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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

BANK OF AMERICA, N.A.
a Delaware corporation,

Plaintiff,

vs.

WILLIAM BILLS;
SHARON WASSON; ELVERINE CASTRO;
THOMAS W. MAGIERA(deceased);
THOMAS R. WASSON; and WINNEMUCCA
INDIAN COLONY COUNCIL,

Defendants

THOMAS W. MAGIERA(deceased);
THOMAS R. WASSON; ANDREA DAVIDSON;
ELVERINE CASTRO, SHARON WASSON; and
the WINNEMUCCA INDIAN COLONY COUNCIL,

Counter-claimants,

vs.

WILLIAM BILLS and KYLE SWANSON,
and DOES I-X, inclusive,

Defendants.

Comes now, the Movants, WINNEMUCCA INDIAN COLONY, Thomas Wasson, Chairman, by and through its counsel of record, HAGER & HEARNE, and respectfully request that the Court accept and consider this Order of the Inter Tribal Court of Appeals of May 17, 2007, as the final step in the Tribal Court process.

CV-N-00-0450-HDM (VPC)

**Supplemental Statement
In Support of Motion for
Summary Judgment, Request
For Distribution of Account
And Dismissal of
Interpleader**

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1 The Movants respectfully request that this Court distribute the bank account
2 held in interpleader to the Movants, Thomas Wasson, Chairman, Winnemucca
3 Indian Colony, and that this matter be dismissed.

4 **Introduction**

5 After the murder and assassination of Glenn Wasson on February 21, 2000,
6 the Chairman of the Winnemucca Indian Colony, chaos reigned at the Colony in a
7 dispute over the leadership of the Colony. William Bills, the acting Vice Chairman
8 attempted to take over the Colony after the death of Glenn Wasson and in addition
9 he attempted to oust all other members and replace that membership with persons
10 who were not Indians and others who were Native American but who had never been
11 members of the Winnemucca Indian Colony. On August 28, 2000 the Bank of
12 America filed an interpleader because of the dispute over the bank account and who
13 had the actual authority to act as the government of the Winnemucca Indian Colony,
14 which was the initiation of this case.

15 After a long history of litigation in this case, before the Interior Board of
16 Indian Appeals, before the Ninth Circuit Court of Appeals in other federal litigation,
17 and before the Inter-Tribal Court of Appeals, the parties agreed to an appeal of the
18 Tribal Court matter. Since the Bureau of Indian Affairs had failed to fund an Inter
19 Tribal Court and none existed at that time to hear this appeal in 2002, the appeal
20 was heard by agreement of the parties before a panel of judges from the Souix Nation
21 who presided over a hearing in the United States Federal District Court in Reno,
22 Nevada for one day. The decision was rendered on August 16, 2002 recognizing the
23 Winnemucca Indian Colony government as Thomas Wasson, Sharon Wasson,
24 William Bills, Elverine Castro, and required that someone be appointed to take the
25 place of Thomas Magiera who was deceased.(Exhibit 1) The cost of this Court
26 convening was paid for from the interpleader funds.

27 The losing side who was aligned with William Bills on August 16, 2002, filed
28 an appeal with the Inter Tribal Court of Appeals of Nevada as soon as it was

1 constituted. Another several years went by while appeals were taken to the Interior
 2 Board of Indian Appeals who stated that all parties had to wait for the Tribal
 3 processes to be complete. The first order of the Inter-Tribal Court of Appeals was
 4 unconstitutional since it attempted to take away the right of the Council to determine
 5 the membership in the first instance. The Honorable Howard McKibben presided
 6 over the federal court proceeding, CV-N-04-573, (Exhibit 2) on December 10, 2004.
 7 As a result of the hearing before this Court, a stipulation was entered into by the
 8 Chief Justice of the Inter-Tribal Court and the Movants herein that the Inter-Tribal
 9 Court would not interfere in the membership process. (Exhibit 3)

10 Based upon the directions of the Honorable Howard McKibben, the
 11 Winnemucca Indian Colony council published notice for membership applications.
 12 That process was preliminarily concluded with a membership on May 1, 2005. The
 13 membership list was filed with this Court, with the panel from the Sioux Nation, with
 14 the Bureau of Indian Affairs on or about May 11, 2005.(Exhibit 4) Finally, after
 15 several more months and another hearing before the Inter-Tribal Court on who
 16 represented the parties in 2006, on May 17, 2007, the Inter-Tribal Court has
 17 dismissed all matters before it since the dismissal was requested by the Winnemucca
 18 Indian Colony, Thomas Wasson, Chairman, William Bills, Vice Chairman, Elverine
 19 Castro, Sharon Wasson and Judy Rojo, Council members.(Exhibit 5)

20 Based upon the decision of August 22, 2000, and now the decision that
 21 concludes the Tribal Court process, the Movant requests that this Court disburse the
 22 Bank of America account to the Winnemucca Indian Colony, Thomas Wasson,
 23 Chairman. After the account is disbursed to the Winnemucca Indian Colony,
 24 Thomas Wasson, Chairman, then this matter can be dismissed.

25 II.

26 **A dispute no longer exists and the interpleaded funds** 27 **must be disbursed.**

28 The general purpose of an interpleader action is to decide the validity and

1 priority of existing claims to a res.¹ There have been no subsequent claims upon the
 2 interpleader fund for the Court to consider. ² The two claims to the interpleader
 3 action were Winnemucca Indian Colony, Thomas Wasson, Chairman and William
 4 Bills on behalf of the Winnemucca Indian Colony. Both of those parties are now a
 5 part of the same Colony Council. (Exhibit 5) and, thus, there is no further dispute.

6 WHEREFORE the Court has held this account in interpleader for nearly seven
 7 years. The Tribal Court process is completed. The recognized Council of the
 8 Winnemucca Indian Colony pursuant to the appellate decision of August 16, 2002,
 9 is the governing body of the Winnemucca Indian Colony. The account should be
 10 disbursed to Winnemucca Indian Colony, Thomas Wasson, Chairman.

11 Dated this 31st day of May, 2007.

12 **LAW OFFICES OF HAGER & HEARNE**

13
 14 By: _____/s/ Treva J. Hearne, Esq.

15 **Treva J. Hearne, Esq.**

16 **HAGER & HEARNE**

17 910 Parr Blvd. #8

18 Reno, Nevada 89512

19 Attorney for Winnemucca Indian Colony,
 20 Thomas Wasson, Chairman

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 27 ¹ *Texaco, Inc. V. Ponsoldt*, 118 F.3d 1367 (9th Cir. 1997).

28 ² *Id.*, 1369

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of the law offices of HAGER & HEARNE, 910 Parr Boulevard, Suite 8, Reno, Nevada 89512, and that on this date, I e-filed as per usual office practice and procedures or I sent via United States Postal Service, in a postage pre-paid, stamped envelope a true and correct copy of the foregoing document(s):

Supplemental Statement in Support of Motion for Summary Judgment, Request for Distribution of Account and Dismissal of Interpleader
On the party(s) set forth below by:

 xx Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

 Personal delivery.

 Facsimile (FAX) to: _____

 Federal Express or other overnight delivery.

 xx E-filing : United States District Court for the District of Nevada

Addressed as follows:

Mr. Brendon Ludwig, Esq.
Rossette and Associates
6124 East Brown Road
Suite 101
Mesa, Arizona 85205

DATED this 31st day of May, 2007.

 /s/ Ivy Wright Bryan
Ivy Wright Bryan

EXHIBIT 1

IN THE APPEALS COURT OF THE
WINNEMUCCA INDIAN COLONY
IN NEVADA
Case No. CV1003 (Lower Court)

Sharon Wasson, Lucy (Wasson) Lowery, et al.,
Appellants,

Vs.

William Bills, Acting Tribal Chairman, et al.
Appellees,

Filed August 16, 2002
Reversed.

Treva J. Hearne, Esq., Zeh, Saint-Aubin, Spoo & Hearne, 575 Forest Street, Suite, 200, Reno,
Nevada 89509; and

Donald K. Pope, Esq., 1385 Haskell St., Reno, Nevada 89509.

Considered and decided by Scheffler, Chief Judge, Reding, Associate Judge, and Treuer,
Associate Judge.

SYLLABUS

1. The Trial Court's determination of members of the Winnemucca Colony Council is not supported by substantial evidence and does not comport with the Constitution and Bylaws of the Winnemucca Indian Colony in Nevada.
2. The Trial Court's determination of the membership of the Winnemucca Indian Colony is not supported by substantial evidence and does not comport with the Constitution and Bylaws of the Winnemucca Indian Colony.
3. The Trial Court's determination of Tribal Judge is not supported by substantial evidence and does not comport with the Constitution and Bylaws of the Winnemucca Indian Colony.
4. The Order of Steven Habermeld, issued on May 9, 2002 is reversed and vacated.

Introduction

The Winnemucca Indian Colony (WIC) was created by the federal government of the United States by Executive Order No. 2639 dated June 18, 1917 which set aside 340 acres near the town of Winnemucca, Nevada for the benefit of certain "homeless Indians" in the area. The Indians of the Winnemucca Indian Colony organized under the Indian Reorganization Act of June 18, 1934 (as amended). In December 1970 the Winnemucca Indian Colony adopted a Constitution and Bylaws which were approved by the Assistant Secretary of the Interior on March 5, 1971.

Under the Constitution and Bylaws, the WIC had an operating tribal council and engaged in government-to-government relations with the United States government. As of February 21, 2000, the members of the Winnemucca Colony Council were Chairman Glenn Wasson, Vice Chairman Williams Bills, and members at large Thomas Wasson, Elverine Castro, and Lucy Lowery.

On February 22, 2000, Council Chairman Glenn Wasson was murdered. The events leading to this lawsuit followed the death of Chairman Wasson. The remaining Colony Council split into two factions, both purporting to be the legitimate Colony Council. Each faction took various actions "on behalf of" the Colony. Each faction later held an election and claimed to seat a new council. The governmental chaos in the Colony caused the federal government to declare the Colony to be dysfunctional and to break off government to government relations with it.

