No. 02-1393

# In The Supreme Court of the United States

GORDON B. SAUCERMAN; JOE BENJAMIN; SHARRON BENJAMIN; CLEO FREEMAN,

*Petitioners,*

v.

GALE NORTON, Secretary of the Interior; KEVIN GOVER, Assistant Secretary for Indian Affairs; ELUID MARTINEZ, Commissioner of Reclamation; WAYNE NORDWALL, Phoenix Area Director for Bureau of Indian Affairs; JANET WONG, Staff Solicitor; WAYNE SUMATZKUKU, Bureau of Indian Affairs Realty Specialist; WILLIAM TITCHYWY, ALLEN ANSPACH; CHEMEHUEVI TRIBAL COUNCIL; ROBERT MOELLER; EDWARD SMITH; DAVID CHAVEZ,

*Respondents.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## BRIEF IN OPPOSITION

LESTER J. MARSTON*
RAPPORT AND MARSTON
*Attorneys for Tribal Respondents*
405 West Perkins Street
P.O. Box 488
Ukiah, California 95482
(707) 462-6846

**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

## QUESTIONS PRESENTED

Does the Indian Lands Exception to the Quiet Title Act divest the Federal District Court of jurisdiction over claims relating to real property where:

1. The United States has presented a colorable claim of an interest in the real property based on that property's status as Indian trust land in the form of a Secretarial Order issued pursuant to a Congressional delegation of authority; and

2. In order to assert jurisdiction over the claims, the District Court would be required to determine whether or not the real property is held in trust by the United States for the benefit of an Indian Tribe?

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## BRIEF IN OPPOSITION

Respondents, Chemehuevi Tribal Council, Robert Moeller, Edward Smith, David Chavez ("Tribal Respondents"), respectfully oppose and urge this Court to summarily deny the petition for writ of certiorari filed by Petitioners Gordon Saucerman, Joe Benjamin, Sharron Benjamin, and Cleo Freeman ("Petitioners"). The Petition questions whether the Quiet Title Act, 28 U.S.C. §2409a, divested the District Court below of subject matter jurisdiction over Petitioners' claim that the United States does not hold title to a portion of the Chemehuevi Reservation in trust for the Chemehuevi Indian Tribe ("Tribe") and that, therefore, the Chemehuevi Tribal Court lacked jurisdiction to hear an unlawful detainer action brought by the Tribe to evict the Petitioners. This issue has been resolved by the decision of the Ninth Circuit Court of Appeals in *Metropolitan Water District of Southern California v. United States*, 830 F.2d 139 (9th Cir. 1987), *aff'd sub nom California v. United States*, 490 U.S. 920, 109 S.Ct. 2273, 104 L.Ed.2d 981 (1989), as well as other Ninth Circuit precedent, and Petitioners' arguments that there is a conflict between the Ninth and Tenth Circuits on the issue of the effect of the Quiet Title Act are meritless.

## CORRECTIONS AND ADDITIONS TO PETITIONERS' STATEMENT OF THE CASE

Petitioners' statement of facts as set forth in their Petition is incomplete and inaccurate. The Tribal Respondents, therefore, submit the following statement of the facts relevant to the consideration of the Petition:

The Chemehuevi Indian Reservation ("Reservation") was created by order of the Secretary of the Interior ("Secretary") on February 2, 1907, pursuant to the provisions of the Mission Indian Relief Act, 26 Stat. 712 (January 12, 1891), and the Congressional Appropriations Act of March 1, 1907, 34 Stat. 1015.

On July 8, 1940, Congress passed an "Act for the Acquisition of Indian Land for the Parker Dam and Reservoir Project . . . " 54 Stat. 744 ("Parker Dam Act"). The Act granted to the United States "all the right, title, and interest" to the "tribal . . . lands of the . . . Chemehuevi Reservation . . . *as may be designated by the Secretary of the Interior.*" (Emphasis added.) KAPPLER, CHARLES J., INDIAN AFFAIRS LAWS AND TREATIES ("KAPPLER"), Vol. VI, pp. 88-89 (54 Stat. 744).

