

DRAFT

The purpose of this letter is to provide specific guidance to the Riverside County Sheriff's Department ("RCSD") in addressing a situation involving the Westbank Homeowners' Association ("Westbank") and the Colorado River Indian Tribes ("CRIT"). This guidance letter, the result of a combined effort between the RCSD, the Riverside County District Attorney ("RCDA"), and Riverside County Counsel, is intended to ensure that RCSD continue to keep the peace, as well as protect the parties' legal and civil rights, during the course of this ongoing dispute.

1) Background Information.

Westbank is an unincorporated organization representing approximately 650 families who live on a full or part time basis along a 17 mile stretch of the bank of the Colorado River in California. This land is the subject of a boundary dispute spanning over 40 years. CRIT contends that the 17 miles of "disputed property" is part of reservation land, whereas Westbank residents contend that the property on which they reside is located outside and west of the reservation's legal boundary.

The relationship between CRIT and Westbank appears best described as one of landlord-tenant. For many years Westbank residents legally occupied the disputed property under valid use permits issued by CRIT and/or the Secretary of the Interior, expressly allowing Westbank residents to occupy and enjoy their particular properties. Although CRIT apparently believes that many Westbank residents are in violation of their permits, CRIT has made no known effort to pursue any legal unlawful detainer action against any of the individuals currently residing within the disputed property.

2) Red Rooster Trailer Park.

In November 2000, CRIT purported to "evict" the residents of the Red Rooster Trailer Park in the 17 mile stretch. Red Rooster was a trailer park managed by Bill Booth, a full-time resident and long term occupant within the disputed property. Several years ago CRIT and/or the federal government obtained a judgment for ejectment against Mr. Booth, who nonetheless continued to occupy and manage the trailer park. Eventually, the CRIT police department and the RCSD permanently removed Mr. Booth from his residence at Red Rooster.

In late October of 2000, CRIT took steps to permanently remove the remaining residents of the Red Rooster park, including some individuals who had used the site for more than 30 years. CRIT began the process by posting 7-day notices to vacate on resident trailers, notices which stated the residents were all trespassing. CRIT never obtained a court order (from either tribal court or federal court) to legally support this "eviction" action. After the time period elapsed, CRIT entered onto the Red Rooster property, deemed the residents to be "criminal trespassers" and contacted the RCSD. Upon RCSD's arrival CRIT informed police personnel that CRIT wanted permanent removal of any residents that did not leave voluntarily, and, if necessary, CRIT would make a "citizen's arrest" for criminal trespass.

Many Red Rooster individuals feared that they would be arrested by RCSD if they did not immediately vacate their residences. This fear resulted in Red Rooster being quickly vacated by its residents. Unfortunately, some residents had insufficient time to remove most of their personal property, including trailers, furniture, and other personal effects. CRIT blocked access to the site soon after the residents vacated, and CRIT may have burned much of the abandoned property.

3. Current Situation.

Westbank residents fear that CRIT will soon attempt to "evict" Westbank residents from the "disputed property" without legal process, as it did at Red Rooster. Under California Law, however, it is illegal for CRIT to evict Westbank residents from the property without a valid court order, even assuming the true ownership of the property remains in dispute. If such an illegal eviction were attempted, CRIT would likely assert that Westbank residents are committing "criminal trespass" by not leaving, and threaten to make a "citizen's arrest" of residents that do not immediately vacate. Under California law Westbank's members cannot be guilty of "criminal trespass."

Penal Code Section 602(l), concerning criminal trespass by an individual, provides that one is guilty of criminal trespass when:

Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owners agent or by the person in lawful possession to leave the lands.

It appears that Westbank residents took possession of their property under a tenancy and cannot be deemed "criminal trespassers" under the meaning of Penal Code Section 602(l). A violation of this provision requires that the individual both enter and occupy real property or structures without the consent of the owner. As explained by a California court:

It is not a violation of Penal Code section 602, subdivision (l) to enter private property without consent unless such entry is followed by occupation thereof without consent. Nor is it a violation to occupy without consent if the entry be made with consent.

People v. Wilkinson (1967) 248 Cal.App.2d Supp. 906, 909-910 (emphasis added)

Since most if not all of the Westbank residents originally came into possession of the property with the express permission of CRIT, it follows that they cannot be considered criminal trespassers under the meaning of Penal Code Section 602(l).