Eventually, various lawsuits were filed and the two sides became engaged in litigation to resolve the issues. After a complicated procedural history which is shown in the list of pleadings

in this matter, the trial in this matter was heard before *pro tem* Judge Steven Haberfeld. As stated in his Order dated May 9, 2002, the issues to be resolved by the trial judge were:

- 1) The names of the members of the Winnemucca Indian Colony who are eligible for enrollment.
- 2) The identity of the proper and legitimate members of the Business Council of the Winnemucca Indian Colony at the present time.
- 3) The identity of the Tribal Judge, other than the *pro tem* Judge, legally authorized to hold such office for the Colony at the present time.

Judge Haberfeld's Order dated May 9, 2002, as amended by Order dated May 22, 2002, determined the identity of the legitimate tribal judge, created a membership list for the WIC, and determined that there was no legitimately formed tribal council and ordered an election to establish the council. Although the trial court judge recognized that an "Indian tribe's most basic power is the authority to determine its own membership," he determined that in this instance, he was given specific instructions to determine the names of person eligible for enrollment. Therefore, he made specific findings regarding certain persons' eligibility for membership and he established a list of 48 people who "have been placed on the Official Winnemucca Indian Colony Tribal Enrollment List" out of 106 potentially eligible persons.

Both parties appealed the Tribal Judge's decision. Due to lack of funding, the Intertribal Court of Appeals that would normally hear this case is not functioning. The parties, through counsel, stipulated to the appointment of a special appellate panel to hear appellate arguments and to issue a binding, non-appealable decision. The standard of review stipulated by the parties is as follows: *de novo* review of constitutional issues, *de novo* review of legal issues, and "any substantial evidence" review of factual issues.

STATEMENT OF FACTS

The WIC's membership initially included those persons listed on the 1916 census rolls, hereinafter known as the "List of 17". (Exhibits 36 and 84). When the WIC adopted a constitution, the Constitution provided that to be a member of the Colony a person must be at least 1/4 degree Paiute and/or Shoshone Indian blood AND they must be named or descended from person(s) named on the December 9, 1916 census of the Winnemucca Shoshone Indians. Further, no person can be a member of the Winnemucca Indian Colony if they have received money or land as a result of having been enrolled as a member of some other tribe.

In the 1980s, the BIA expressed concern that the membership rolls of the Colony included people who were not eligible for membership under the Constitution. (Exhibit 38b.) In 1994, the Colony adopted Enrollment Ordinance No. 310, which was approved by the Acting Area Director of the Phoenix Area Office of the BIA on July 12, 1994. On February 14, 1998, the WIC adopted a revised membership list which included 77 names (hereinafter known as the "List of 77".) This membership list was accepted by the Colony through their elected Council. The membership list was forwarded to the BIA for verification. The BIA did not approve the membership list because the Colony had not brought individual resolutions for each new member before the Colony Council for approval. (Exhibit 38a.)

As of February 21, 2000, the members of the Winnemucca Colony Council were Chairman Glenn Wasson, Vice Chairman Williams Bills, and members at large Thomas Wasson, Elverine Castro, and Lucy Lowery. On February 22, 2000, Chairman Glenn Wasson was murdered in front of the administration building of the Colony. As the Vice-Chairman, William Bills became the Acting Chairman of the Colony. The Council members thereafter split into two factions, as shown by their subsequent actions. One faction, hereinafter known as the Wasson

Council, included Thomas Wasson, Elverine Castro, and Lucy Lowery. The other faction, hereinafter known as the Bills Council, included only William Bills.

At a meeting on February 28, 2000, the three members of the Wasson Council held a meeting at which they purported to appoint Sharon Wasson as a Council member to fill Glenn Wasson's vacant seat. (Exhibit 7.)

At a Council meeting on March 22, 2000, the seat vacated by Glenn Wasson was declared to be vacant and William Bills was declared to be the Chairman. (Exhibit 10.) By a separate resolution, an Enrollment Committee was established. (Exhibit 10.) Another resolution set a special/emergency meeting date for April 8, 2000 to fill the vacant Council seat.

After the regular Council meeting, three of the four remaining members, Thomas Wasson, Elverine Castro, and Lucy Lowery, held another meeting, the purpose of which was to appoint a replacement for former member Glenn Wasson within thirty (30) days after the seat became vacant, as required by Article V, Section I of the Constitution. They elected Sharon Wasson to the empty seat on the Council. The three members acting at that time also stated their intent to call a special meeting to discuss, among other things, removal of Mr. Williams Bills from the council. (Exhibit 11.)

Article 3, Section II of the Bylaws allows special meetings to be called by a chair or the majority of the Council. The three members acting at this time constituted a majority of the Council. Further, Article V, Section 1 of the Bylaws allows the appointment of another council member "to fill the unexpired term." The Constitution and Bylaws do not specify where Council meetings must be held and they do not specify any notice requirements for special meetings. (Exhibit 1.)

From this point forward, the two groups claiming to be the legitimate council diverged and each group continued to act and take action as if it was the legitimate Colony Council. At a meeting on March 24, 2000, attended by Sharon Wasson, Thomas Wasson, Lucy Lowery, and Elverine Castro, the Wasson Council voted to make Sharon Wasson Acting Chair of the Council while they attempted to address membership issues and removal of Mr. Bills. (Exhibits 11 and 12.) The Wasson Council sent a letter to Mr. Bills informing him of his removal from the position of Chairman and his opportunity to respond to the Council at a meeting on April 8, 2000. (Exhibit 13.) Although there is no proof of service of this letter, Mr. Bills did appear at the April 8, 2000 hearing. There was not a quorum at the meeting. The meeting agenda does not contain an item regarding the removal of Bills and there is no evidence in the record that the removal of Bills was discussed at the April 8, 2000 meeting or that he was given a hearing or opportunity to oppose his removal.

On April 7, 2000, William Bills filed a Motion for Emergency Injunctive Relief in the Winnemucca Tribal Court. (Exhibit 15). This Motion sought an order against the other Council members ordering them to cease from interfering with the finances of the colony, and to turn over all bank account information and funds. On April 17, 2000, then-current Tribal Court Judge Kyle Swanson issued an order granted Bill's motion for emergency relief. (Exhibit 19.) The Wasson Group, through their attorney, filed a Motion to Dismiss the injunction dated April 19, 2000. (Exhibit 20.)

On April 11, 2000, the Wasson Council removed Mr. Bills as the Chair of the Committee and appointed Sharon Wasson Chairman, pursuant to Article VI, Section I of the Constitution. (Exhibit 17.) By Resolution dated April 24, 2000, the Wasson Council attempted to remove William Bills as a Council member. The three signatories on that resolution were Sharon

Wasson, Lucy Lowery, and Thomas Wasson. (Exhibit 21.) However, until at least September 14, 2000, the Wasson Council continued to act as though Mr. Bills was a member of the council, listing him as "absent without excuse" on many Council documents. (Exhibit 38a).

By Resolution dated May 2, 2000, signed by Elverine Castro, Lucy Lowry, Thomas Wasson, and Sharon Wasson, Kyle Swanson was purportedly removed from service as a Tribal Judge. The Resolution indicated that a hearing on the matter would be held on May 13, 2000. (Exhibit 22.) Judge Swanson did not receive a copy of the Resolution regarding his removal until approximately two weeks later, after the scheduled May 13, 2000 hearing. (Exhibit 25.) It is unclear from the record if the May 13, 2000 hearing took place.

Also on May 2, 2000, the same group of actors appointed Chuck Hartman as associate Judge of the Winnemucca Tribal Court. (Exhibit 23.) On May 23, 2000 this group entered into a Memorandum of Understanding regarding his term and compensation as associate judge. (Exhibit 28.) On August 9, 2000, Judge Hartman issued an Order removing William Bills from all tribal business, recognizing Sharon Wasson as Tribal Chairman, and ordering release of all tribal bank account funds to the Wasson Council. (Exhibit 31.)

William Bills sent correspondence to Judge Swanson dated May 18, 2000, instructing him to sit as Tribal Judge on May 19, 2000. (Exhibit 26.) By Order dated May 19, 2000, Judge Swanson issued his Order for Preliminary Injunction, which essentially gave control of the Colony's finances to Mr. Bills and enjoined the Wasson Group from interfering with the activities of the Enrollment Committee.

On or about June 25, 2000, Council member Lucy Lowery died. On July 13, 2000, Tom Magiera was appointed to the Council to replace Ms. Lowery. (Exhibit 46.) By Resolution dated September 14, 2000, the Wasson Council disenrolled/banished William R. Bills. By

Resolution dated October 16, 2000, the Wasson Council declared the seat vacant and appointed Andrea Davidson to the vacant seat. (Exhibit 47.)

Also on October 16, 2000, the Wasson group brought a Complaint and Motion for Temporary Restraining Order before Judge Hartman. On the same date, Judge Hartman issued a temporary restraining order restraining William Bills from entering the trust lands of the Winnemucca Indian Colony and issued an order to show cause at a hearing on October 31, 2000 why the order should not become permanent. (Exhibit 49.)

From the time of its appointment in March 2000, the Enrollment Committee continued to accept enrollment applications and enroll various people as members in the tribe. Both sides also held Council elections which each claimed to be the legitimate election to seat the legitimate Colony Council. After an election in October 2000, the Wasson Council claimed that its duly elected members were Thomas Wasson, Thomas Magiera, Elverine Castro, Andrea Davidson, and Merlene Magiera. After an election in April 2001, the Bills Council claimed that its members were Allen Ambeler, Linda Ayer, Lovelle Brown, Charlene Dressler, and Lorinda (Toni) George. (Exhibit 64). For various reasons that are outlined in the record, both faction's elections had procedural and due process deficiencies.

On January 18, 2001, Judge Swanson issued an Order for Permanent Injunctive Relief and Restraining order, which found, among other things, that William Bills was the Acting Tribal Chair, that Sharon Wasson was not a Council member, and that the Wasson Council was ordered to refrain from interference or participation in the daily operations of the tribe's smoke shop. (Exhibit 34.) After appeals from Judge Swanson's Order, the parties had a trial before Judge Haberfeld. Both parties appealed Judge Haberfeld's decision and the following opinion results from the appeals of Judge Haberfeld's Order.

Although the following information was not in the record, counsel for the parties informed the Appellate Panel at oral arguments that Thomas Magiera died on June 30, 2002.