Pursuant to this authority, Secretary Harold Ickes designated all the land within the Reservation from the Colorado River on the east to the 465th elevation line on the west, comprising 7,776.12 acres. See Solicitor's Opinion of August 15, 1974, *Authority of the Secretary to Determine Equitable Title to Indian Lands*, 11 Op. Sol. 2071, 2072.

After the United States acquired the designated land, the United States completed construction of the Parker Dam. The level of Lake Havasu, however, only rose to the 450th elevation line, leaving a strip of land owned by the United States within the Reservation, lying between the 450th and 465th elevation lines. *Id.*

This strip of shoreline land ("Shoreline") was administered first by the United States Fish and Wildlife Service and then by the Bureau of Land Management until August 14, 1974. During that time, those federal agencies issued



site-use permits to non-Indians, including the Petitioners, to build residences and operate the Needles Lodge on the Shoreline. Petition, p.7a. The net result was that the Tribe lost not only its valuable bottom lands as a result of the inundation of Lake Havasu, but also the lands riparian to the lake, which had considerable recreational and development value. 11 Op. Sol. 2072. The Solicitor noted in the 1974 Opinion that:

> As a consequence, the purpose for which the Chemehuevi Reservation was created – to provide a lasting homeland for the Chemehuevi Indians – has been frustrated to a great degree. Most of the Reservation remaining in Indian control after the construction of Parker Dam is desert and mesa land unsuitable for habitation; in fact, I am advised that only one Chemehuevi family has resided there in recent years. The only land of substantial value in the area is the shoreline property.

*Id.*

The Solicitor accordingly determined that it was appropriate to modify Secretary Ickes's original designation "by correcting the 1941 description of lands taken, deleting from it the lands not permanently flooded. . . . " *Id.* at 2073. The Solicitor noted that this step "would merely confirm equitable title in the Chemehuevies to the lands in question." *Id.*

A final Secretarial Order ("Restoration Order") correcting the 1941 designation was signed by Secretary Rogers Morton on November 1, 1974. The Restoration Order restored the Shoreline to the Tribe's equitable ownership above the elevation of 450 feet on m.s.l. Petition, p.7a.

In late 1974, the Petitioners[1] and other shoreline permit-holders filed suit challenging the validity of the Restoration Order. *Havasu Landing, Inc., et al. v. Morton, et al.*, United States District Court for the Central District of California, No. CV 74-3665 EC (1974). Rather than litigate the case, the parties entered into a Settlement Agreement resulting in a dismissal of the case. Under the Settlement Agreement, the Tribe entered into long-term leases with the Petitioners that expired on July 1, 1990, in exchange for which each of the Petitioners executed releases agreeing forever to never challenge the legality of the Restoration Order.

After Petitioners' leases expired, they refused to enter into new leases with the Tribe and held over in possession of the premises within the Shoreline. Petition, p.7a.

On November 17, 2000, the Tribe filed suit against Petitioners G.B. Saucerman ("Saucerman") and Joseph and Sharon Benjamin ("Benjamin") in the Chemehuevi Tribal Court ("Tribal Court") for trespass, ejectment and damages. Petition, p.7a. Saucerman and Benjamin were served with a summons and a complaint. The summons advised each of them that they had 30 calendar days after service of the summons to file a type-written response with the Tribal Court. The summons advised Saucerman

[1] Robert White, on behalf of the Needles Rod, Gun and Boat Club, executed the Settlement and the release discussed below. Petitioner Cleo Freeman is identified in the complaint filed with the District Court as "a non-Indian resident of Arizona and is a member of Needles Lodge, which has a possessory interest in a building on the western shoreline of Lake Havasu." His standing is that of a representative of the Needles Lodge, which is another name for the Needles Rod, Gun, and Boat Club.



and Benjamin that the type-written response must be in a proper legal form and that the form could be obtained from the Clerk of the Tribal Court. The instructions for the form informed Saucerman and Benjamin that they were entitled to be represented by an attorney in Tribal Court.

