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**DEPARTMENT OF JUSTICE**

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October 29, 2015

United States Court of Appeals for the Ninth Circuit  
James R. Browning Courthouse  
95 7<sup>th</sup> Street  
San Francisco, CA 94103

RE: *Roger French v. Karla Starr, et al.*  
United States Court of Appeals for the Ninth Circuit, Case No. 15-15470

To the Honorable Judges of the Court of Appeals:

At the request of our client and on behalf of the State of California, we respectfully request leave to file this letter brief pursuant to Circuit Rule 29-1.<sup>1</sup> While the State takes no position on the underlying dispute, it joins in Appellant's argument that a January 17, 1969, memorandum of the Secretary of the Department of the Interior (1969 Secretarial Memorandum) did not resolve the issue of the Colorado River Indian Tribes' (CRIT) Reservation boundary. *See* Appellant's Reply Brief 2-4; Supplemental ER (SER) Vol. 1, 551-52; see also *Arizona v. California*, 373 U.S. 546, 601 (1963); *Arizona v. California*, 530 U.S. 392, 419 (2000). Contrary to Appellees' brief, and the United States' amicus brief, the boundary issue remains unsettled.

This Court should decline Appellees' request to reach the boundary issue for the first time in the context of this appeal. At Appellees' urging, the district court did not reach or attempt to resolve the Reservation boundary issue and, indeed, denied the State's request to file an amicus brief on the boundary issue, deciding the case on other grounds. Appellees' effort to revive the boundary issue now should be rejected under the doctrine of judicial estoppel. *See Humetrix, Inc. v. Gemplus S.C.A.*, 268 F.3d 910, 917-18 (9th Cir. 2001) (change in party's position in same litigation precluded by judicial estoppel); *see also Sechrest v. Ignacio*, 549 F.3d 789, 805 (9th Cir. 2008), *cert. denied*, 130 S. Ct. 243 (2009) (after successfully arguing appellant was bound by terms of a prior judicial decision to delete certain claims, state was precluded by judicial estoppel from arguing in subsequent appeal that appellant could include those same claims in a pleading).

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<sup>1</sup> The State seeks leave because the deadline for filing as of right has passed. Fed. R. App. P. 29(a), (e). Given Appellees' position on the boundary issue in the district court, the State reasonably believed that the Reservation boundary would not be at issue in this appeal.

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Should this Court determine that resolution of the boundary dispute is nonetheless appropriate and necessary to the disposition of the appeal, the State respectfully requests that the Court not address this complex issue in the first instance. The State requests that the Court instead remand the matter to the district court for further proceedings, allowing that court to reconsider the State's request for leave to file an amicus brief and to augment the record as necessary to ensure a full and fair consideration of the issue.

Sincerely,

A handwritten signature in blue ink, appearing to read 'W. Williams, Jr.', with a stylized flourish at the end.

WILLIAM L. WILLIAMS, JR.  
Deputy Attorney General

For KAMALA D. HARRIS  
Attorney General

WLW:pc

**CERTIFICATE OF COMPLIANCE**

**PURSUANT TO FED.R.APP.P 32(a)(7)(C) AND CIRCUIT RULE 32-1**

**FOR 15-15470**

I certify that:

1. **Amicus Briefs.**

Pursuant to Fed.R.App.P 29(d) and 9th Cir.R. 32-1, the attached amicus brief is proportionally spaced, has a typeface of 14 points or more and contains 7,000 words or less,  
or is

Monospaced, has 10.5 or few characters per inch and contains not more than either 7,000 words or 650 lines of text,  
or is

Not subject to the type-volume limitations because it is an amicus brief of no more than 15 pages and complies with Fed.R.App.P. 32 (a)(1)(5).

October 29, 2015

Dated

  
WILLIAM L. WILLIAMS, JR.  
Deputy Attorney General

### CERTIFICATE OF SERVICE

Case Name: *Roger French v. Karla Starr, et al.* No. 15-15470

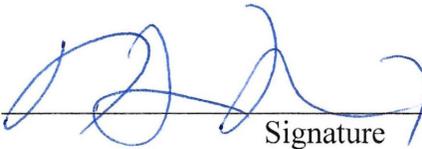
I hereby certify that on October 29, 2015, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**AMICUS LETTER BRIEF**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 29, 2015, at Sacramento, California.

WILLIAM L. WILLIAMS, JR.  
DECLARANT

  
Signature