ISSUES

- I. Whether the Trial Court's Order determining the members of the Winnemucca Colony Council is supported by substantial evidence and comports with the Constitution and Bylaws of the Winnemucca Indian Colony.
- II. Whether the Trial Court's Order determining the membership of the Winnemucca Indian Colony is supported by substantial evidence and comports with the Constitution and Bylaws of the Winnemucca Indian Colony.
- III. Whether the Trial Court's Order determining the Tribal Judge is supported by substantial evidence and comports with the Constitution and Bylaws of the Winnemucca Indian Colony.

ANALYSIS

Winnemucca Colony Council

A vacancy was properly declared pursuant to Article V, Section I of the Winnemucca Indian Colony of Nevada Constitution (the "Constitution") shortly after the death of Glenn Wasson. William Bills ascended to the Chair position by virtue of being the Vice Chair. This ascension is permitted whenever the Chair is not able to fulfill his responsibilities under the Constitution.

The WIC Constitution at Article V, Section 1 provides that the remaining Colony Council members, after declaring a vacancy, shall appoint a successor to fill the unexpired term. On March 22, 2000 a majority of the Council appointed Sharon Wasson to the Colony Council according to the Constitution. The WIC Constitution at Article III, Section 1 states that a

chairman shall be selected by the Colony Council from within its own members. On April 11, 2000, Sharon Wasson was selected by a majority of the remaining Council members as Chair pursuant to the Constitution.

Article V, Section II of the Constitution provides for removal of members of the Colony Council. The Constitutional provisions for removal were not followed to properly remove Mr. Bills from the Colony Council. A letter marked Exhibit #13 from Sharon Wasson to William Bills gives notice to Mr. Bills of his removal and that a hearing was set for April 8, 2002. The notice was defective in that it did not have an address on its face for Mr. Bills, and there was no evidence of service. Mr. Bills appears to have had knowledge of the April 8th hearing because (1) he filed a legal action in another court the day before and (2) Mr. Bills showed up for the meeting on April 8, 2002, the Wasson group did not prove actual notice. There is considerable case law identifying the difference between actual notice and legal notice.

Mr. Bills, Thomas Wasson and one other Colony Council member were present at the April 8th meeting. Two other Colony Council members' car broke down and they were not in attendance at the meeting. The evidence provided in the record indicated that a number of topics were covered but no action was taken on the removal of Mr. Bills. The attempt to remove Mr. Bills from the Council was procedurally defective, was not completed, and, therefore, is ineffective.

As time went on, Mr. Bills' name continued to appear on official documents and the other council members present would sign their initials that he was absent without an excuse. This evidence shows that even the Wasson Council continued to include Mr. Bills as a Colony Council member and Vice Chair through September of 2000.

On April 13, there was a recall petition date stamped and marked received on April 26th. However, the record does not reflect that the process was ever carried out for a recall of Colony Council members.

The WIC Constitution at Article V directs how a vacancy on the Colony Council is to be filled and Article IV of the WIC Constitution describes a quorum of three as necessary to transact business of the Colony Council. A quorum of the Wasson Council declared a vacancy when Lucy Lowery died. As stated in Exhibit #46 dated July 13, 2000, the Wasson Council declared a vacancy, took nominations and appointed Tom Magiera to the Wasson Council. Article II, Section 2 of the WIC Bylaws requires that each Colony Council member elected or appointed take an oath of office. Mr. Magiera took the oath of office as required by the WIC Constitution.

Exhibit #47 states that Mr. Bills was disenrolled or banished, that there was a vacancy on the Colony Council and that Andrea L. Davidson was appointed to fill the position declared vacant. The contents of Exhibit #49 do not illustrate any due process in trying to disenroll or banish Mr. Bills. There was not an effective disenrollment or banishment of Mr. Bills. Therefore, there was no vacancy on the Wasson Council and Ms. Davidson was not validly appointed to the Wasson Council.

The election of October 28, 2000 was defective for a number of reasons including:

- 1) the election committee was not valid because only one member was a member of the Colony at the time;
- 2) there was an altercation which disrupted the process;
- 3) two of the election committee members were incarcerated; and
- 4) the polling place was changed at last minute to a different place than posted.

All these incidents resulted in an invalid election on October 28, 2000.

The Court reviewed the Order of Judge Swanson identified as Exhibit #30 dated

January 18th, 2001 and information regarding the election proceeding. Judge Swanson exceeded his authority by ignoring the Constitutional election requirements.

On or about January 2001, Mr. Bills appointed an interim Colony Council, known as the Bill's Council in this opinion. The appointment of such a council was invalid and unconstitutional. There is absolutely no provision in the Constitution providing for the appointment of an interim Colony Council. There is no Constitutional provision for a single Council member to appoint any other council members or to act as a Colony Council of one. For foregoing reasons, the Bills' council is invalid.

Membership List

One of the inherent powers of self-government is the power to establish the members or citizens of a particular tribe, nation, band, community or colony. Another power of self-government is to exclude people from the tribe, nation, band or community or colony's territories or lands. The Enrollment Ordinance is clear about how to apply for membership and identifies the appeal for denial of a membership application. The Constitution is silent on how a member loses their membership or how they are excluded from tribal territories or lands. The Enrollment Ordinance is also silent on the process to disenroll someone. The Constitution places great value on due process as illustrated in Article VIII. The Enrollment Ordinance reflects the importance of due process by providing for due process if one's application for membership is denied. It is not the place of the judiciary to carry out an inherent sovereign power to say who the members are of a tribe, nation, band, community or colony. The last known list approved by the validly constituted Colony Council, the body with the authority to declare who the members are of the Colony, was the "list of 77 from 1998."

The duly appointed Enrollment Committee, appointed by the remaining Council in March, 2000, continued to act on enrollment applications throughout the past two years of chaos. Some membership applications were forwarded to the Council for approval and acted on by the council. There is no evidence in the records that these new membership approvals are defective. Any membership application which was approved by the Wasson Council, or the predecessor WIC Council, shall be added to the valid enrollment list of the Colony.

This Court is aware of the disproportionate number of Shoshone represented on the Colony Council and in the previous enrollment committee and that there are Paiutes who desire to be enrolled and may be eligible under the Constitution but are concerned about potential bias against Paiutes by enrollment committee members. The Colony is ordered to take steps to address this issue.

Tribal Judge

On April 7, 2000, William Bills filed a motion for emergency injunctive relief in the WIC Tribal Court requesting that the Wasson Group be enjoined from interfering with WIC financial matters. Kyle Swanson was the only sitting Judge of the WIC Tribal Court at that time. The Wasson Council had duly appointed him to his position in 1998. (See Exhibit 25). On April 17, 2000, the same day Bills' motion was served on the defendants; Judge Swanson issued an order granting Bills' motion for an emergency injunction. (Exhibit 19).

On May 2, 2000, the Wasson Council passed a resolution immediately removing Judge Swanson from office. (Resolution 5-2000-3, Exhibit 22). The stated grounds for his removal were that he presided over litigation in which a party was a close friend and did not hold hearings at a time and place provided by the WIC Law and Order Code. The resolution provided that a hearing would be held on Swanson's removal on May 13, 2000. It is unclear from the record

whether the removal hearing scheduled May 13, 2000 hearing ever took place. Judge Swanson stated that he did not receive notice of his removal until three days after the scheduled hearing. He clearly was not given a fair hearing and an opportunity to respond to the charges.

Except for the resolution of removal itself, the record below does not establish that a written complaint to the Wasson Council was ever made by anyone against Judge Swanson. The record does support a conclusion that Judge Swanson did not receive notice of the charges made in the resolution for two weeks. His receipt of notice was three days after the scheduled May 13th hearing. Contrary to the clear requirements of the Code sections cited above, Judge Swanson was removed without any notice and prior to any hearing. Other sections of the Code were also violated. Section 1-40-100(b)(4) provides that hearings regarding removal of a judge shall be set at least thirty days but not more than sixty days in advance. Here, the removal hearing was set to take place eleven days after its passage.

The actions taken by the Wasson Council were clearly illegal under the WIC Code. They were also unlawful under the due process requirements of the WIC Constitution and under controlling federal law. Article VIII of the WIC Constitution provides that "No person shall be denied any of the applicable rights or guarantees as provided in Title II of the Civil Rights Act of 1968 (82 Stat. 77). The Federal Indian Civil Rights Act of 1968 (hereinafter ICRA) provides as follows:

No Indian tribe in exercising powers of self-governmental shall . . .
deprive any person of liberty or property without due process of
law. 25 U.S.C. 1302(8).

Certainly, Judge Swanson had a property interest in his position as Tribal Judge. It is elementary law that due process generally requires notice and an opportunity to be heard prior to deprivation

were not followed by the residual Council.

In her letter to Judge Swanson, Ms. Hearne apparently took the position that Judge Swanson's contract had simply expired. The Code, however, provides that the "Tribal Court shall consist of one Chief Judge and at least one or more Associate Judges" . . . and further that "all judges shall serve for a term of one year and until their successors take office" . . . (Code Sections 1-40-010 and 1-40-050). (Emphasis supplied). Judge Swanson was the only judge serving on the Tribal Court when these events took place. He had held his position for two years. The resolution appointing Chuck Hartman clearly states he was appointed as an associate judge. The only logical conclusion is that Judge Hartman was not appointed as a successor to Judge Swanson and that, therefore, removal based on expiration of Judge Swanson's term is also illegal.

Winnemucca Colony Council

I. The Trial Court's determination of members of the Winnemucca Colony Council is not supported by substantial evidence and does not comport with the Constitution and Bylaws of the Winnemucca Indian Colony in Nevada.

Mr. Bills was properly elevated to the position of Chair pursuant to the by-laws of the Winnemucca Indian Colony of Nevada Article I, Section II. Sharon Wasson was properly appointed to the Wasson Council and subsequently properly appointed Chair of the Wasson Council. The Court finds no hearing for removal of Mr. Bills was ever held. We find that the removal of Mr. Bills was defective resulting in the fact that Mr. Bills is still on the tribal council.

There was no recall of Wasson Council members because the recall process was not completed. Mr. Bills continued to serve and continues to serve on the Wasson Council. Tom Magiera was properly appointed to replace Lucy Lowery. After review of the documents, this Court finds there was no proper procedure followed for the disenrollment of Mr. Williams. Therefore, it was inappropriate to declare a vacancy, nominate and appoint Andrea Davidson. The appointment of Andrea Davidson was defective, she is not a member of the Council and Mr. Bills remained and remains as a valid member of the Wasson Council.