Neither Saucerman nor Benjamin filed an answer or other responsive pleading to the complaint with the Tribal Court within the 30 days, as was required under the Tribal Court's Rules of Procedure. Petition, pp.7a-8a.

Instead, Petitioners Saucerman and Benjamin, along with Petitioner Cleo Freeman, on behalf of the Needles Lodge, filed suit against the Tribal Respondents and certain federal officials in the District Court below, seeking to enjoin the Tribal Court proceedings on the grounds that the Tribal Court lacked jurisdiction over Saucerman and Benjamin. Petitioners argued that the Tribal Court lacked jurisdiction because the land they occupied, a portion of the Shoreline, was not tribal land. Petition, p.8a. The Tribal Respondents and the United States moved to dismiss the action on the grounds, among other things, that the Tribe, its officials, and the federal officials were immune from suit. Petition, pp.9a-10a.

On July 9, 2001, the District Court granted the Tribal Respondents' and the United States' motion and dismissed the complaint. Petition, pp.6a-17a. On appeal, that decision was upheld by the Court of Appeals for the Ninth Circuit. Petition, pp.1a-5a.

## REASONS FOR DENYING THE WRIT

### I.

### THE ISSUES RAISED IN PETITION DO NOT FALL WITHIN THE COURT'S GUIDELINES FOR GRANTING A PETITION

Under Rule 10 of the United States Supreme Court's Rules of Court ("Rule 10"): "A petition for writ of certiorari will be granted only for compelling reasons." The legal issues raised by Petitioners do not qualify under any of the criteria listed in Rule 10(a)-(c).

Of the criteria identified in Rule 10, only subdivision (a) has any possible application to this petition. Rule 10(a) states, in relevant part, that this Court considers, as a reason for granting a petition for writ of certiorari, cases in which "a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter." Petitioners have portrayed the present case as one that involves a conflict between the United States Court of Appeals for the Ninth Circuit and the United States Court of Appeals for the Tenth Circuit relating to the effect of the Quiet Title Act, arguing that the Ninth Circuit's decision in *Metropolitan Water District of Southern California v. United States*, *supra*, ("*Metropolitan*") is in conflict with *State of Kansas v. United States, et al.*, 249 F.3d 1212 (10th Cir. 2001) ("*Kansas*"). This Opposition Brief will demonstrate that no such conflict exists between the Ninth and Tenth Circuits and that Petitioners' other claims are meritless.



### II.

### THE INDIAN LANDS EXCEPTION TO THE QUIET TITLE ACT BARS PETITIONERS' CLAIMS

The Petitioners have no right of possession or claim of title to the land in question in this case. They are trespassers who held over in possession of the land after their leases with the Tribe expired. Their only basis for challenging the Tribal Court's jurisdiction is the assertion that the Shoreline is not Reservation land (i.e., not owned by the United States in trust for the Tribe), because the Secretary had no authority to issue the Restoration Order. The District Court rejected Petitioners' argument and ruled that it lacked subject matter jurisdiction over Petitioners' claims because the United States was and is a necessary and indispensable party to the proceedings that could not be joined because it is immune from suit under the Quiet Title Act ("QTA"), citing among other authorities, *Metropolitan*, *supra*.

> The QTA permits the United States to be named as a defendant in lawsuits seeking the adjudication of disputed title to land. However, when the United States claims an interest in real property based upon that property's status as trust or restricted Indian lands, the Government is immune from suit under the QTA.

*Metropolitan*, 830 F.2d at 143.

Petitioners argue that the QTA does not govern this action because they seek only a determination by the Court as to whether the Tribal Court has jurisdiction over Petitioners and their property, which would not affect title to the lands in question. Petitioners further claim that a decision as to whether the Secretary had the authority to

issue the Restoration Order would only determine the status of the land and would not affect any claim of title to the land.

