed area. And as California explained in her *Amicus Curiae*, "California has an interest in the presence or absence of its jurisdiction over the disputed area, and the effect that that jurisdiction may have on the State and its residents".

The reasoning behind Respondents' complaint that the implication of California's challenge to CRIT's title over the disputed area is somehow divorced from its position on the resulting jurisdiction is certainly lost on Petitioner. Petitioner thus defers to the State of California's amicus briefs filed in this action as to the State's position on the disputed boundary and the resulting proper jurisdiction. Petitioner asserts that had the district court granted the State's Motion for Leave to File Brief as *Amicus Curiae* in Support of Plaintiff,

Respondents' complaint could be more thoroughly and correctly considered by this Court. Petitioner reasserts that the Court should reconsider the courts' denial of California's amicus briefs and allow California to express the state's interest in this matter.

#### IV. Respondents Sidestep Differentiating Facts in Asserting that Petition does not Raise Questions within Rule 10(c)

Within the Brief in Opposition, Respondents plead before the Court that "the Petition does not raise questions within the scope of Rule 10(c)". But instead of addressing the Petition's specific citations to conflicts in accordance with Supreme Court Rule 10(c), Respondents resort to their fallback position that the Ninth Circuit's reasoning in *Water Wheel* somehow mysteriously applies, completely ignoring the fundamental and significant differences in the facts.

##### A. The Lower Courts' Refusal to Consider Congressional Authority is Indeed a Conflict with Relevant Decisions of this Court

The 1964 Act prevents tribal jurisdiction in this matter. But instead of challenging the ramifications of the 1964 Act on tribal jurisdiction, Respondents attempt to nullify the 1964 Act by discrediting all previous court conclusions that the boundary dispute is unresolved, and ignoring California's amicus brief. Respondents' denial of the boundary dispute cannot be reasonably held credible.

The lower courts' refusal to address or

consider the 1964 Act not only presents a conflict with this Court's affirmation of the plenary power of Congress, it is an egregious assault on the rule of law and puts into question the credibility of the courts to uphold Constitutional law per the Supremacy Clause, Art. VI<sup>2</sup>, and Article III<sup>3</sup> ("one supreme Court") to follow the Supreme Court. *See Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, 460 U.S. 533, 103 S.Ct. 1343, 1344, 75 L. Ed. 2d 260 (1983).

In spite of Respondents assertions to the contrary, the lower courts' refusal to consider the 1964 Act is very much a conflict with relevant decisions of this Court as envisioned within Rule 10(c). Leaving this congressional statute unaddressed by a denial of this Petition would result in further immeasurable harm to the 200 West Bank families whom this Petitioner has sought to defend, albeit with limited resources.

#### B. The Lower Courts' Refusal to Consider Land Status is Indeed a Conflict with Relevant Decisions of this Court

As the Petition included argument that the courts were required to examine land status as a condition of finding tribal jurisdiction over Petitioner, and that the refusal of the courts to consider land status is in direct conflict with *Nevada v. Hicks*, 533 U.S. 346 (2001), *Strate v. A-1 Contractors*, 520 U.S. 438 (1997), and *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 658 n.12 (2001), Petitioner will not repeat the arguments here. Pet.

---

<sup>2</sup> U.S. Const. Art. VI, cl. 2

<sup>3</sup> U.S. Const. Art. III, § 1

at 17-21. But Respondents' omission of any response to the obvious conflict with the courts' refusal to consider land status and these relevant decisions of this Court demonstrates that Respondents claim that "the Petition does not raise questions within the scope of Rule 10(c)" is clearly without merit.

**C. The Lower Courts' Application of Estoppel is Indeed a Conflict with Relevant Decisions of this Court**

As the Petition included argument that the courts' decision to utilize estoppel to justify tribal jurisdiction over Petitioner is in conflict with relevant decisions of this Court per Rule 10(c), Petitioner will not repeat that argument here. Pet. at 22-24. But Petitioner notes that Respondents have not only ignored the Court's criteria for tribal jurisdiction over nonmembers in accordance with *Montana, Strate, Hicks, Atkinson, and Plains Commerce (Plains Commerce Bank v. Long Family Land and Cattle Co., 554 U.S. 316 (2008))*, Respondents have ignored the unavoidable questions presented within the Petition on this issue:

1. How any court could reasonably find that CRIT has the inherent authority to exclude on land that "may not be within the boundaries of the Reservation"?
2. Where "estoppel does not depend on the validity of landlord's title", are we to infer that the jurisdiction of a tribal court over a nonmember also does not depend upon the validity of a tribe's claim of tribal land?

3. Is not jurisdiction required as a threshold issue prior to any court's authority to consider eviction?
4. How can CRIT be considered "landlord" when the Permit was issued by the U.S. Department of Interior?
5. How can estoppel based upon *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9 (1987) be justified in the face of the applicability of the *Montana* rule as confirmed in *Strate*?

