West Bank Homeowners Association

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October 31, 2017

The Honorable Dianne Feinstein
United States Senator
331 Hart Senate Office Building
Washington, D.C. 20510

RE: Ninth Circuit Court of Appeals
Need to Divide the Ninth Circuit

Dear Senator Feinstein:

As Ranking Member of the Senate Judiciary Committee, you are no doubt aware of efforts to divide the Ninth Circuit Court of Appeals and that Congress has the sole authority to establish and assign federal courts per the U. S. Constitution. Although the Ninth Circuit is noted for its left leaning rulings that may be consistent with your party's goals, I believe that there are other factors to consider in a break-up of the Ninth Circuit that are fundamentally consistent with the Senator's views. I submit to you one of those factors below.

Abandonment of Honesty and the Law in order to Achieve Political Goals:

I request your consideration of a case I brought before the Ninth Circuit that was decided this year, *French v. Starr*, No. 17-197. At issue was whether the Colorado River Indian Tribes (CRIT) had adjudicatory jurisdiction over myself and hundreds of similarly situated non-Indian families within a disputed area defined by Public Law 88-302, 78 Stat. 188. In a 2 page memorandum, the appeals court affirmed the lower court's decision that CRIT indeed had jurisdiction. However, to reach that conclusion, both the district and the appeals court had to ignore the congressional statute, PL88-302, that denies the Secretary of Interior's authority to approve leases in the disputed area unless the controversy over the location of the Reservation boundary is resolved in the Tribes' favor. Since the court agreed with the State of California that the boundary dispute has not been resolved, PL88-302 prevents tribal jurisdiction over nonmembers in accordance with the United States Supreme Court decisions based upon *Montana v. United States* 450 U.S. 544 (1981).

To ignore this congressional statute that was intended to prevent the Tribes from asserting authority over the resorts and residents of the disputed area, the courts not only had to ignore the law, they had to create a mischaracterization of the nature of the challenge to tribal jurisdiction. To that end, the district court judge attempted to create an equivalency between California's position that the boundary dispute was unresolved and my arguments that the boundary dispute triggered PL88-302. This supposed equivalency reasoning was applied to justify estoppel against citing a boundary dispute and thus prevent consideration of the statute. The Ninth Circuit went further claiming that "French argues CRIT lacked jurisdiction because French's lot is not part of the Colorado River Indian Reservation", and "French is therefore estopped from contesting CRIT's title". But the truth is that **nowhere in French's argument is a challenge to CRIT's title or any assertion that the land was "not part of the reservation"**, because all that is required to trigger the statute is the unresolved boundary, which the courts admitted is fact. Another truth is that the Ninth Circuit's assertion is blatantly false, and in simpler terms, a lie. On a lighter side, it is almost amusing that the court would take the ridiculous position of recognizing the boundary dispute, yet claim that appellant cannot present nor will the court accept evidence of a boundary dispute, all in order to ignore the congressional statute.

So why would the appeals court lie about the argument presented by mischaracterizing the challenge to jurisdiction, ignore Congressional authority, and defy the rule of law as established

by the Supreme Court? We cannot know for sure, but a peek at the history of similarly situated cases before the Ninth Circuit provides a basis for speculation.

Disputed area residents have challenged CRIT previously in *Water Wheel Camp Recreational Area, Inc. v. La Rance* F.3d 802 (9th Cir. 2011) and in *Turley v. Eddy*, Fed. Appx. 934, 2003 WL 21675511 (9th Cir. July 16, 2003). In both cases the Ninth Circuit ruled in CRIT's favor. In *Turley*, the court ruled that CRIT was entitled to sovereign immunity in spite of the boundary dispute; and in *Water Wheel*, the court found tribal jurisdiction on the assumption that the disputed area was tribal land. Of the 3 judge panels in those previous cases, one judge from each was assigned to the current case, *French v. Starr*. Certainly a ruling against CRIT would have cast doubt upon the rulings in the previous cases. Therefore, both of these judges had a vested interest and prejudice in a ruling against French. Under the circumstances, honesty would dictate that both of these judges should have recused themselves. But of course, neither judge took that option.