In *Metropolitan,* the court considered whether the QTA's Indian lands exception applied to reservation boundary disputes between a tribe and a water district. *Id.,* at 830 F.2d at 141. While recognizing that the water district was "not seeking to quiet title in itself," the court held that the QTA applied because the water district sought "a determination of the boundaries of the Reservation" and "[t]he effect of a successful challenge would be to quiet title in others than the Tribe." *Id.* at 143. The Ninth Circuit later commented that "*Metropolitan Water District* expanded the application of the QTA to govern suits involving plaintiffs who, while not seeking to quiet title in themselves, might potentially affect the property rights of others through successfully litigating their claims." *Alaska v. Babbitt,* 38 F.3d 1068, 1074 (9th Cir. 1994).

While Petitioners do not challenge the United States' ownership of the Shoreline, they do seek a declaration that the land is *not* held in trust by the United States for the benefit of the Tribe. A successful claim by Petitioners would affect the United States title to the Shoreline by vesting equitable title "in others than the tribe." *Metropolitan,* 830 F.2d at 143. This attempt to divest the tribe of its equitable title to the land is sufficient to invoke the application of the QTA.

The Ninth Circuit has further stated that "the immunity of the government applies whether the government is right or wrong." *Wildman v. United States,* 827 F.2d 1306, 1309 (9th Cir. 1987). "The very purpose of the doctrine is to prevent a judicial examination of the merits of the



government's position." *Id.* Further, "[n]othing in the [QTA] or its history suggests that the United States was to be put to the burden of establishing its title when it has a colorable claim and has chosen to assert its immunity on behalf of land of which the government declares that it is the trustee for Indians." *Id.*

In this case, the government has a "colorable claim" regarding its title as trustee to the Shoreline. By enacting the Parker Dam Act, Congress expressly recognized the existence of the Chemehuevi Reservation. The Restoration Order, on its face, restored equitable title to the Tribe to all the Shoreline within the Reservation previously taken by the United States in 1941. The 1974 Solicitor's Opinion expressly found that the Secretary had the authority to correct his 1941 designation and to return equitable ownership of the Shoreline to the Tribe, because those lands were not needed for the construction of the Parker Dam and the creation of Lake Havasu. 11 Op. Sol. 2071, 2072.

Petitioners attempt to counter the foregoing analysis by characterizing the *Kansas* decision as conflicting with that of *Metropolitan*. Petitioners argue that both cases involve the issue of the status of the land, not title to the land and, therefore, because the 10th Circuit concluded that the QTA did not apply to the claims against the tribe in *Kansas*, that decision is in conflict with *Metropolitan*. In fact, the two cases are easily distinguishable.[2]

[2] While the Tribal Respondents will address the issue of the alleged conflict between *Metropolitan* and *Kansas*, they will do so only in a summary way and join in the more extensive analysis offered by the United States in its brief filed in opposition to the Petition filed herein.

Fundamentally, *Kansas* did not involve the issue of how the United States held title to its lands. Rather, *Kansas* involved the question of whether the land owned (with restrictions on alienation) by individuals and leased to the tribe constituted "Indian Lands" within the meaning of the Indian Gaming Regulatory Act, 25 U.S.C. §2701 et seq. ("IGRA"). Under the IGRA, the land could only be "Indian lands" if the tribe exercised "jurisdiction over the property." In *Kansas,* the National Indian Gaming Commission ("NIGC") had concluded that the lands leased by the Miami Tribe of Oklahoma from landowners (who had recently been adopted into the tribe) under an agreement that the tribe could exercise jurisdiction over the land constituted "Indian lands within such tribe's jurisdiction" for the purposes of the IGRA. The central question in *Kansas* was whether the tribe's adopting the owners of the land into the tribe and then leasing the land from the landowners, who consented to the tribe's exercising jurisdiction over the land, met the requirements for demonstrating that the tribe had jurisdiction over the land for the purposes of the IGRA. The State of Kansas's challenge to the NIGC determination was clearly not one that would have affected the United States' title to the land by vesting equitable title "in others than the tribe." The challenge only addressed whether the NIGC's determination that the land was sufficiently subject to tribal jurisdiction in order to permit gaming was legally supportable. "Defendants in this case fail to appreciate the discrete concepts of land status and land title. . . . The 'interest' which the State seeks to protect in this case is not an interest in the title to real property contemplated by the QTA." *Kansas*, 249 F.3d at 1225.