Respondents' omission of any answer or comment on these questions regarding estoppel clearly demonstrates that Respondents claim that "the Petition does not raise questions within the scope of Rule 10(c)" is unfounded and without merit.

#### D. The Lower Courts Did Not Consider a *Montana* Analysis

Respondents attempt to make the case that the Ninth Circuit applied a *Montana* analysis:

Petitioner also asserts that *Water Wheel* is distinguishable because, in that case, the Ninth Circuit applied both *Merrion*<sup>4</sup> and *Montana*. But Petitioner ignores that the Ninth Circuit in this case applied *Water Wheel* whole cloth, including its discussion of both lines of Supreme Court precedent. Pet. App. at 3a. Br. in Opp'n at 12.

---

<sup>4</sup> *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1981)



In reality, the Ninth Circuit reaffirmed the district court without comment on either line of this Courts' precedent. Respondents conveniently ignore the district court's finding that "*Montana* did not apply [to Water Wheel because it] addressed a tribe's exercise of jurisdiction over non-members on non-Indian fee lands within a reservation", and "Accordingly, the Court declines to enter into a *Montana* analysis here." Pet. at 27. Unquestionably, the lower courts rejected a *Montana* analysis, despite assertions otherwise by Respondents. [Emphasis added]

Because the Petition included argument that a *Montana* analysis is required in the determination of tribal jurisdiction over a nonmember, and the courts' rejection of a *Montana* analysis is in conflict with relevant decisions of this Court per Rule 10(c), Petitioner will not repeat that argument here. Pet. at 25-29. Respondents' assertions that a *Montana* analysis was considered are unsupportable, which further discredits assertions that the Petition does not raise questions within the scope of Rule 10(c).

#### E. The Lower Courts Did Not Consider Land Alienated under *Montana*

The Petition included argument that the lower courts refused to consider land alienated under *Montana* in accordance with the 1964 Act, *South Dakota v. Bourland*, 508 U.S. 679 (1993), and *Strate*, which resulted in an obvious conflict with relevant decisions of this Court per Rule 10(c). Pet. at 29-32. Since Respondents' failed to address land alienated under *Montana*, their assertions that the Petition does not raise questions within the scope of Rule

10(c) are simply without merit.

#### F. The Lower Courts Did Not Consider Regulatory Authority

The Petition included argument that the lower courts refused to consider the necessary requirement of regulatory authority for tribal jurisdiction over a nonmember, and the failure of the courts to confirm regulatory authority is indeed another example of a conflict with relevant decisions of this Court per Rule 10(c). Pet. at 32-34. Since Respondents' failed to address the requirement for regulatory authority, their assertions that the Petition does not raise questions within the scope of Rule 10(c) are again simply without merit.

### V. CONCLUSION

Ever since the first challenge to the 1969 Secretarial Order by Metropolitan Water District, *Metropolitan Water District v. United States*, Civ. No. 81-0678-GT(M) (Apr. 28, 1982)<sup>5</sup>, CRIT and its hired agents have consistently hidden behind tribal sovereign immunity in order to avoid the truth regarding CRIT's attempts to establish jurisdictional control within the 1800 acres in California that Secretary Udall attempted to add to the CRIT

---

<sup>5</sup> See *State of Arizona v. State of California Bill of Complaint*, 531 U.S. 1 (2000). "In *Arizona v. California*, 460 U.S. 605 (1983) (*Arizona II*),...The Secretary's determinations did not qualify as "final determinations" ... we noted that California state agencies had initiated an action in the United States District Court ...challenging the Secretary's decisions, and that the United States had moved to dismiss that action on various grounds, including sovereign immunity."

reservation. The Brief in Opposition submitted before this Court follows the same pattern as all the other cases before involving disputed area residents and the tribes. Here CRIT attempts to piggyback on the *Water Wheel* case where defendants were bullied into conceding that the disputed area was tribal trust land by the same threat of sovereign immunity via Fed. R. Civ. P. 19 ("Rule 19"). Pet. at 8-10.

And true to form, here the CRIT Respondents (including their judges) fail to address literally all of the issues presented in the Petition, instead relying on the courts' application of estoppel to ignore both the truth and the law.

It is time for the restoration of the rule of law for the hundreds of families that have suffered for decades under the brutal and savage oligarchy of the Colorado River Indian Tribes. The United States of America was founded upon principles centered upon unalienable rights to life and property for all Americans, regardless of race, creed, or color. Petitioner prays that those very principles are indeed considered by the Court in its review of this Petition.

Respectfully submitted,

Roger L. French (appearing pro se)  
18001 Cowan Ste J  
Irvine, CA 92614  
Tel: 949 697-3246  
Email: rvrrrat3@cox.net