The political aspect of the rulings is presented by Judge Tuchi, the district court judge:

> "*The equitable considerations raised in this dispute – most notably the policy of promoting tribal self-government and the development of tribal courts, the recognition of a tribe's inherent authority to exclude, and the recognition of the government's role as trustee of reservation land on behalf of the tribes ...weigh in favor of the Tribal Court's application of the doctrine of estoppel to determine its jurisdiction in this matter.*"

Of particular note is that within the courts' application of estoppel in accordance with their subjective "equitable considerations", the courts have ignored congressional authority and federal Indian law established by the Supreme Court under the *Montana* progeny. Quite simply, the judges here have not only created a false characterization of the arguments presented, they have completely sidestepped the law in order to accomplish their own political agenda.

Support from Ninth Circuit Judge Andrew J. Kleinfeld

Before the House Judiciary Committee, Ninth Circuit Court of Appeals Circuit Judge Andrew J. Kleinfeld submitted remarks on March 13, 2017, strongly supporting the need to divide the Ninth Circuit Court. His 14 page analysis is enclosed herein. We find his reasoning for recommending a reduction in the size of the Ninth Circuit Court persuasive and convincing.

As Circuit Judge Kleinfeld's description of the inability of the Ninth Circuit to function as a court due to size, he has provided insight as to how, in our case, the 3 judge panel has absconded from peer review. En banc cannot be provided within the Ninth Circuit, and review of unpublished decisions does not occur. So to avoid any scrutiny, all the 3 judge panel had to do was mischaracterize (lie) about the nature of the case presented and issue an unpublished ruling.

Circuit Judge Kleinfeld's remarks also provide insight into the Court's need to provide consistent rulings. To accomplish that objective in this case would require consistency with *Water Wheel*. But the Ninth Circuit was hampered by the district court's admission that *Water Wheel* may not apply: "*when the question of whether the lot at issue is within the Reservation remains unresolved... the Court agrees that such an exercise of a tribe's inherent authority may exceed that contemplated in Water Wheel....*". So again to avoid conflict with *Water Wheel* and to provide a seemingly consistent ruling, the Ninth Circuit conveniently created a lie about the nature of appellant's arguments.

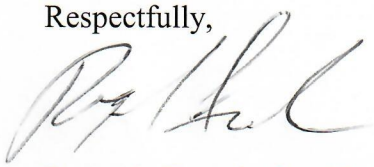
Conclusion:

As the Ninth Circuit Court of Appeals has become heavily loaded with "progressive" judges, it has lost its ability to represent the citizenry fairly, and as a result has become arrogant with its one-sidedness and its ability to circumvent the law. In this case, all 4 judges (district and appellate) were appointed by Democratic administrations. Not a single judge from the other side. Therefore the outcome of the case was not surprising. However the depth of dishonesty was not only unexpected, it was and is shocking.

Congress included a provision in Public Law 88-302 to protect property and constitutional rights. Those rights have been hijacked by the Ninth Circuit Court of Appeals. The result will be the continued takings of homes without compensation by an Indian tribe on land that has never been determined to be within their Reservation. I ask, is there a greater infidelity to the founding principles of the United States of America than usurping the authority of Congress as has occurred here?

This case alone shows that the Ninth Circuit Court of Appeals is not only legally, ethically, and morally corrupt, it is a disgrace to the judiciary of this great country. For these reasons, as president of the West Bank Homeowners Association representing the residents of the disputed area, I humbly request your consideration of this case in the ongoing efforts to divide the Ninth Circuit. I hope that the information presented here is helpful. Your assistance is greatly appreciated.

Respectfully,



Roger L. French, President

cc: Governor Jerry Brown
Senator Kamala Harris
President Donald J. Trump
Jeff Sessions, U.S. Attorney General