The Court finds the Order of Judge Swanson dated January 18, 2001 invalid. The valid Colony Council that has survived to the present includes the following: Sharon Wasson, Thomas Wasson, Williams Bills, Elverine Castro and Thomas Magiera until his death.

Therefore, all subsequent activities of the Bills Council are found to be unconstitutional and invalid. The election held on April 2001 is declared an invalid election and in violation of the Constitution.

If the remaining members of the Colony Council feel it necessary and appropriate to remove Mr. Bills as a member of the Colony Council and/or disenroll Mr. Bills, then the Colony Council must follow the Constitution and By-Laws including proper notice, procedure, and opportunity to be heard at a hearing. The Colony Council has the responsibility and duty to assure that due process is provided for in any ordinance or procedure in compliance with the Constitution in order to avoid any further defective disenrollment or defective removal of a Colony Council member.

The next Colony Council election scheduled pursuant to the Constitution would be October 2002. The Court and the parties have the desire for that election to occur on time. However, the serious situation the Colony faces today results from the chaos which began in February 2000 including the unconstitutional and invalid actions identified by this Court. Because of the need to identify who the Colony members are, the need to draft procedures to identify members and because the Constitution permits all Colony Council members to serve a term of two (2) years or until their successors are duly elected and seated, the October 2002 election shall occur within six months of October 2002.

The desire is for the Colony to definitively identify its members and hold a valid election with the purpose of bringing order to the Colony and making a future again for its members. This huge effort will require a complete and participatory Colony Council and active tribal members. If tribal members choose to be obstruct, uncooperative, petty and selfish, then this Colony will continue in chaos with no hope. The people have to care enough to move forward. The judicial and legal systems can do only so much.

II. The Trial Court's determination of the membership of the Winnemucca Indian Colony is not supported by substantial evidence and does not comport with the Constitution and Bylaws of the Winnemucca Indian Colony.

Judge Haberfeld's Order is overturned in its entirety. The "list of 77 from 1998" is the valid list of the members of the Winnemucca Indian Colony of Nevada. Anyone who was added by previous Council or the Wasson Council from 1998 to the present shall be added to the "list of 77 from 1998".

Tribal Judge

III. The Court's determination of Tribal Judge is not supported by substantial evidence and does not comport with the Constitution and Bylaws of the Winnemucca Indian Colony.

We find that Swanson's removal as Tribal Court Judge was improper and illegal under the WIC Law and Order Code. (Hereinafter "Code"). Removal of Judges, Section 1-40-100(b)(1) of the Code provides that "no action will be taken except upon written complaint to the Tribal Council setting forth specific facts which justify removal." Section 1-40-100(b)(2) provides that the "judge shall be immediately notified of the charges against him." The Code further provides that "No judge shall be removed except following a hearing on the complaint and a subsequent decision by the Tribal Council that removal is appropriate." (Code Section 1-40-100(b)(3); (emphasis supplied).

We agree Judge Haberfeld's determination that the attempted removal of Judge Swanson and the appointment of Judge Hartman was a reaction to a negative decision issued by Swanson and an attempt to create a Tribal Court more to the liking of the residual Council members.

We hold that WIC Tribal Court Judge Swanson was not legally removed from office according to the requirements of WIC's laws. He is legally authorized to hold the office of Judge of the WIC Tribal Court.

ORDER

1. The Order of Steven Haberfeld, issued on May 9, 2002, is reversed and vacated.
2. The WIC Colony Council is Sharon Wasson, Thomas Wasson, Williams Bills, Elverine Castro. There is one vacancy created by the death of Thomas Magiera.
3. The WIC Colony Council shall declare a vacancy on the Colony Council because of the death of Thomas Magiera immediately and within 30 days of this order appoint a successor to fill the unexpired term of Thomas Magiera.
4. The WIC Colony Council shall serve until their successors are duly elected and seated or any member is duly disenrolled or banished.
5. The October 2002 election of the WIC shall occur within six months of October 2002.
6. The WIC Colony Council shall set time lines within the next six months of the date of this Order for the following:
 - a. amend the enrollment ordinance within 45 days of this order to provide procedures for appealing a denial of an application including due process provisions and to provide procedures to disenroll a member including due process provisions;

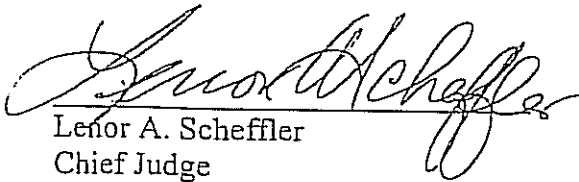
c. service of process methods;

- d. written reasons for denial of an membership application and disenrollment;
- e. hearing and hearing procedures, if any;
- f. in disenrollment processes the burden is upon the person bringing or requesting the action of disenrollment; and
- g. appeal and appeal procedures including the use of an independent body or court.


9. The WIC Colony Council shall contact the United States Department of Interior Bureau of Indian Affairs office for the last address list for members of the Colony.

Signing for the Appeals Court of the Winnemucca Indian Colony in Nevada:

Date: 8-16-02


Lenor A. Scheffler
Chief Judge

Certified by:


Acting Clerk of Court

EXHIBIT

2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Thomas Wasson, et al.,

Plaintiff,

-vs-

Inter-Tribal Court of Appeals
of Nevada; et al.,

Defendants.

NO. CV-N-04-573-HDM(VPC)
United States District Court
400 S. Virginia Street
Reno, Nevada 89501
December 10, 2004

COPY

TRANSCRIPT OF PLAINTIFF'S MOTION

FOR PRELIMINARY INJUNCTION (#4)

BEFORE THE HONORABLE HOWARD D. McKIBBEN

UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF:

Robert R. Hager
Treva Hearne
Attorneys at Law

FOR THE DEFENDANT:

William Kockenmeister
Attorney at Law

Proceedings recorded by mechanical stenography produced by
computer-aided transcript

OFFICIAL COURT REPORTER:

KATHRYN M. FRENCH, RPR
NEVADA LICENSE NO. 392
CALIFORNIA LICENSE NO. 8536

1 Reno, Nevada, Friday, December 10, 2004, 9:00 a.m.

2 ---OoO---

3 THE CLERK: Case number CV-N-04-573-HDM(VPC),
4 Thomas Wasson, et al. versus Inter-Tribal Court of Appeals
5 of Nevada, et al.

6 Robert Hager and Treva Hearne are present on behalf
7 of plaintiffs. William Kockenmeister is present on behalf of
8 the defendants.

9 THE COURT: Okay. Thank you, Miss Clerk.

10 This is the time set for the hearing on the motion
11 for preliminary injunction. I've he reviewed the pleadings
12 that have been filed here.

13 Counsel, are you ready to proceed?

14 MR. HAGER: Ready on behalf of the plaintiffs,
15 Your Honor.

16 MR. KOCKENMEISTER: Ready on behalf of the
17 defendants, Your Honor.

18 THE COURT: All right. Thank you. You may go
19 ahead.

20 MR. HAGER: Good morning, Your Honor.

21 Your Honor, the first issue in this case today is
22 whether the ITCA has any jurisdiction. Jurisdiction cannot
23 be waived. It either exists or it doesn't exist. The ITCA
24 provides for appellate review for Nevada tribes, quote:

25 "Which by resolution of the respective Tribal

1 Councils or the Tribal Law and Order Code, designate appeals
2 to be held by the Nevada Inter-Tribal Court of Appeals," end
3 quote.

4 That's what the basis for jurisdiction of the ITCN
5 is, Your Honor.

6 THE COURT: Well, let me suggest that I don't think
7 there's any question that the Inter-Tribal Court of Appeals
8 has the right to review matters on appeal from a decision of a
9 tribal judge. There are some things, and the reason I set
10 this hearing -- and maybe it would be easier if I just ask
11 some questions because I need to try to get some history on
12 this. I'm well aware of a lot of problems that have arisen in
13 the context of this dispute going back to 2000 in connection
14 with other litigation that we've have, and it's very
15 unfortunate, and I've attempted to have other matters
16 resolved.

17 What was the basis on which matters were submitted
18 to what I'll call the Minnesota Panel? Was it a stipulation?

19 MR. HAGER: Yes, Your Honor.

20 THE COURT: All right. Signed by whom?

21 MR. HAGER: Signed by, I believe, all sides; all
22 parties to the disputes in Winnemucca.

23 THE COURT: And was that in written form?

24 MR. HAGER: I believe the stipulation was in written
25 form. There was no dispute with regards to the establishment

1 of that special panel.

2 THE COURT: And what did the stipulation say with
3 respect to whether or not the parties would be bound by that
4 decision?

5 MR. HAGER: Well, there's a dispute in that regard
6 as well, Your Honor. I know --

7 THE COURT: Putting aside the dispute, what did
8 the language say? I haven't seen it. I'd like to see the
9 document. Is there a specific document that was signed by all
10 the parties?

11 MR. HAGER: Let me see if I can answer that
12 question.

13 THE COURT: If you have that, I would like to take a
14 look at it.

15 MR. HAGER: Your Honor, we do have it at the office,
16 but I don't have it here today.

17 THE COURT: Okay. Well, can you give me your best
18 recollection of what it says about whether the parties agree
19 to be bound by that decision.

20 MR. HAGER: It is our position that it does provide
21 that the parties agree to be bound by that decision. There
22 is --

23 THE COURT: What's the language, to the best of your
24 knowledge?

25 Okay. I'm kind of back on the circular thing, I

1 guess, but, you know, I am concerned about that.

2 Now, that panel was created by the Ninth Circuit
3 arbitrator, isn't that true?

4 MR. HAGER: Well, there is a subsequent decision
5 by the Ninth Circuit directing that the -- any appeal from
6 that panel should go to the Interior Board of -- and let me
7 state --

8 THE COURT: What appeal? What decision is that? I
9 haven't seen it. Was that cited in the briefs?

10 MR. HAGER: I don't believe it was.

11 THE COURT: I would like to know what that decision
12 is. What is it?

13 MR. HAGER: There is an appeal pending right now
14 before the Interior Board of --

15 THE COURT: Okay. This is -- this is all
16 interesting. Now, can somebody give me the citation on that?

17 MR. HAGER: On the Ninth Circuit decision, Your
18 Honor?

19 THE COURT: Yes.

20 MR. HAGER: I think I can give you the name of the
21 case.

22 THE COURT: Okay. Let's start with that.

23 Counsel, could you come up here? If you want to
24 kind of assist on some of this, we'll save some time. You
25 may know some of the background here that will be helpful.