Moreover, even if the property owner withdraws consent, that alone cannot create a criminal trespass. In People v. Brown (1965) 236 Cal.App.2d Supp. 915, the court, in concluding that criminal trespass requires both the entry and occupancy be without the consent of the owner, addressed the "consent withdraw" argument and stated:

Respondent argues that section 602, subdivision (1) is applicable where entry of a building was with the consent of the owner if the owner later withdraws his consent, and that following that withdrawal a person on the premises may become a trespasser. The cases cited for the proposition that an invitation may be withdrawn at any time...are both civil cases, and do not involve the issue of criminal trespass.

People v. Brown (1965) 236 Cal.App.2d Supp. 915, 920 (emphasis added).

Since Westbank residents originally entered the property with express consent, failing to vacate the property at CRIT's request does not violate Penal Code Section 602(1), at least until CRIT obtains a valid court order. As the Westbank residents are not criminal trespassers within the meaning of Penal Code Section 602(1), CRIT cannot legally make a citizen's arrest of a non-complying resident.

Further, it appears that the RCSD cannot legally effectuate a citizen's arrest purportedly made by CRIT for trespass. Assuming that Westbank residents are in violation of their permit agreements, they are no more than "hold-over tenants" and subject only to civil remedies. An arrest of hold-over tenants would violate the Fourth Amendment as an arrest without probable cause. Probable cause for arrest "exists when the facts known to the arresting officer would lead a man of ordinary care and prudence to believe and conscientiously entertain an honest and strong suspicion that the person is guilty of a crime." People v. Adams (1985) 175 Cal.App.3d 855, 861. Since a hold-over tenancy is not a crime, RCSD could not have a strong suspicion that Westbank residents are guilty of a criminal act for failing to vacate the premises without a valid court order.

RCSD therefore should not arrest, or threaten to arrest, Westbank residents for criminal trespass if CRIT attempts a citizen's arrest similar to the manner that took place at Red Rooster Trailer Park. Instead, the RCSD personnel should inform CRIT representatives that a citizen's arrest is not appropriate in this situation and that CRIT should pursue standard civil remedies to legally evict Westbank residents from the disputed property.

4) Attorney General Opinion.

In 1997, the California Attorney General issued an opinion under similar facts. In that opinion the Chemehuevi Indian Tribe adopted an ordinance that made it unlawful for any person to enter upon the reservation land if excluded by the Tribal Council. Among other issues, the Attorney General was asked if a violation of the exclusion order was a misdemeanor under Penal Code Section 602.

The Attorney General determined that the violation of the exclusion order would not constitute a misdemeanor under the terms of Penal Code Section 602(1). Under "Public Law 280," Congress expressly granted California broad criminal jurisdiction over offenses committed by or against Indians within all Indian county within the State. Accordingly, California's criminal statutes

apply to Indian reservations in the state, and tribal code provisions do not constitute the criminal law of the state and have no force and effect in California. Furthermore, such tribal code provisions are not enforceable by a county sheriff either within or without the reservation. 80 Ops. Cal. Atty. Gen. 46, 6.

5) Nevada v. Hicks

Nevada v. Hicks (2001) 121 S.Ct. 2304, a case decided by the United States Supreme Court on June 25, 2001, has a significant impact on CRIT Tribal Court jurisdiction over Westbank residents, especially in the event that CRIT relies on a Tribal Court order in an attempt to evict Westbank residents. In essence, it undercuts the legal ability of CRIT's tribal court to issue eviction orders against the Westbank residents.

The issue in Hicks was whether state sovereign immunity barred tribal court jurisdiction over actions alleging tribal-law claims and civil rights claims against state officials. On two occasions, Nevada wardens seized mounted bighorn sheep heads from the reservation residence of a tribal member pursuant to a state-issued search warrant contingent upon Tribal Court approval. The state officials seized the bighorn heads wrongfully, and returned them to Hicks in damaged condition.