In *Kansas*, the issue of title to the land never came up. All parties agreed that the land was owned by the individuals who were adopted into the tribe for the purpose of establishing that the tribe had jurisdiction over the land. Here, the situation is entirely different. Petitioners are undeniably attempting to divest the Tribe of equitable title to the land itself. Petition, p. 7. Unlike *Kansas*, the jurisdictional issue raised by Petitioners would only arise *after* a determination that the United States did not own the Shoreline in trust for the Tribe.

## III.

## THE COURT OF APPEALS WAS PRESENTED WITH SUFFICIENT EVIDENCE OF A COLORABLE CLAIM OF AN INTEREST IN THE SHORELINE BASED ON THE LAND'S STATUS AS INDIAN TRUST LAND

In the Questions Presented section of their Petition, Petitioners state that a secondary legal issue requiring settlement by this Court is whether the Ninth Circuit's reliance on the 1974 Solicitor's Opinion that addressed the Secretary's authority to issue the Restoration Order provides the "colorable claim" to title in the United States to invoke the provisions of the QTA. The Petitioners misstate the Ninth Circuit's opinion. The Ninth Circuit did not rely on the Solicitor's Opinion as the only basis for holding that the United States and the Tribe had a "colorable claim" to the Shoreline. Rather, the Ninth Circuit had before it the 1907 Order of the Secretary of the Interior creating the Reservation, the Parker Dam Act, in which Congress expressly recognized the existence of the Reservation, and the 1974 Restoration Order restoring the Shoreline to the equitable ownership of the Tribe. The

Ninth Circuit simply recognized that in the 1974 Solicitor's Opinion, the Solicitor opined that the Secretary had the authority to restore the Shoreline to the Tribe.

Although they raise the issue in the Questions Presented, Petitioners never actually address the question of the sufficiency of the Solicitor's Opinion as constituting a colorable claim of title. Instead, they ask the Court to overturn the Ninth Circuit's application of the "colorable claim" standard, citing *Block v. North Dakota*, 461 U.S. 273, 275, 103 S.Ct. 1811, 75 L.Ed.2d 840 (1983). *Block*, however, does not stand for the proposition for which Petitioners cite it. *Block* did not involve the Indian lands exception to the QTA. Rather, *Block* involved the statute of limitations provision of the QTA. The only reference to the cited language ("trust or [is] restricted Indian lands," Petition, p.8) is found in a footnote setting out the text of the QTA. *Block*, 461 U.S. at 275, n. 1. This can hardly be cited as a court decision setting forth a specific standard on this issue.

Petitioners argue that the "colorable claim" standard improperly prevents a suit under the Administrative Procedures Act, 5 U.S.C. §702 ("APA"). Petitioners cite no case law to support their argument. Instead they cite to a single article from the Alaska Law Review, THE NINTH CIRCUIT ERRS AGAIN: THE QUIET TITLE ACT AS A BAR TO JUDICIAL REVIEW. 19:2 Alaska Law Review 433 (2002).

Ironically, on the issue of the availability of the APA, *Block*, cited earlier by Petitioners, is in direct conflict with Petitioners' argument. The Court in *Block* expressly held that "Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property." *Block*, 461 U.S. at



286. All of the Court's references to the Indian land exception in the QTA are made in the context of specifically rejecting the availability of an officer's suit as a means of evading those provisions of the QTA that restrict available claims. *Id.* at 284. The Court stated that if plaintiffs are permitted to avoid the provisions of the QTA by bringing an officer's suit, "the Indian lands exception to the QTA would be rendered nugatory." *Id.* at 284-85.

The Ninth Circuit has also held that a claimant may not circumvent the Indian lands exception to the QTA by obtaining jurisdiction under the APA. *State of Alaska v. Babbitt,* 75 F.3d 449, 453 (9th Cir. 1996) (holding officer's suit against the Bureau of Land Management was precluded by the United States' sovereign immunity under Indian lands exception to the QTA); *McIntyre v. United States*, 798 F.2d 1408, 1410-11 (9th Cir. 1986) (rejecting action brought under §702 of APA and holding that the QTA is the exclusive means to challenge government's title to real property), *rev'd on other grounds, Fadem v. United States*, 52 F.3d 202 (9th Cir. 1995); *State of Alaska v. Babbitt*, 182 F.3d 672, 674 (9th Cir. 1999) ("a plaintiff cannot avoid the Indian lands exception by obtaining jurisdiction under the Administrative Procedure Act").