1 MS. HEARNE: Yes. Excuse me, Your Honor. Treva
2 Hearne on behalf of --

3 THE COURT: Yes.

4 MS. HEARNE: Your Honor, the history of this
5 litigation was that when we first appealed the rejection of a
6 temporary restraining order to put the assets in trust --

7 THE COURT: Yes.

8 MS. HEARNE: -- we were before a Ninth Circuit Court
9 of Appeals mediation service, and they asked if we could agree
10 to an appeal. We then wrote a very summary sort of fashioned
11 agreement, which Mr. Pope wrote. And what he claims is, well,
12 I didn't say that that would be the final appeal. Well, there
13 is no appeal beyond the -- if it were --

14 THE COURT: Let's not get into a whole lot of the
15 nuances of it.

16 MS. HEARNE: Right.

17 THE COURT: There was a draft and it was signed.
18 Who signed it?

19 MS. HEARNE: I signed it on behalf of the Winnemucca
20 Indian Colony. Mr. Pope signed it on behalf of --

21 THE COURT: The parties didn't sign it, but each of
22 you signed it on behalf of your respective clients?

23 MS. HEARNE: That's correct, Your Honor.

24 THE COURT: All right. And then was there an order
25 entered by anybody pursuant to that stipulation?

1 MS. HEARNE: No. What there was was a dismissal of
2 the actions before the Ninth Circuit, based upon our entering
3 into that stipulation.

4 THE COURT: Okay. And then the panel was convened
5 and who paid for the panel?

6 MS. HEARNE: The Winnemucca Indian Colony account,
7 which is now held by the federal court and Valerie Cooke,
8 magistrate.

9 THE COURT: And that's where that money came from,
10 correct?

11 MS. HEARNE: That's correct, Your Honor. And it was
12 held in the courtroom of Valerie Cooke.

13 THE COURT: And there was a written agreement, since
14 it was signed, and what did it say about being bound? What
15 was the language to the best of your recollection?

16 MS. HEARNE: It said there would be an appeal, and
17 that that appeal would be before these justices, and that they
18 would hear it, and there would be an order issued.

19 THE COURT: That was because the Bureau of Indian
20 Affairs hadn't funded a --

21 MS. HEARNE: Inter-Tribal court.

22 THE COURT: -- and Inter-Tribal Appellate Court, is
23 that right?

24 MS. HEARNE: That's correct.

25 THE COURT: Okay. And was there any language in

1 there that said that the parties agree to be bound by that
2 decision?

3 MS. HEARNE: There was no language that said that
4 exact word.

5 THE COURT: Okay. Now, as I understand what has
6 just been said, Mr. Hager was telling me a minute ago that
7 there was a provision someplace that indicated that that
8 decision was subject to review by someone in the BIA.

9 Is that right, or did I miss understand?

10 MS. HEARNE: That was just a misunderstanding
11 because there are two or three lines of litigation in this
12 case.

13 THE COURT: I'm amazed there aren't more.

14 MS. HEARNE: Once the Ninth Circuit Court of Appeals
15 turned back that appeal and said you must exhaust your
16 administrative remedies --

17 THE COURT: Right.

18 MS. HEARNE: -- the thing that's being appealed
19 through Interior Board of Indian Appeals is whether or not the
20 BIA must recognize a council of a federally recognized tribe.
21 And in addition to, I have asked that the Winnemucca Indian
22 Colony Council, Thomas Wasson, be recognized, because of the
23 historic membership before them, and they have all the
24 records. That still has not been determined.

25 And the Special Panel's decision made the same

1 conclusion, and that was because of the historic records, that
2 Thomas Wasson, and all the people who were the council as of
3 the date that Glen Wasson was murdered, should be reinstated.

4 THE COURT: Now, the decision --

5 MS. HEARNE: That's all that's before the Interior
6 Board.

7 THE COURT: The decision I'm talking about, the
8 Minnesota Panel, that came down August 16th, 2002.

9 MS. HEARNE: That's correct.

10 THE COURT: How long was it after that that the BIA
11 suddenly came up with some money so that they could fund the
12 Inter-Tribal Court of Appeals again?

13 MS. HEARNE: I believe they came up with money
14 sometime in 2003.

15 THE COURT: Okay.

16 MS. HEARNE: They started, I think, about August of
17 2003.

18 THE COURT: So August -- it was about a year later?

19 MS. HEARNE: They can answer that better than I can,
20 they've got --

21 THE COURT: So, approximately a year later, you
22 think they funded the Inter-Tribal Court of Appeals.

23 And I take it, during that period of time, until
24 the Inter-Tribal Court of Appeals came into existence, and
25 then there was this appeal up through the process there, what,

1 if anything, was done to comply with the provisions of this
2 order entered by this Minnesota Panel?

3 MS. HEARNE: Well, certainly that was a dispute,
4 Your Honor, but we asked the Bureau of Indian affairs to
5 please allow us to re-enter their lands. And they refused to
6 do that.

7 THE COURT: So, really, nothing happened.

8 MS. HEARNE: Other than we went ahead with
9 membership. We went ahead doing everything else the Court
10 instructed us to do.

11 THE COURT: That you could do.

12 MS. HEARNE: That we could do.

13 THE COURT: Right. But was there any -- obviously
14 there was no election held?

15 MS. HEARNE: Yes, we had --

16 THE COURT: There was an election held?

17 MS. HEARNE: Absolutely. We've held election --

18 THE COURT: It says October of 2002 election of WIC
19 shall occur within six months of October 2002.

20 MS. HEARNE: And we did do that, and we held one in
21 October of 2004, Your Honor.

22 THE COURT: All right. And what was the appellate
23 route for challenging enrollment issues?

24 MS. HEARNE: Enrollment issues, once determined by
25 Tribal Council, once it's recognized --

1 THE COURT: Yeah.

2 MS. HEARNE: -- would be -- could be appealed to the
3 Inter-Tribal Court if --

4 THE COURT: If there was no Inter-Tribal Court.
5 That's my point.

6 MS. HEARNE: Right.

7 THE COURT: Isn't that true?

8 MS. HEARNE: At that --

9 THE COURT: So I don't see how there could have been
10 due process for an appeal. And that's my concern here.

11 MS. HEARNE: Prior to 2000 there was, Your Honor.

12 THE COURT: I'm not concerned about 2000. I'm
13 talking about the so-called 2002 election that was ordered by
14 the Minnesota Panel.

15 MS. HEARNE: Right.

16 THE COURT: There was no mechanism in place -- Well,
17 let's backup.

18 It seemed to me a critical concern was the
19 enrollment issue; who has the right to vote? That's been
20 the basis of a lot of this dispute all along. And, who has
21 the right to vote, who has the right to be enrolled is an
22 issue that ultimately should be determined by the tribal
23 court. The council that can make some certifications, but
24 the tribal court has the right to review it, in my opinion.

25 The Inter-Tribal Appellate Court, if it exists,

1 has the right to review that. And, ultimately, at least due
2 process issues can come to this court. That's my opinion.
3 You may agree or disagree, but that's the way I see the
4 posture of things. And that hasn't happened, and that's
5 what's of concern to me.

6 Now, whether or not we rely on what happened in
7 this Minnesota Panel, or we rely on what is being said here by
8 the Inter-Tribal Court of Appeals, it seems to me that the
9 process that should be in place is to allow, if they're the
10 warring factions or whatever here, to present lists, and to
11 that extent, I'm inclined to agree with what has been done
12 here, subject to appellate review as to the legitimacy of the
13 people that are claiming entitlement to be enrolled and to
14 vote, have that be reviewed, have their right of due process,
15 and then this court could do two things:

16 One, if it's appealed here, one would be to
17 determine whether or not those people had due process.
18 That is, did they have the right to a fair hearing,
19 notice and a fair hearing with respect to whether or not
20 they were properly enrolled; and

21 Two, did the Inter-Tribal Court act beyond its
22 jurisdictions in making those determinations? In other words,
23 was there something fatally flawed about the whole process?

24 So that's why whether or not we're dealing with
25 what was done by the Minnesota Panel, or if we deal with

1 what's been done by this Inter-Tribal Court, that's the fair
2 way for this matter, ultimately, to be resolved in my mind.

3 Now, tell me why you don't agree, if you don't.

4 MR. HAGER: Your Honor, the issue of membership is a
5 fundamental issue which is solely within the control of the
6 tribe. And that determination is to be made by the council
7 pursuant to the constitution and the by-laws of the Winnemucca
8 Indian Colony.

9 THE COURT: Well, they can designate the basis
10 for enrollment, but whether or not somebody under those
11 conditions, under whatever their constitutional provisions
12 are, the Tribal Court and the Appellate Tribal Court have the
13 right to review that, in my opinion.

14 MR. HAGER: And that's the process we're asking to
15 have applied here; that the council makes the determination
16 first. That's solely within their power --

17 THE COURT: Well, see, we have a problem here
18 because who is the council?

19 MR. HAGER: Well, everybody agrees who the council
20 is, even the Inter-Tribal Court of Appeals agrees who the
21 council is. It's the council that was designated by the
22 special Minnesota Panel.

23 The problem is where they go from there. They then
24 say there's no way to dispute that, that is the council. But,
25 we're going to make a decision on who is the enrolled members.

1 Well, that doesn't follow, Your Honor. That's
2 what --

3 THE COURT: See, that's not exactly what I
4 understood, because I understood that the Minnesota Panel
5 indicated these people are the panel, which would be the -- or
6 the council, and those are the ones that are designated as
7 plaintiffs in this action in this court, correct?

8 MR. HAGER: That's correct.

9 THE COURT: It was my understanding that the
10 decision out of the Inter-Tribal Appellate Court was that
11 you go back to 2000 and that would be the council, is that
12 true?

13 MR. HAGER: That's what we're saying. We'll go
14 back to that council. All of the remaining available members
15 of that council are plaintiffs in this case, Your Honor.