Hicks, a tribal member, sued the wardens under the Indian Civil Rights Act in Tribal Court. Nevada argued that it was immune from suit in tribal court, and, with the tribal court suit pending, Nevada filed an action in federal court against the tribal court for declaratory and injunctive relief, seeking again to assert its sovereign immunity. The federal court held that the tribal court had subject matter jurisdiction over Hick's claims against the nonmember wardens. The Supreme Court disagreed.

As to the sovereign immunity issue, the Supreme Court held that the tribal court did not have jurisdiction to adjudicate the wardens' alleged tortious conduct in executing a search warrant for an off-reservation crime. Furthermore the fact that Hicks resided on tribal land did not automatically confer tribal court jurisdiction over nonmember conduct on that land. As the Court stated, "[t]he land's ownership status is only one factor to be considered, and while that factor may sometimes be dispositive, tribal ownership is not alone enough to support regulatory jurisdiction over nonmembers." Id. at 2310 (emphasis added).

More importantly, and in regards to the jurisdictional reach of tribal courts over nonmembers, the Supreme Court stated "[t]ribal courts, it should be clear, cannot be courts of general jurisdiction in this sense, for a tribe's inherent adjudicative jurisdiction over nonmembers is at most only as broad as its legislative jurisdiction." Id. at 2314. In other words, absent a federal law providing tribal-court jurisdiction over a particular cause of action, tribal courts lack jurisdiction to adjudicate such claims.

The Hicks case provides a clear limitation of Tribal Court jurisdiction over nonmembers. In the context of the Westbank/CRIT dispute, it follows that a Tribal Court order purporting to evict

individual Westbank residents would be invalid on its face. Therefore, RCSD should not attempt to enforce a tribal court order that in any way limits the property rights of Westbank residents.

6) Conclusion.

In summary, although RCSD should continue to "keep the peace" and enforce all criminal laws at the disputed property, RCSD does not have the legal authority to arrest, or effectuate a citizen's arrest, of Westbank residents for criminal trespass if "evicted" by CRIT without legal process. An arrest of Westbank residents under this situation is tantamount to RCSD participating in an illegal eviction and would not only severely impact Westbank property interests and violate Fourth and Fifth Amendment rights, but would also result in CRIT dominion and control, and possibly ultimate destruction, of much of Westbank residents' personal property.

Subj: Re: CRIT Questions / Sheriff's Office Response
Date: 8/2/2007 7:24:51 A.M. Pacific Daylight Time
From:
To: TMre9137@aol.com

That's what I figured.

I also received a response regarding the Sheriff's role in the eviction process.

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Our eviction process is as follows:

1. You would be served with a notice from the property owner of a "Notice to pay or Quit".
2. Next you would be served with a "Summons and Complaint" which is filed by the property owner with Riverside Superior Court.
3. After your response to the summons a court hearing would be held to determine a judgement (ie whether you can be lawfully evicted)
4. If the judgement is in favor of the property owner they would obtain a "Writ of Possession" and file it with our office.
5. At this point the Sheriff would post the property with the date for the tenant to vacate the property.
6. Lastly, the deputy would meet the property owner or his agent at the property and turn over possession to the owner and remove all persons on the property.

This is our process, any other questions should be referred to an attorney or legal aid.

Lieutenant Clay Hubbard
Sheriff Court Services - East
Desk (760) 863-8765
FAX (760) 863-8919

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It appears that CRIT would have to first prove ownership of the land in order to have an eviction enforced by the Sheriff's Dept.

Also, I plan to make time in the near future to send a letter to SCE regarding their policy when/if CRIT requests that meter be de-energized.

I'll keep you posted.

TMre9137@aol.com

08/01/2007 04:44
PM

To

Joe Rank

Page

From: Joe Rank

We have reviewed the material forwarded to our office and conducted our own research regarding the proposed evictions along the Colorado River. Without addressing the more formal action that may be taken by either the Colorado River Indian Tribes (CRIT) or the residents along the river, we have reviewed the position that should be taken by the Riverside County Sheriff's Department.

Based upon the correspondence from the CRIT to the Paradise Point tenants, the closure of Resort Units 1-22 and the order to vacate the premises is based upon an action taken by the Tribal Council and not any recognized judicial order. To the extent therefore that the Tribe has sought to administratively exclude these residents from the site, we are unable to conclude that "due process" has been afforded the residents. Insofar as California is a Public Law 280 State, California law may be enforced within Indian Country (as defined under 18 U.S.C.A., Section 1151) which does not include the enforcement of a Tribal Council order.

