Indian Affairs - Office of Public Affairs

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Secretary of the Interior Cecil D. Andrus today signed an order restoring to the Quechan Indians 25,000 acres of land within the original 1884 boundaries of the Fort Yuma Reservation in Arizona and California.

The Secretarial Order transfers administration of the land from the Bureau of Land Management to the Bureau of Indian Affairs as Trustee for the tribe. The action implements an opinion by Interior Solicitor Leo M. Krulitz that the land belongs to the tribe because conditions imposed by the 1893 agreement under which the tribe would have ceded its "non-irrigable" acreage to the United States were never met. Krulitz' ruling reverses two previous Solicitors' Opinions, one rendered in 1936, the other in 1977.

Most of the 25,000 acres are in California with a small portion in Arizona. While most of the land is still considered non-irrigable, it is now thought that between 5000 and 5500 acres are practicably irrigable. The restoration will more than triple the size of the reservation's land base, now an area of around 9200 acres, on which 860 of the tribe's 1725 members live.

The order protects valid third party interests, such as leases, patents, easements and rights of way which have been issued over the years--some before the reservation was established, some since the Department first ruled over 40 years ago the lands did not belong to the Tribe.

Interior Assistant Secretary for Indian Affairs Forrest Gerard said, "With the entire Indian community of the United States, I am pleased to see the rights of the Quechan Tribe acknowledged and upheld by this Secretarial Order. The Order does not give something new to the tribe, but rather recognizes that their property had never been ceded away. The Secretary's Order is an act of justice, not of benevolence."

The Fort Yuma Reservation, situated along both sides of the Colorado River is southern Arizona and California, was established by Executive Order in 1884. In 1893, the Quechan notified the President and the Congress that they were willing to cede their reservation to the U.S. in return for receiving allotments of irrigated land, hoping to improve the tribal economy with smaller, individual plots of productive farm land.

An agreement was negotiated in 1893 for:

- An allotment and irrigation of irrigable land to members of the tribe;
- Sale of surplus irrigable lands to settles under strictly prescribed conditions, after all member were allotted land;
- And the opening of non-irrigable acreage to settlement by proclamation of the President;
- The holing of proceeds from the sale of surplus land in trust for the tribe at 5% annual interest.

The Congress ratified the agreement in 1894, adding two more conditions: an irrigation canal would have to be started within three years or right-of-way granted by statue a year earlier would be fortified; and, each adult Quechan male would receive free water for acre of his allotment over a 10-year period.

"During the following decade, allotment did not occur, the President did not proclaim the non-irrigable

lands a part of the public domain and open to settlement and the irrigation canal was not built," said Krulitz in his opinion. "In short, the cession of 1893 was conditional, the United States never met its conditions and the non-irrigable acreage remains in the Tribe." Krulitz said allotment and irrigation did not occur on the reservation until Congress passed the 1904 statue applying the Reclamation Act to the Ft. Yuma and Colorado River Reservations. But the 1904 Act appears to have been completely unrelated to the cession agreement and ratifying statute, said the Solicitor. It therefore did not effect the conditional cession. The terms under the act for the sale of surplus irrigable lands and the handling the proceeds from such sales differed significantly from those in the 1893 agreement and the Congressional ratification a year later.

Departmental records show that until the 1936 Solicitor's Opinion, the Fort Yuma non-irrigable acreage continued to be administered as tribal lands, indicating that the 1904 Act was not viewed within the Department as having fulfilled the cession conditions.

In 1975 a draft Solicitor's Opinion, asserting Indian ownership of the 25,000 acres, was widely circulated within and outside the Department, Krulitz said, and a decision was expected to be issued in favor of the tribe. But in February 1976, the Solicitor upheld the 1936 opinion. The unexpected move sparked a controversy which led to hearings before the Senate Subcommittee on Indian Affairs.

During those hearings, then-Interior Secretary Thomas Kleppe agreed to direct his Solicitor to prepare a formal written opinion explaining the decision to uphold the 1936 ruling. That became the 1977 Solicitor's Opinion, issued on January 17, 1977.

"The sharp and continuing divergence in legal views with respect to this issue persuaded me that the matter merited reconsideration," said Krulitz.

He said the Quechan Tribe has previously recognized that its title to the lands in question is subject to valid existing rights of third parties and also to lands taken by the United States for reclamation uses.

A lengthy list of the third party rights which would be protected is attached to the Secretarial Order. The order also provides for correction, within ninety days, of those rights which may have been erroneously described and inclusion of rights inadvertently omitted.