16 THE COURT: Are both parties telling me that they've
17 agreed on who the council is?

18 MR. HAGER: That's not in dispute, Your Honor.
19 Exactly.

20 THE COURT: Okay. Who are they?

21 MR. HAGER: And it's set forth -- it's Tommy Wasson
22 -- Thomas Wasson. I'm sorry.

23 THE COURT: Right.

24 MR. HAGER: Sharon Wasson.

25 THE COURT: Right.

1 MR. HAGER: Bills, who is unavailable. He's
2 disappeared.

3 THE COURT: Well, yes. I mean, it looks like
4 there's a vacancy there.

5 MR. HAGER: And Elvirene Castro.

6 THE COURT: Elvirene Castro and Bills.

7 Who is Lucy Wasson Lowery?

8 MR. HAGER: She's deceased, Your Honor.

9 THE COURT: All right. I mean, she's listed in the
10 decision by the Inter-Tribal Court. So she was originally in
11 that action, is that right?

12 MR. HAGER: Yes, Your Honor. She's deceased now.

13 THE COURT: Okay. Well, tell me what the issue is
14 here then.

15 MR. HAGER: So then the problem, Your Honor, is I
16 agree with your analysis here that the council has the power
17 to make that determination. And there's appellate review of
18 that decision in terms of who is an enrolled member.

19 The defendants here agree who that council is. The
20 special Minnesota Panel determined who that council is.

21 THE COURT: Right.

22 MR. HAGER: The problem is in this court, this BIA
23 court then goes off in the direction of saying, well, but
24 we're going to decide who the members are. And that doesn't
25 follow, Your Honor. That's what the problem is.

1 THE COURT: That's not really the way I read that
2 decision. What that decision is saying is these people will
3 submit the list of the people that they believe are enrolled,
4 and anyone that they agree on will be enrolled. And anywhere
5 there's a dispute, will be subject to review. And I don't
6 think there's anything wrong with that, because they would
7 review it -- and I think an Inter-Tribal Appellate Court has
8 the right, whether it's a special Minnesota court or if
9 it's the Inter-Tribal Court, has the right to review that
10 determination, you know, on due process grounds and give
11 them the right of a hearing, an opportunity to be heard,
12 and notice of that hearing, in connection with anybody that
13 claims they should have been on that list and they were
14 excluded from that list.

15 That's all I read this decision to say. Why am I
16 mistaken on that?

17 MR. HAGER: The reason you're mistaken, Your Honor,
18 is that the council has the right to determine membership.
19 They make that determination. Then, if someone wants to
20 complain about that, they appeal. The appellate court
21 doesn't make that initial determination, and the standard
22 on appeal is abuse of discretion. They don't exercise the
23 initial decisions on whatever standard they want to apply in
24 terms of who is or is not a member at this point.

25 THE COURT: I thought that's what they were saying

1 in effect, is that the council gives us a certified list, and
2 the only reason they say there's a dispute is because there's
3 two councils here.

4 MR. HAGER: If they say, and what they're going
5 to propose here today is that the council is going to make a
6 determination with regard to who the enrolled members are,
7 and then anybody who wants to appeal that under the law that
8 applies to that kind of determination, Your Honor, then that's
9 fine.

10 THE COURT: Well, that's what should be done.

11 MR. HAGER: But that's not what the existing order
12 is. The existing order is there's so much confusion and chaos
13 there, that we're going to make that decision. They can't
14 make a decision unless there's an appeal.

15 THE COURT: Let me shift over to opposing council.
16 Do you agree on who the council is?

17 MR. KOCKENMEISTER: That's the question, Your Honor.
18 There is no one out there, there is no body, there is no
19 court, the BIA, no one has indicated or recognized what the
20 appropriate council is. And that's what we're faced with,
21 Your Honor. We're faced with --

22 THE COURT: But do you agree on who the council
23 should be?

24 MR. KOCKENMEISTER: We don't. It's unclear that --

25 THE COURT: Well, Mr. Hager just got done saying the

1 two of you agreed on this.

2 MR. KOCKENMEISTER: I don't know, Your Honor, if I
3 may, I don't know where he came up with that conclusion.

4 What we have suggested is that there is no
5 legitimate council that's recognized by any body out there.
6 There are two competing factions. They've each held their
7 own elections, Your Honor. It's chaos. And what we're
8 suggesting is that the first step is to determine who the
9 appropriate enrolled legitimate members of the Winnemucca
10 Indian Colony are. We have asked both sides to submit a list.
11 We'll go through it and we'll make the determination as to who
12 the legitimate members of the Winnemucca Indian Colony. After
13 that --

14 THE COURT: When you say "both sides," you mean the
15 two --

16 MR. KOCKENMEISTER: There are competing factions out
17 there.

18 THE COURT: Now, just a second. You're talking
19 about what you perceive to be two councils?

20 MR. KOCKENMEISTER: Well, they are alleging that
21 there are two councils. We haven't made any determination
22 as to who the appropriate council is, Your Honor. All we're
23 saying is it came before us, we had two competing factions
24 that are both are alleging -- both held elections and both are
25 alleging they are the legitimate council.

1 Now, the plaintiffs in this case are relying on
2 the Minnesota decision to assert that they are the legitimate
3 council. If you read our decision closely, what we have
4 stated is that we cannot determine at this point in time who
5 the legitimate council, who the le --

6 THE COURT: Let me ask this.

7 Since the parties agree to have the Minnesota
8 council decide this issue, and that was agreed upon, right?
9 I mean that was agreed?

10 MR. KOCKENMEISTER: It was agreed as --

11 THE COURT: And you don't waste the Ninth Circuit's
12 time. And you're certainly not going to waste this Court's
13 time.

14 MR. KOCKENMEISTER: And the issue that we had with
15 that decision was we didn't see in the agreement that that was
16 a binding final decision.

17 THE COURT: Well, put that aside for a second.

18 You agree that it was submitted for decision by that
19 body?

20 MR. KOCKENMEISTER: It was submitted. That is
21 correct.

22 THE COURT: All right. And that body made a
23 decision. I, for the life of me, can't understand why the
24 parties don't go on then and let that council designate
25 who the enrolled members are. And then, to the extent

1 anybody has been excluded from that list, they have the
2 right of appellate review to determine, based upon due
3 process considerations, notice, opportunity for a hearing,
4 why they shouldn't be included. And then if they're
5 successful on that, they're included, an election is held a
6 short time thereafter, and whatever the results of that
7 election are, when they're certified, that's it and everybody
8 moves on with their life.

9 MR. KOCKENMEISTER: And that is very close to what
10 we're suggesting.

11 THE COURT: What's the difference?

12 MR. KOCKENMEISTER: The difference is that --

13 THE COURT: You want to submit two lists?

14 MR. KOCKENMEISTER: -- the Minnesota Panel was
15 acting in place of the Inter-tribal Council Court of Appeals
16 because it didn't exist --

17 THE COURT: What can you do -- Right. I mean, what
18 can you do?

19 MR. KOCKENMEISTER: Because it didn't exist --

20 THE COURT: That's basic fairness.

21 MR. KOCKENMEISTER: But, now, we still -- they did
22 not, for whatever reason, Your Honor, that decision did not
23 resolve the dispute. For whatever reason, it didn't work. No
24 one is recognizing any council at this point in time.

25 THE COURT: You see when that finally happens,

1 whether the Court wants to or not, out of necessity, it has
2 to intervene.

3 MR. KOCKENMEISTER: That's our position, is that
4 we're faced with --

5 THE COURT: I think the way they should intervene
6 is to accept what the court in existence at the time said.
7 And that is, here's your council. Go ahead and submit a list.
8 You can conduct the election. But, before you conduct the
9 election, anyone that wants to appeal to be included as a
10 potential voter here, has the right to do that. And enough
11 time should be allowed so they can do that before the
12 election.

13 Now, that's basic fairness. What's wrong with that?

14 MR. KOCKENMEISTER: There's nothing wrong with it,
15 but what we're suggesting is -- we wanted to end this
16 controversy as quickly as we possibly could and argue --

17 THE COURT: Why don't you all consent to let me
18 end this as soon as possible then. I would be delighted to do
19 that. I don't want to intervene. You know, this should all
20 be resolved within the tribe, and it should all be resolved by
21 the Inter-Tribal Appellate Court.

22 MR. KOCKENMEISTER: That's our position, is we
23 would like to resolve that matter so that we can establish
24 legitimate -- if we went back, and if you took the position
25 that the Minnesota Panel was the appropriate decision, and

1 that's the council, then it would be back to us again because
2 the dispute wouldn't end because the other faction --

3 THE COURT: Well, it would end because the other
4 faction if they claim they're being left out, all they have
5 to do is the people that they claim have not been entitled to
6 be enrolled are not being enrolled, all they have to do is
7 have those people, collectively, file with the Inter-Tribal
8 Appellate Court or with tribal court, subject to appellate
9 review, and there would have to be a built-in time frame for
10 that, to have the matter heard so that they could be certified
11 or not certified.

12 MR. KOCKENMEISTER: And that's exactly --

13 THE COURT: First what she should do is go to the
14 council that's been designated by the Minnesota court, they
15 should go to them. If they're refused, then they should have
16 a reasonable period of time in which to take an appeal on
17 that. And then if they're denied that, I think the only
18 appellate review from that to this court would be on whether
19 or not they were denied due process. I don't get involved in
20 the other parts of it probably. I'm not sure. I would have
21 to look at that.

22 But, what's not eminently fair about that?

23 MR. KOCKENMEISTER: It's not that it's not fair. We
24 believe our solution is -- it's going to get to us, in our
25 opinion, no matter -- if the Tribal Council is as set forth by

1 the Minnesota Panel -- and by the way, I'm not sure if the
2 entire members are still around as Mr. Hager said, so you have
3 a partial council that decides membership. We know that
4 there's going to be a dispute. It's going to work its way
5 through the system. Several years from now, we'll have the
6 same issue before us.

7 THE COURT: How many people are we talking about?

8 MR. KOCKENMEISTER: I believe it's about -- is it a
9 100 people in the colony?

10 MR. HAGER: Your Honor, the last list that was
11 submitted in 1990 -- and there's a long history of membership
12 here and self-government successfully by this council --

13 THE COURT: How many people are we talking about?

14 MR. HAGER: We're talking about 99 on that list,
15 Your Honor.

16 THE COURT: Ninety-nine people? Okay.

17 Ninety-nine people. And of the 99 people, how
18 many -- I realize I'm not binding anybody to this, how many
19 do you pretty much concede are enrolled members and there's
20 really no dispute over it, of the 99? Just give me a figure.