As contrasted with this extensive authority determining that the APA cannot be used to avoid the QTA, petitioner's citation to a law review article is, to say the least, unconvincing.

## IV.

## EVEN IF THE QUIET TITLE ACT DID NOT BAR PETITIONERS' CLAIMS, THEIR CLAIMS WOULD HAVE TO BE REJECTED UNDER *MONTANA*

Petitioners maintain that, if the Court does not find that the Indian lands exception to the QTA does not divest the District Court of jurisdiction over their claims, the District Court would be compelled to find that the Chemehuevi Tribal Court lacks jurisdiction over Petitioners, citing *Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981) ("*Montana*"). Petitioners are wrong. Even if the Court concludes that the Indian lands exception to the QTA does not bar their claims,[3] Petitioners' challenge to the Tribal Court's jurisdiction must fail because both of the exceptions to the general rule that tribal courts lack jurisdiction over non-tribal members set forth in *Montana* would apply.

[3] Regardless of the application of the QTA, the Shoreline is owned by the United States in trust for the Tribe. As the Solicitor's Opinion makes clear, the Secretary had the authority to restore the Shoreline to the Tribe. In essence, the Secretary's power of designation was an ongoing one. Just as the Secretary could have designated more land for the Parker Dam Project had Lake Havasu risen higher than estimated, the Secretary had the authority to restore the land that was not needed for the project. 11 Op. Sol. at 2072. The Secretary clearly had the authority to review and modify the decisions of his predecessors. *West v. Standard Oil Co.*, 278 U.S. 200, 210, 49 S.Ct. 138, 73 L.Ed. 265 (1929), see also, 11 Op. Sol. at 2073, n. 2. As the Solicitor's Opinion also pointed out, it is clear that it was the intention of Congress and the Department of the Interior to take from the Tribe only those Reservation lands that were needed to create the lake. *Id.* at 2073, n. 1.



The first *Montana* exception is:

> A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.

*Montana*, 450 U.S. at 565.

Clearly, the present case falls within this exception. Petitioners initially entered into leases with the Tribe in 1974 pursuant to the settlement agreement ("Settlement") in *Havasu Landing, Inc., et al. v. Morton, supra*. In both the Settlement and the releases, signed by the Petitioners pursuant to the Settlement, the Petitioners waived all of their claims against the Tribe and promised never to file the legal challenge that they are making here (i.e., challenging the legality of the Restoration Order). The Court in *Montana* specifically cited leases as an example of the kind of commercial relationship that qualified for the first *Montana* exception. Thus, Petitioners entered into precisely the kind of voluntary commercial relationship described in the first *Montana* exception. The fact that Petitioners held over after the termination of their leases, refused to enter into new leases, refused to pay their rent or abide by the requirements of tribal law, and thus became trespassers, does not change the nature of the transaction. Petitioners' relationship was both consensual and commercial. There could not be a clearer example of parties submitting to the jurisdiction of a tribe under the first *Montana* exception.

The second *Montana* exception is:

> A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

*Montana*, 450 U.S. at 566.

"Real estate resources are the single most important economic resource of Indian tribes." (FELIX S. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, 1982 Ed., p. 471 ("COHEN").) Land is also essential to the political survival of an Indian tribe. Without land, an Indian tribe exists in name only, without any meaningful jurisdiction. No sovereign would be able to exert its sovereign powers without the fundamental authority to control the use and disposition of its territory. All of the early Supreme Court decisions that laid the foundation for the present legal and political status of Indian tribes were based on a recognition of tribal rights and powers related to their territory. See, for example, *Johnson v. McIntosh*, 21 U.S. 543, 8 Wheat. 543, 5 L.Ed. 681 (1823); *Cherokee Nation v. Georgia*, 30 U.S. 1, 5 Pet. 1, 8 L.Ed. 25 (1831); *Worcester v. Georgia*, 31 U.S. 515, 6 Pet. 515, 8 L.Ed. 483 (1832).