Based upon our reading of a ¹⁹⁹⁹ 1977 Attorney General Opinion (80 Ops. Cal. Atty. Gen. 46), what amounts to an exclusion order by a Tribal Council would not require enforcement by the Sheriff. In his opinion, the Attorney General determined that violation of the exclusion order would not constitute a criminal trespass under Penal Code Section 602 (1), therefore the Sheriff would not be able to enforce the issuance of such an order. It is further recognized that Penal Code Section 602.5 provides that entering or remaining within a noncommercial dwelling house without the consent of the owner constitutes a misdemeanor. As it is understood that the initial occupancy was with permission, subsequent withdrawal of such permission would not constitute criminal trespass, rather resolution would be through a civil proceeding.

As requested, we are providing basic "guidelines" as to the participation of the Riverside County Sheriff in the exclusion order issued by the Tribe.

1. Violation of an exclusion order issued by the Tribal Council, prohibiting entry upon real property or structures would not constitute a crime under the terms of Penal Code Section 602(1) and the Sheriff would not be required to enforce violation of the order.
2. Any claim that continued occupancy is a violation of Penal Code Section 602.5, and therefore the residents are subject to citizens arrest should be disregarded by the Sheriff as inconsistent with both statutory and case law.
3. Under the circumstances enumerated above, the role of the Sheriff should be to maintain the peace and respond appropriately to any physical contact or threats to engage in any such behavior.

Secretary. *Id.*

HN10 ¶ In addition to the specific provisions regarding leasing of Indian lands, 25 C.F.R. § 1.4 provides that unless specifically adopted by the Secretary,

none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, . . . shall be applicable to any such property leased from . . . any Indian or Indian tribe . . . that is held in trust by the United States

HN11 ¶ Pursuant to 25 C.F.R. § 1.4(b), the Secretary has adopted and made applicable all laws of the State of California regulating or controlling the use or development of property held in trust by the United States for an Indian or Indian tribe and located within the State of California. 30 Fed. Reg. 8722 (1965). The Secretary [****12**] expressly excluded the laws, ordinances and other regulations of the various counties and cities within the State, concluding that such local laws would be considered separately. *Id.* The Secretary has not adopted or applied the subject ordinances of the Cities of Rancho Mirage and Cathedral City. ¶

----- Footnotes -----

s The Tribe has entered into an agreement with Cathedral City, extending the City's land use controls to trust lands within the City limits. By the terms of the contract, the Tribe agreed to (1) adopt by ordinance all existing Cathedral City land use controls, and (2) designate the City as its agent for enforcement of Tribal land use controls on trust lands within the City limits. The City agreed to allow appeals from any final land use decision by the City to the Tribal Council, for the purpose of preserving Tribal control over reservation land use.

The contract expressly provides that it in no way limits the authority and duty of the Department of the Interior and Bureau of Indian affairs to negotiate and administer existing and future leases of trust lands. Appellants and the Tribe, as amicus, assert that this provision in the contract was intended to prevent any local attempt [****13**] to regulate the use of leased trust lands, and did not authorize application of the City's rent control ordinances to appellants' allotted lands. Appellees have not suggested that the contract applies to the ordinances in question.

----- End Footnotes -----

[***1392**] Appellees argue that the federal statutes authorizing the leasing of trust lands and the regulations governing such leasing do not constitute a comprehensive regulatory scheme with preemptive effect on state and local laws. We cannot agree.

In *White Mountain Apache Tribe v. Bracker, supra*, the Supreme Court found that comprehensive federal regulation of Indian timber harvesting preempted application of Arizona's tax laws to a non-Indian logging company operating entirely on Indian lands. 448 U.S. at 148. The Court relied on federal law granting the Secretary broad authority over reservation timber sales, specifically, the requirement that timber sales "be based upon a consideration of the needs and best interests of the Indian owner and his heirs," 25 U.S.C. § 406(a); the detailed set of regulations governing the harvesting and sale of tribal timber, 25 C.F.R Part 141; and the "overriding federal objective of guaranteeing Indians that they will 'receive [****14**] . . . the benefit of whatever profit [the forest] is capable of yielding' 25 C.F.R. § 141.3(a)(3) (1979)." *Id.*, 448 U.S. at 146-49. In the face of such a regulatory scheme, there could be "no room" for the imposition of state taxes. *Id.* at 148.

