

# COLORADO RIVER RESIDENTS FOR JUSTICE

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## CRIT BOUNDARY DISPUTE ARIZONA v. CALIFORNIA SETTLEMENT AGREEMENT

On February 23, 1999, Daniel Eddy, Jr., on behalf of the Colorado River Indian Tribes (CRIT), signed a document entitled STIPULATION AND AGREEMENT (Settlement Agreement). This document reflected an agreement among the parties to end the litigation in the third *Arizona v. California* case (*Arizona III*). *Arizona III* was accepted by the Supreme Court to resolve the CRIT boundary dispute and related water rights issue. The Special Master appointed by the Supreme Court in *Arizona III* issued several decisions that did not recognize any additional water rights for the disputed land in California. He concluded that these lands were not part of the CRIT Reservation. These decisions were rendered after thorough briefing and comprehensive oral arguments by the parties to that litigation.

The Special Master's decisions were well reasoned and abundantly supported by prevailing legal precedents. His decisions also concluded that the Secretary of the Interior was not authorized to issue an opinion on the location of the disputed boundary and, further the Secretary's opinion was technically "unsound." The Special Master was critical of the Secretary's opinion, and he noted that in the earlier litigation in *Arizona II*, the United States Supreme Court had also rejected the Secretary's boundary opinion.

The second *Arizona v. California* case was instituted by the US Government on behalf of CRIT after the Secretary of the Interior issued an unauthorized opinion in 1969 that certain lands in California were part of the CRIT Reservation (disputed lands). The US Government and CRIT had argued that CRIT was entitled to additional water rights from the Colorado River as a result of the alleged inclusion of the disputed lands in the reservation. The United States Supreme Court refused to award the additional water rights in *Arizona II* and ruled that the Secretary's 1969 opinion was unauthorized. The Court stated that CRIT would have to wait for future litigation to determine if this disputed land was part of their Reservation. CRIT and the United States Government knew they were ultimately going to lose in *Arizona III* just as they had lost in *Arizona II*. *These Special Master decisions in Arizona III, as well as the Supreme Court's rulings in Arizona II related to the boundary in general and were in no way limited to water rights.*

In 1997, CRIT sent a letter to its tribal members acknowledging the imminent loss on the boundary issue based on the Special Master's adverse rulings on the Secretary's opinion. See the attached letter that was sent out to CRIT tribal members in 1997. The letter contained many misstatements about the settlement and the boundary dispute. The letter states: "THE TRIBES HAVE BEEN OFFERED A SETTLEMENT AGREEMENT IN ARIZONA v. CALIFORNIA WHICH WILL GIVE THE TRIBES THE ABILITY TO RE-ASSERT CONTROL OVER THE LAND IN CALIFORNIA, SOUTH OF RIVERSIDE MOUNTAIN. THE TENANTS ON THAT LAND HAVE CHALLENGED TRIBAL AUTHORITY AND PERSUADED SOME U. S. CONGRESSMAN THAT THIS (LAND) IS NOT PART OF THE RESERVATION." The letter also stated that: "THE SETTLEMENT AGREEMENT HELPS THE TRIBES BECAUSE THE STATE OF CALIFORNIA AND THE FEDERAL GOVERNMENT WILL AGREE THAT THE LAND SOUTH OF RIVERSIDE MOUNTAIN IS PART OF THE RESERVATION."

The settlement did ***not*** give CRIT the ability to re-assert control. The Settlement Agreement, at page three provides:

“C. Disputed Boundary. The parties agree not to seek adjudication in this phrase 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., through section 12. T. 5 S., R. 23 E., S.B. M., Cal., No. 90-1-5-668, 41-54 (1969 Secretarial Order). The United States, 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.”

The boundary dispute was not resolved and CRIT was not given any authority to assert control over the disputed land. Contrary to the statement in CRIT’s letter to its members, the State of California expressly disagreed with CRIT and the US Government and the State reserved all boundary arguments. CRIT signed the Settlement Agreement to avoid having the Special Master’s decisions on the boundary, and the Secretary’s opinion from becoming binding legal authority. Further, CRIT leaders have intentionally misstated the nature of the controversy by asserting that the tenants had initiated the litigation by persuading some Congressman that the land was not part of the Reservation. CRIT and the United States Government initiated the litigation and no Congressman was ever involved in the dispute on behalf of the “tenants.”