> Federal policy from the beginning recognized and protected separate status for tribal Indians *in their own territory*. Treaties established distinct boundaries between tribal territory and the areas open to white settlement, trade and other federal laws were enacted to control white entry, settlement, trade and other activities on tribal lands. The tribes governed their own internal



> matters, reflecting the general rule of international law that the international laws of acquired territories continue in force until repealed or modified by the new sovereign.

COHEN at p.28 (emphasis added).

Indian tribes have survived in this country because the ownership and control of their lands provided tribal members with a place to live and a resource that, at least ostensibly, allowed for a subsistence existence. Later, for some tribes, the tribal lands provided a foundation for economic development. Without the ownership and control of their lands, Indian tribes would not have survived to the present day. Because of the importance of land to Indian tribes, numerous federal statutes have been passed that restrict the alienation of Indian land and that require federal approval of the sale or leasing of Indian land. See, e.g., Nonintercourse Act, 25 U.S.C. §177; 25 U.S.C. §81; Indian Leasing Statute, 25 U.S.C. §415. These statutes were made necessary by the clearly hostile attitude taken by individuals and states toward Indian tribes and their sovereignty over their land, which included state participation in the stealing of Indian land. *United States v. Kagama*, 118 U.S. 375, 384-385, 6 S.Ct. 1109, 30 L.Ed. 228 (1886).

Nothing could be more essential to "the political integrity, the economic security, or the health or welfare of the tribe" than the preservation of a tribe's land base. As the Court of Appeals stated in *Crow Tribe v. Montana*, 650 F.2d 1104, 1117 (9th Cir. 1981): "Any substantial incursion into the revenues obtained from the sale of the Indians' land-based wealth cuts to the heart of the Tribe's ability to sustain itself."

The present dispute revolves entirely around the ability of the Tribe to control the use of its land and its land-based resources. Petitioners occupied tribal land after the termination of their leases, refused to enter into new leases for the use of that land, refused to abide by the laws of the Tribe relating to the use of tribal land, refused to acknowledge the sovereignty of the Tribe over the Tribe's land, and refused to even pay rent to the Tribe for the land that they occupied. This is nothing less that an effort to dispossess the Tribe of portions of its land base, which truly "cuts to the heart of the Tribe's ability to sustain itself." The present case clearly falls under the second *Montana* exception.

Based on the foregoing analysis, there can be no question that the Tribal Court's exercise of jurisdiction over the Petitioners was a legitimate exercise of the Tribe's inherent sovereign power[4] under the Court's decision in *Montana*.

## V.

## PETITIONERS ARE ESTOPPED TO DENY THE TRIBE'S TITLE, AND THEIR CLAIMS BASED ON SUCH A CHALLENGE MUST BE REJECTED

Petitioners, as tenants in possession of tribal land at the time that this lawsuit was filed, cannot challenge the

[4] The Tribal Court's exercise of jurisdiction over the Petitioners was also a legitimate exercise of Congressionally delegated authority under the Indian Reorganization Act, 25 U.S.C. §475 ("IRA"). In the IRA, Congress expressly delegated to tribes, such as the Chemehuevi, who are organized under the Act, the authority to prevent the "sale, disposition, lease and encumbrance" of its lands. *Id.*



Tribe's title: " . . . a tenant in possession is estopped to deny his landlord's title to the leased property." Restatement (Second) of Property (Landlord and Tenant) §4.3 cmt. b. (1976).

> Tenants are never allowed to deny the title of their landlord, . . . the rule being that whenever the possession is acquired under any species of tenancy, whether the action be assumpsit, debt, covenant, or ejectment, the tenant is estopped from denying the title of the landlord.

*Williams v. Morris*, 95 U.S. 444, 5 Otto 444, 24 L.Ed. 360 (1877). See also, *Richardson v. Van Dolah*, 429 F.2d 912 (9th Cir. 1970).