POTENTIALLY APPLICABLE LANDLORD TENANT LAWS

This information is provided to assist your counsel in evaluating your options in dealing with CRIT's recent threats to take your property or compel you to sign a lease that gives them and their tribal court complete control over you and your property.

Once you sign a lease with CRIT, you have consented to the jurisdiction of their tribal court. You will have surrendered your due-process rights and will be subject to whatever they want to charge you for the use of land they do not own.

CRIT is asserting that it is the landlord and therefore has the right to collect rent from the California residents. If CRIT is asserting that it is the Landlord, it should be required to follow the provisions in the law that protect the tenant and insures the tenant is afforded its due-process rights.

Potentially applicable statutes.

1. The Fair housing Act. 42 UCC §3601-3631. Housing discrimination complaints may be filed with HUD.

2. Mobilehome Residency Law: California Civil Code §798--799.10.
 - A. Landlord may be liable under the Racketeer Influenced and Corrupt Organization Act (RICO) a federal statute. Landlord liability may be found for using Fraudulent and extortionate tactics to get tenants to sign leases.

 - B. A resident-subtenant who occupies an installed mobilehome under an agreement with the owner of the mobilehome, rather than with the park management, may be evicted by the mobilehome owner only under the unlawful detainer statutes (California Code of Civil Procedure §1159-1179a). Managements remedy is to terminate the homeowner's tenancy and evict the homeowner in accordance with the unlawful detained statutes.

In essence, it appears that if you occupy a mobilehome pursuant to an agreement with the prior owner-not the park management, which CRIT asserts it is, CRIT must use the unlawful detainer statutes to evict the prior homeowner.

Remember, in the *Water Wheel* case District Court Judge David Campbell ruled that CRIT has no jurisdiction over a person who had not consented to tribal court jurisdiction. Therefore, if CRIT must comply with the unlawful detainer statutes, it cannot do so in its tribal court. Judge Campbell even ruled that a prior tribal court judgment against a person who had not consented to tribal court jurisdiction was void.

Even if a prior rental agreement has expired, expiration of a prior rental agreement is not grounds for eviction. In such a case, the homeowner continues in tenancy because the tenancy can be terminated only for the causes specified in Civil Code (CC) §798.56, and there is no requirement that the homeowner sign a subsequent rental agreement. See CC §798.55(b). Since the CC requires compliance with the unlawful detainer statutes for any eviction the Sheriff would be *permitting an unlawful eviction if CRIT attempted a removal of a resident without compliance with this statute*. CRIT may argue the statute does not apply-but it would appear to apply to the Sheriff.

3. Regarding the abandonment procedure that CRIT is trying to use as a scare tactic - look at CC§ 798.61 it spells out a very specific procedure that must be followed.

4. If CRIT is asserting they are the management then they may be liable for willful violations of the mobilehome laws. There are federal and state civil and criminal penalties. See Manufactured Housing Act of 1980 (health and Safety Code §§18000-18199.

5. Anti-Harassment Statute CC §1940.2. If applicable to CRIT this provision defines conduct that is designed to protect the tenant from just the kind of actions currently being used by CRIT. It would certainly appear that the Sheriff should not allow such conduct that is in violation of specific statutes. This is particularly true since California Penal Code §§484(a), 518 define as a crime theft or extortion which clearly CRIT has engaged in. CC §1940.2(a) also prohibits the use of threats, force or menacing conduct that interferes with the tenants right to quiet enjoyment of the premises and creates apprehension of harm to a reasonable person.

6. California Penal Code §418 provides that:

“Every person using or procuring, encouraging or assisting another to use, any force or violence in entering upon or detaining any lands or other possessions of another, except in a manner allowed by law, is guilty of a misdemeanor.”

If CRIT fails to utilize the unlawful detainer statutes required by California law, and continues to use force and the threats of force, then it would appear that this is a criminal act that the Sheriff **must stop**. It cannot be said that the Sheriff is maintaining the peace if they stand by and allow a criminal act to be committed.