21 MR. HAGER: No dispute? Sixty, Your Honor.

22 THE COURT: So the dispute is over 39 people, right,
23 approximately?

24 MR. HAGER: That's approximately correct.

25 THE COURT: Okay.

1 MR. KOCKENMEISTER: And I would like to add, Your
2 Honor, we had a --

3 THE COURT: Okay. Couldn't that be resolved fairly
4 simply? We're not talking about thousands and thousands. If
5 they can decide a national election --

6 MR. KOCKENMEISTER: You're absolutely right. That's
7 our position, Your Honor. We have those lists. We've asked
8 the parties to submit the lists. We've submitted -- we have a
9 list of the disputed individuals. Now all we would like to do
10 is now hold a hearing on those disputed individuals and make
11 a determination as to whether they're legitimate members of
12 the Winnemucca Indian Colony and hold the election. We think
13 that's the quickest and fairest way of resolving this dispute.

14 Under the use of the Minnesota --

15 THE COURT: Why don't you simply stipulate that
16 the council that was established by the Minnesota Panel --
17 and you could do this before the Inter-Tribal Court, rather
18 than having this court take some type of extraordinary action,
19 which I'm not inclined to do -- simply stipulate that for
20 purposes of getting this matter before the court, moving it
21 forward, that that council would be the council that would
22 make the initial determination with respect to those who are
23 enrolled members and entitled to vote.

24 The parties would further stipulate that to the
25 extent there are any that are not included on that list who

1 wish to vote, believe they should be enrolled members, their
2 names would be certified for immediate appellate review to the
3 Court of Appeals, the Inter-Tribal Court of Appeals, with an
4 opportunity for a hearing and a decision as to whether or
5 not they should be enrolled members to vote. And that that
6 process should be completed within, say, 30 days or 60 days.

7 MR. KOCKENMEISTER: Your Honor, I think,
8 essentially, we've already done that because they've
9 submitted a list based on what they believe are the
10 appropriate members. The other side has submitted a list
11 where they believe these individuals should be included as
12 members.

13 THE COURT: That's where you're down to the 39 that
14 are in dispute?

15 MR. KOCKENMEISTER: Right. We have that information
16 already. All we now want --

17 THE COURT: Counsel, do you agree with that or not?

18 MS. HEARNE: (Shakes head negatively.)

19 THE COURT: You said you thought there were 39 in
20 dispute. He thinks there's 39 in dispute. Why can't
21 everybody move forward to let -- if you need a certification
22 from this original council, fine, certify it, and then that
23 would be the trigger for the Inter-Tribal Court of Appeals
24 to give an opportunity for a hearing to these 39 that claim
25 they've been disenfranchised.

1 MS. HEARNE: I believe it's because some people
2 who want to be members who are not on that list, who would
3 have the right then to file their application for membership
4 with the council, and those people are the ones who have never
5 been members who want to file an application.

6 THE COURT: That's fine. Let them file it. Let
7 them file it and let the court review that.

8 MR. KOCKENMEISTER: We have no problem. We just
9 want --

10 THE COURT: So let's do it. Why can't it --

11 MS. HEARNE: It has to be filed with the council so
12 they can re --

13 MR. HAGER: So long as it's filed with the council,
14 Your Honor. The council makes the determination that --

15 THE COURT: Fine. I'm saying stipulate so it can
16 be filed with the council. This council is not going to do
17 anything other than just probably rubber-stamp whatever
18 they want to rubber-stamp, but then you get it into the court.
19 That's all I'm trying to do.

20 Why can't you stipulate to do that? Go back to
21 the Inter-Tribal Court, indicate the parties -- because you
22 can stipulate to what you want -- that the parties have
23 stipulated that the council that was designated -- the parties
24 agree that the council that was designated through this
25 hard work of this Minnesota Panel, will make the initial

1 certification of those who are the enrolled members, and any
2 of the group that you're talking about who feel they should
3 be. And that the ones that are, that the council -- and the
4 council is probably going to at least confirm those that you
5 all agree on. There will be that one list. The second list
6 will be those that are not agreed, and they won't certify
7 those.

8 And then there would be a period of time, I would
9 think something in the neighborhood of 30 days or whatever
10 would be a reasonable period of time for you to stipulate,
11 that they would have the right, those who claim they're
12 disenfranchised, or claim they should be enrolled and are not,
13 would have the right to file an appeal with the Inter-Tribal
14 Court of appeals, and with appropriate notice and an
15 opportunity to be heard, the decision would be made by the
16 Inter-Tribal Court of Appeals as to whether or not they're
17 entitled to vote and be enrolled. Then at that point, that
18 decision, I suppose, could be appealed to this court.

19 Now, I'm not going to give you an advisory opinion
20 now on what the breadth of my authority would be, whether it's
21 simply to determine whether due process has been met here,
22 or whether or not I have the right to go in and make a
23 determination as to who should be enrolled and who's not.
24 I'm not sure at that one. I haven't looked at the law in the
25 area.

1 But in any event, after that process, after that
2 appellate period has expired, then there would be a definite
3 date set for election, and those who are enrolled pursuant to
4 law would be entitled to vote, period. They'll vote. Whoever
5 they vote on, that's the council and you can move on.

6 What's wrong that?

7 MR. HAGER: That sounds good. If I could have one
8 moment, Your Honor.

9 THE COURT: Do you see a problem with that?

10 MR. KOCKENMEISTER: I don't see a problem. The only
11 issue is that we've interjected another step in the process
12 because we already know who --

13 THE COURT: But if that makes everybody happy, why
14 not do it?

15 MR. KOCKENMEISTER: I'm okay with it. All I'm
16 saying is --

17 THE COURT: It's not a step that's going to hurt
18 anybody.

19 MR. KOCKENMEISTER: -- we know who the disputed
20 individuals are already.

21 THE COURT: That gives a little support, anyway, to
22 the hard work these people in Minnesota did. I'm impressed
23 with all the work they put in on this. And it cost -- I don't
24 know how much that cost, but I'll bet it was twenty, thirty,
25 forty thousand dollars.

1 MR. KOCKENMEISTER: It's a significant amount of
2 money, Your Honor.

3 MS. HEARNE: Thirty-four thousand dollars.

4 THE COURT: That was my recollection that it was in
5 the thirty thousand dollar range. That's not the barometer on
6 which we decide whether a decision is a good one or not, but
7 certainly everybody had agreed to do that. It's time to move
8 on. We make agreements. We're bound by them. And we move
9 on.

10 MR. KOCKENMEISTER: We don't have a problem. We
11 just believe it's our responsibility to ultimately determine
12 disputes over tribal membership. And I think it's clear that
13 it's our responsibility.

14 THE COURT: What's your problem with that
15 resolution?

16 MR. HAGER: I don't have a problem with that
17 resolution. In response to what was just said, there is no
18 dispute right now regarding membership, because membership
19 has not yet been determined. So once the membership is
20 determined, then I think the comments here might be
21 appropriate. But, it's inappropriate to anticipate there's
22 going to be a dispute, and since there may be one in the
23 future, we'll just take control of that decision now. That's
24 the problem we have with the decision.

25 MR. KOCKENMEISTER: Your Honor, I beg to differ with

1 that. There is --

2 THE COURT: Well, could I have you go back then to
3 the Inter-Tribal Court of Appeals and request that they
4 re-open the matter and allow you, on your stipulation, to
5 proceed as I've just outlined it for you? Would you be
6 willing to do that?

7 MR. HAGER: Yes, we would, Your Honor.

8 THE COURT: Would you be willing to do that?

9 MR. KOCKENMEISTER: We have no problem. If they
10 would be stipulating with the other, quote, competing faction
11 in this matter, we don't have a problem with that. We just --
12 if I hear the Court correctly, you believe it's our
13 responsibility to determine disputes with respect to tribal
14 enrollment. And we agree wholeheartedly. And if this is the
15 procedure --

16 THE COURT: What I've said is this: That it's
17 my opinion, if you look at the Articles, if you look at
18 the Constitution, that it's the responsibility first of
19 the council to make that determination. Unfortunately,
20 there's a huge question about that as to who is the real
21 council.

22 It's my opinion that the Minnesota Panel did a fine
23 job in trying to resolve that, but it didn't get resolved.
24 So, I'm saying the first opportunity should be given, on the
25 certification question to try to comport with what the

1 constitution says, to let that council; that is, the council
2 that was denominated here, absent William Bills, who isn't
3 around --

4 MR. KOCKENMEISTER: And a deceased person as well.

5 THE COURT: And a deceased person. So at least
6 you have a body doing something that's consistent with the
7 Constitution there, they'll make the certification. There
8 will also be this list of people, either those who are
9 enrolled that claim they've been disenfranchised, or those
10 who want to be enrolled --

11 MR. KOCKENMEISTER: To be enrolled, right.

12 THE COURT: -- that list would be made available,
13 and that they would, and they could do it collectively, have
14 the right to take an appeal, with an opportunity for notice
15 and hearing then before the Inter-Tribal Court of Appeals for
16 a determination as to whether or not they should be permitted
17 to be enrolled and, therefore, to vote.

18 That's what I'm suggesting.

19 MR. KOCKENMEISTER: And --

20 THE COURT: That would be the process. And the
21 time frame you can work out in your stipulation so that it's
22 reasonable.

23 MR. KOCKENMEISTER: And --

24 THE COURT: And I would think the Court of Appeals
25 would go along with that.

1 MR. KOCKENMEISTER: We would. And to make the
2 process simple, perhaps if there's a recognition that we would
3 retain jurisdiction over this matter until the process as
4 you've described is worked out, that would be our suggestion,
5 rather than --

6 THE COURT: Well, I think you have jurisdiction over
7 it, so I think you would retain jurisdiction over it. I think
8 this court has the right to review what you do, but probably
9 on a fairly limited basis. I don't want to intrude on what
10 the council does, and I don't want to intrude on what your
11 court does because those are things that should be left to
12 the tribe. They should be left to the colonies. They should
13 be left to the business of the Winnemucca Indian colony, in my
14 opinion.

