



ATTORNEY GENERAL
Criminal Division
Border Crimes Enforcement Section

CONFIDENTIAL WORK PRODUCT

TO: [REDACTED]

FROM: Mike Jette
Assistant Attorney General

DATE: December 11, 2012

RE: Rio Nuevo – Declination of Prosecution

No Substantial Likelihood of Conviction:

This 18-month investigation focused on obtaining: (1) evidence beyond a reasonable doubt to establish that any individual misrepresented or omitted a material fact resulting in any benefit to that individual (*see generally* A.R.S. § 13-2310); and/or (2) evidence beyond a reasonable doubt to establish that any individual committed fraud under the theory of depriving the State, the City, and/or the public taxpayers of honest services (*see* A.R.S. § 13-2310 (E)).

Significantly, in June, 2010, the Supreme Court in *United States v. Skilling* sharply limited the scope of fraud in “honest services” in 18 U.S.C. § 3146, the federal statute upon which Arizona’s fraud statute is modeled, by ruling that the statute is unconstitutionally vague except in cases involving bribery and kickback schemes. The decision rejected the statute’s constitutionality in cases where public officials or private-sector employees are charged with engaging in self-dealing or having undisclosed conflicts of interest, without a bribery or kickback scheme. The Supreme Court stated that by limiting the “honest services” fraud statute to bribery or kickback schemes, it established a uniform national standard, defined honest services with clarity, and reached only seriously culpable conduct. The effect of the Supreme Court’s decision was to remove a tool from the government used to prosecute violations of ethics where there was no victim harm or proof that a payment or inducement actually had affected any official action.

Here, ample evidence exists that the City of Tucson, the Rio Nuevo Board, and other persons involved with greater Rio Nuevo mismanaged public funds. This mismanagement without question jeopardized the community’s trust in competent governance and lawful expenditure of public funds. However, the investigation could not establish mismanagement sufficient to sustain criminal charges under either theory of fraud in light of *Skilling*, which is fatal to any State prosecution under the “deprivation of honest services” theory unless the State could prove a suspect received either a kickback or a bribe as a result of that person’s effort to deprive the State, the City, or the citizens of honest services. No such evidence of fraud was sustained in this investigation.

Rio Nuevo Background:

Cultural revitalization and economic empowerment were the goals of the Rio Nuevo Proposition 400 ballot initiative. Proposition 400 authorized the capture of State sales tax money—Tax Increment Financing (“TIF”) funds—from a special sales tax district (Rio Nuevo Multi-Purpose District or “RNMD”). The money collected created a fund to pay or help finance cultural, civic, entertainment, and business developments for a 62-acre parcel of land just south of Tucson and west of the Santa Cruz River. The TIF money, the RNMD, and the various projects were collectively known as “Rio Nuevo.” Proponents of Proposition 400 pitched Rio Nuevo to voters using projects like a new cultural park, a recreation of the San Agustin Mission Complex, relocation of both the Arizona State Museum and the Arizona Historical Society Museum, and a state-of-the-art University of Arizona Science Center.

RNMD geographical boundaries included downtown Tucson and extended east along Broadway Blvd. to include both the El Con and Park Place Malls. Money was diverted from the special sales tax district to the RNMD projects. RNMD was empowered to develop and revitalize downtown Tucson by focusing on two locations: (1) a cultural sub-district located south of Tucson on the east side of I-10; and (2) an economic sub-district located south of Tucson on the west of I-10.

Proposition 400 required the City of Tucson to match any and all money collected and spent from TIF. Theoretically, these matching funds would spur private development and funding. The idea was to leverage private investment and achieve a 1:3 funding ratio: for every dollar the City of Tucson and TIF contributed, private investment would invest three. The City of Tucson financing was restricted to non-private projects which provided a basis of support for private investment, including utilities, roads, garages, and public revenue generating projects like an arena and museums.

In 1999, Tucson voters approved Proposition 400. Rio Nuevo was overseen by a Rio Nuevo Board appointed by the City of Tucson and the State Legislature. The original board was disbanded in 2009 and replaced with a subsequent board appointed by both the State Legislature and the Governor. This newer board has undergone significant personnel changes and has lacked both a cohesive direction and/or leadership since its inception. Currently, the Rio Nuevo Board is in mediation involving the use of TIF money to repair the Tucson Convention Center and the City of Tucson is not meeting its obligation under the Proposition 400 mandate to provide matching funds.

Since the passage of Proposition 400, the taxpayers have been inundated with allegations of project mismanagement, financial improprieties, and embezzlement. While few of the projects were completed, each venture triggered contracts for extensive planning and studies which cost millions of dollars. In total, approximately \$250 million was spent on Rio Nuevo with few visible projects completed.

FBI Investigation:

The FBI initiated the investigation based on allegations by two former Rio Nuevo Board members that persons involved in the TCC hotel and the University Science Center committed crimes. In the summer of 2011, the FBI executed a search warrant to obtain records belonging to both the City of Tucson and the Rio Nuevo Board. The FBI began an exhaustive cataloging of these records, and agents and the AGO reviewed and analyzed thousands of documents and contracts. In addition, AGO issued subpoenas for bank records, retrieved City of Tucson accounting records, requested and reviewed many vendor records, evaluated both public and private records involving various bond initiatives to fund RNMD, and evaluated efforts to thwart public wants to eliminate and kill the RNMD. The FBI and AGO also conducted lengthy

interviews of over 20 factual witnesses—including former City Managers, city accounting personnel, supervisors at both government and quasi-government departments and organizations, private vendors and contractors, and former City Council members—and investigated numerous civilian and municipal complaints and allegations on several proposed projects including, but not limited to:

- General Infrastructure
- I-10 Deck Park
- St. Augustine Mission
- Historical Museum/Cultural and Museum Park
- Rainbow Bridge and Science Center
- Origin Heritage Park
- Downtown Arena
- TCC and Hotel
- MLK housing
- The Depot
- Scott Street
- Fox Theater
- Cushing Bridge
- Clark underpass
- Landfill Remediation

The State and FBI pursued theories of fraud and theft including, but not limited to, ghost vendors or billing, overbilling, conflicts of interest, bribes or kickbacks, Ponzi payments, and even the deprivation of honest services. However, because Rio Nuevo was/is a fourteen year-old project with hundreds of thousands of documents involving hundreds of people, complete analysis of each and every proposal or transaction was impracticable in nearly every project and impossible on some. Lack of contemporaneous memorialization of agreements often was encountered, witnesses lacked adequate recollections of significant events, and numerous records had been lost. Additionally, very little information provided by the initial complaining members of the Rio Nuevo Board proved to be either accurate or reliable. Significantly, these same board members made public statements causing intense media scrutiny which impeded the FBI's ability to catch material witnesses and potential suspects off guard with unannounced interviews.

After a comprehensive review by agents, analysts and prosecutors, the available records failed to substantiate criminal conduct with any substantial likelihood of conviction at trial. Unless new evidence is presented which can be substantiated under the *Skilling* standard and supported by reliable, admissible evidence, criminal prosecution is not viable and the investigation should be closed.