Petitioners' claims are based upon their challenge to the Tribe's title to the land restored to the Tribe by the Restoration Order. Without a successful challenge to that title, there is no foundation for their claims. Because they are estopped to challenge that title, Petitioners' Petition must be denied.

## VI.

## PETITIONERS' CLAIMS ARE BARRED BY THE DOCTRINE OF UNCLEAN HANDS

It is a basic principle of equity that he who seeks equity must come to the court with clean hands.

> This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. That doctrine is rooted in the historical concept of

> court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be 'the abetter of iniquity.'

*Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co.*, 324 U.S. 806, 814, 65 S.Ct. 993, 89 L.Ed. 1381 (1945).

Petitioners came before the District Court seeking a variety of equitable relief. They sought an order from the District Court: 1) requiring the Tribal and Federal Respondents to produce a Title Status Report for the Reservation lands at issue in this case; 2) enjoining Tribal Respondents from enforcing the provisions of the Tribe's Unlawful Detainer Ordinance; 3) enjoining proceedings before the Tribal Court in the eviction actions against Petitioners; and 4) declaring that the Parker Dam Act constituted a diminishment of the Reservation. Petitioners, however, came before the District Court and come before this Court with unclean hands, and equity should be denied to them.

As discussed above, a group of plaintiffs, including Petitioners, entered into the Settlement to settle the claims raised in *Havasu Landing, Inc., v. Morton*, *supra*. In the Settlement, Petitioners specifically agreed to never challenge the Tribe's title to the land at issue in this case. The recitals to the Settlement state:

> The Lawsuit, among other things, challenges the legality and constitutionality of an Order of the Acting Secretary of the Interior, John C. Whitaker, dated August 15, 1974 (the "Order"), which corrected a 1941 designation of certain lands by Interior Secretary Ickes and determines, establishes and confirms that the Chemehuevi Tribe has full equitable title to all lands within the Chemehuevi Indian Reservation riparian to Lake Havasu, all as further set forth in the Order.



Under the terms of the Settlement, the Petitioners released the Tribe and the United States, and their officers, employees, successors, trustees, and assigns from all claims:

> arising out of, in connection with or in any way related to, or which may hereafter be claimed to arise out of or in connection with or relate to, the subject matter of the Lawsuit, the Order, the Havasu Concession Contract or the Permits.

Petitioners executed releases of claims arising out of the same litigation. In those releases, Petitioners again agreed never to challenge the Tribe's title to the land at issue in this case. Each release specifically stated that the plaintiff released and discharged the Tribe and the United States, and their officers, agents, employees, successors, trustees and assigns from all claims arising out of or related to, among other things:

> (b) The Order of the Acting Secretary of the Interior, John C. Whitaker, dated August 15, 1974, which corrects a 1941 designation of certain lands by Interior Secretary Ickes and determines, establishes and confirms that the Tribe has full equitable title to all lands within the Chemehuevi Indian Reservation riparian to Lake Havasu, all as further set forth in such Order;
> . . .

By bringing the lawsuit and filing this Petition, Petitioners are in breach of the Settlement Agreement and the accompanying release. Thus, though they seek equity, Petitioners come to the Court "tainted with inequitableness [and] bad faith relative to the matter" in which they seek relief.

## CONCLUSION

Petitioners have not raised any issue that meets the criteria for Supreme Court review under Rule 10. There is no conflict between the Ninth and Tenth Circuits with regard to the application of the Indian lands exception to the Quiet Title Act. Petitioners' arguments can be summarily disposed of, as they are clearly meritless.

For all of the foregoing reasons, the Tribal Respondents respectfully request that Petitioners' Petition for Writ of Certiorari be denied.

Dated: April 21, 2003

Respectfully submitted,

LESTER J. MARSTON
RAPPORT AND MARSTON
*Attorneys for Tribal Respondents*
405 W. Perkins Street
P.O. Box 488
Ukiah, CA 95482
Telephone: (707) 462-6846
e-mail: marston1@pacbell.net