It appears that CRIT did not want its tribal members, or anyone else to know that it was going to lose the litigation that it had persuaded the United States Government to initiate. CRIT has never disclosed to its tribal members, or otherwise acknowledged, that the United States Supreme Court rejected the Secretary’s opinion in *Arizona II* and the Special Master’s denunciation of the Secretary’s opinion in *Arizona III*.

In a document entitled “MEMORANDUM IN SUPPORT OF JOINT MOTION TO RECOMMEND APPROVAL OF STIPULATION AND AGREEMENT” (Memorandum) the impact of the boundary dispute on the jurisdiction of CRIT’s Tribal Court was mentioned. This document acknowledges that the disputed boundary controls the extent of the CRIT Tribal Court’s jurisdiction over the disputed land. At page two, it states:

“In the course of addressing the issue of water rights for the disputed lands before the Special Master, the parties have discussed questions related to the proper location of the Colorado River Indian Reservation (“Reservation”) western boundary (which in turn raises issues of the extent of tribal, federal and state jurisdiction over the disputed land) and the ownership of the west half of the bed of the Colorado River, as well as a host of other issues.” (emphasis supplied).

“However, the settling parties have agreed on a settlement of the matter that resolves the water rights that are before the master.” “Except as between the United States and the Tribes, the issue of the proper location of the reservation boundary is not addressed by the Agreement.” “The parties reserve all arguments regarding such matters.”

On page three of the Memorandum it is acknowledged that: “3. The settling parties reserve their respective positions with regard to the location of the Reservation boundary and title to the west half of the bed of the Colorado River.”

The Memorandum acknowledges that tribal court jurisdiction cannot extend beyond the reservation’s boundary. The Memorandum also clearly states that: “...the issue of the proper location of the Reservation boundary is not addressed by the Agreement.” By his signature on the Settlement Agreement, Daniel Eddy, Jr., on behalf of CRIT, acknowledges that the status of the land remains in

dispute, and that tribal court jurisdiction cannot extend to land that has not been determined to be within the boundary of the CRIT Reservation.

CRIT lost in *Arizona II* in its attempts to persuade the Supreme Court that the Secretary's opinion was a valid boundary determination. In *Arizona II*, the Secretary's opinion was soundly rejected by the Supreme Court. CRIT was going to lose again in *Arizona III* and sent out the letter to tribal members acknowledging its imminent loss. The Settlement Agreement was not honestly described by CRIT nor did the CRIT leaders inform tribal members that the Secretary's position had been rejected **again**.

The Memorandum, the Settlement Agreement, and CRIT's letters to its tribal members, are written, unequivocal proof that CRIT leaders are aware that the disputed land has never been determined to be in the CRIT Reservation, except by the Secretary's opinion that has been soundly rejected **twice**. It is also beyond dispute that CRIT leaders are well aware that its tribal court does not have jurisdiction over the disputed land. The current CRIT leadership will continue to assert control over the disputed land as long as they can get away with it. They lack any legal basis for their actions. It is without dispute that they have lost every time their claims to this land have been heard by a fair and impartial tribunal.

CRIT's current action in their tribal court in the Water Wheel litigation is another attempt to avoid a binding legal determination of the boundary's location. CRIT chose to use its tribal court, as opposed to a readily available federal court, in an attempt to impose its will without a fair and impartial ruling on the merits of its boundary claims, which every federal court has previously rejected. It is no surprise that the judge CRIT hired in its court has stated that he is not bound by prior legal determinations, and he refused to allow any arguments about the location of the boundary.

If the disputed land is outside the reservation's boundary, which it clearly is, there is absolutely no basis for CRIT tribal court jurisdiction over any litigation involving land in the disputed area. CRIT's continuing efforts to mislead the public, including its own tribal members, and ignore the ruling of the United States Supreme Court by attempting to assert control over land not within its reservation's boundary, must be strongly and consistently opposed.

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