15 The Federal District Court does not want to get
16 involved in these matters except as a last resort. So, I
17 don't want to precipitously move in and tell everybody how
18 they have to do things. But, everybody out there is entitled
19 to have a fair election. And the fairest kind of election I
20 can think of is where everybody has a right to vote that has
21 the right to be enrolled, and they should have an opportunity
22 and a hearing ultimately, since there's, you know, it's
23 questionable about the council, ultimately before the
24 Inter-Tribal Court of Appeals.

25 MR. KOCKENMEISTER: Your Honor, we agree with that.

1 Our concern in coming here today as defendants, was the
2 assertion, we thought by the plaintiffs, that we didn't have
3 jurisdiction at all to decide enrollment membership. And that
4 gets to the heart of --

5 THE COURT: Well, my understanding of what they were
6 contending is that the council should have the right to say
7 first who the parties are. And I think they're right on that.
8 That's the way I read everything here.

9 MR. KOCKENMEISTER: I won't -- ultimately, it's
10 going to get to our court, I feel. And as long as we have the
11 right to review those decisions, I'm comfortable with the
12 stipulation that you suggested that the parties enter into,
13 Your Honor.

14 THE COURT: Should we just continue -- what I'm
15 going to do is deny the application for preliminary injunction
16 without prejudice. The parties understand they can come back
17 in here, you know, on appropriate notice, and I'll try to get
18 an expedited hearing on it if we need to.

19 I'm going to allow you to go ahead then and work out
20 the stipulation. You can get a copy of the transcript if you
21 want to do that. I think it's fairly clear what we're talking
22 about here.

23 So, the process simply would be that you agree
24 that those parties who are still alive that constitute the
25 board that was designated by the Minnesota Panel, should

1 first review all of these matters of people who claim they're
2 entitled to vote and be enrolled; either the ones who are
3 outside and want to be in, or those who are in and claim
4 they aren't -- that they're being disenfranchised. And then
5 there should be a certification as to those that the council
6 believes should be entitled to vote, they're enrolled.

7 And then as to the balance of them, they should
8 collectively have the right to take an appeal to the
9 Inter-Tribal Court of Appeals, and have appropriate notice, an
10 opportunity for a hearing to present the issues that they have
11 to present, and then that Inter-Tribal Court of Appeals would
12 make the decision as to whether or not they're entitled to
13 vote.

14 Then if somebody maintains that they've not been
15 given due process, and that they therefore have some right to
16 appeal to this court, I'm going to leave this action open for
17 purposes of allowing them to come in on that basis. And if
18 that delays the election, it will delay it. Otherwise, the
19 Inter-Tribal Court of Appeals then, once that decision is
20 made, then I think that council can go ahead and set the date
21 for the new election.

22 And I don't think the court should be setting dates
23 for elections and everything else. I think that ought to be
24 up to a council. But, I agree with you that there should be
25 that mechanism available so that the council doesn't stonewall

1 anyone from have the right of having the matter heard by the
2 Inter-Tribal Court of Appeal.

3 MR. HAGER: I don't disagree, Your Honor.

4 THE COURT: All right. Any question by either side?

5 MR. KOCKENMEISTER: Your Honor, I'd like to, if I
6 may briefly, throughout the pleadings in this matter, the
7 theme is that somehow the Inter-Tribal Court of Appeals is the
8 pawn of the Bureau of Indian Affairs. We may be back --

9 THE COURT: Let me talk about that just for a
10 minute.

11 You know, I complimented the Minnesota Panel for
12 what they did and, frankly, in reading the decision and order
13 on appeal from the Inter-Tribal Court of Appeals, it looked to
14 me like they, in good faith, were doing a fine job of trying
15 to resolve a very, very difficult problem.

16 MR. KOCKENMEISTER: And I think --

17 THE COURT: I'm well aware how difficult that
18 problem is, Judge Cooke and I both, in connection with earlier
19 proceedings here.

20 MR. KOCKENMEISTER: And I just want to state for the
21 record, as an officer of this court, no one from the BIA
22 contacted any of the three judges on this panel and suggested
23 that we had to enter a decision in any way or form. We are
24 totally independent. And I just wanted to make sure that the
25 integrity of the Inter-Tribal Court of appeals --

1 THE COURT: Sure.

2 MR. KOCKENMEISTER: -- is not maligned in this case.

3 THE COURT: Sure. Well, that's fine.

4 There is one thing that's very troubling to me about
5 all of this. I can't, for the life of me, understand why
6 there wouldn't be adequate funding out there to keep a court
7 of appeals alive and well, so that it can decide these issues.
8 And to the extent the BIA doesn't fund something like that, I
9 think that's a travesty.

10 MR. KOCKENMEISTER: And, Your Honor, I don't
11 disagree with you. I came -- I'm the new wave, if you will.
12 And I can tell you that the justices are committed to having a
13 strong and independent appellate court. Obviously it does
14 depend on funding from the BIA, which we don't have any
15 control over.

16 THE COURT: Well, I know. And to the extent my
17 words means anything, they should always fund something like
18 that. Everybody has the right to go into court. Everybody
19 has the right to an appellate review. And everybody in the
20 colony should have that right. And they should have as much
21 of a right as anybody else in the United States to come into
22 court and have their grievances resolved. And to the extent
23 the BIA or anybody else disenfranchises somebody from not
24 being able to go and do that -- I mean, heaven help us if all
25 the funding is cutoff from the courts in this country so

1 people don't have some right to assert and protect their
2 constitutional rights.

3 MR. HAGER: And we appreciate that, Your Honor.

4 THE COURT: All right. Thank you very much. I
5 appreciate it. Thank you, counsel.

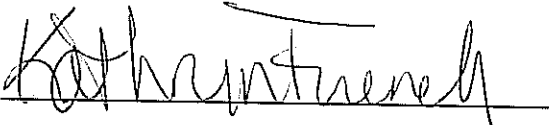
6 MR. HAGER: Thank you, Your Honor.

7 MS. HEARNE: Thank you, Your Honor.

8 THE COURT: We're in recess.

9 (Court Adjourned.)
10
11

12 I certify that the foregoing is a correct transcript from
13 the record of proceedings in the above-entitled matter.

14 
15

16 KATHRYN M. FRENCH, RPR, CCR

1-10-05

DATE

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EXHIBIT

3

U.S. DISTRICT COURT
DISTRICT OF NEVADA
RECEIVED

DEC 20 2004

CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

COPY

THOMAS WASSON, SHARON WASSON
JUDY ROJO, ELVERINE CASTRO,
and MERLENE MAGIERA, in their capacity as
Members of the WINNEMUCCA INDIAN
COLONY COUNCIL, and as individuals,

Case No. CV-N-04-0573-HDM

Plaintiffs,

vs.

STIPULATION TO
REINSTATE THE
COUNCIL
OF THE
WINNEMUCCA
INDIAN COLONY

INTER TRIBAL COURT OF APPEALS, WILLIAM
KOCKENMEISTER, PATRICIA STEARNS, T. LAURA LUI,
in their official capacity as Judges of the Inter Tribal Court
of Appeals of Nevada,

Defendants.

COMES NOW, the WINNEMUCCA INDIAN COLONY, through its Counsel,

~~HAGER & HEARNE, and THE INTER TRIBAL COURT OF NEVADA,~~ through its
representative and counsel, **WILLIAM KOCKENMEISTER**, and stipulates and agrees as
follows according to the directions of the United States Federal District Court, the Honorable
Howard McKibben:

1. The Council of the Winnemucca Indian Colony shall be reinstated according to the
finding of the Specially Appointed Appellate Court of the Winnemucca Indian Colony
(referred to as the Minnesota panel) in its order of August 16, 2002. The Council of the
Winnemucca Indian Colony shall consist of Sharon Wasson, Thomas Wasson, Elverine

1 Castro, Andrea Davidson, and William Bills as of the date of the execution of this stipulation
2 and these persons shall serve for so long as they are able or until another Council is elected
3 pursuant to a membership chosen by this Council and elected at a valid and legal election of
4 the Winnemucca Indian Colony.
5

6 2. The members of the Council shall within thirty (30) days publish a notice that
7 states the following:
8

9 Membership applications for the Winnemucca Indian Colony shall be requested
10 by sending a letter to THOMAS WASSON, Winnemucca Indian Colony, 910 Parr
11 Blvd., #8, Reno, Nevada 89512 or by fax to 775-329-5819 with the applicant's address.
12 Within two weeks of receipt of the request for application, the person sending the
13 application shall receive an application packet. This packet must be returned to the
14 Council of the Winnemucca Indian Colony within thirty (30) days for consideration of
15 initial membership. Membership packets will be sent in the order in which they are
16 received. Membership is an on-going consideration and if a person who wishes to be
17 a member does not make application in the first initial round of membership
18 considerations by the Council, that person is encouraged to file a membership
19 application for the next round of considerations by the Council.
20

21 3. The notice shall be published in the Winnemucca newspaper of general
22 circulation. The notice shall be mailed to each address of persons who have been enrolled
23 as members of the Winnemucca Indian Colony previously. The notice shall be mailed to
24 Donald Pope, Esq. for dissemination to his clients who wish to submit an application. The
25 notice shall be sent to the Bureau of Indian Affairs, Western Nevada Agency for posting by
26 them. The notice shall be posted at the Inter-Tribal Council in Sparks, Nevada, for posting
27 by them.
28

29 4. The transcript of the hearing in this matter shall be submitted to the Bureau of
30 Indian Affairs at all levels to give the suggestion of the District Court to the Bureau that
31 Inter-Tribal Court of Appeals should be funded at all times.
32

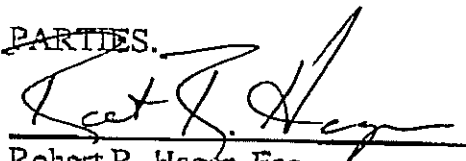
1 5. With the reinstatement of Sharon Wasson, Thomas Wasson, Elverine Castro,
2 Andrea Davidson and William Bills by this stipulation, a meeting of the Council shall be held
3 at the Winnemucca Public Library on January 15, 2005, in which a membership committee
4 shall be appointed and the notice shall be prepared and sent to the parties indicated in this
5 stipulation.
6


7 6. After notice and receipt of applications, the Council shall make an initial
8 determination if the application is complete within thirty days after receipt of the application.
9 If the application is not complete or there is a question regarding membership, a hearing shall
10 be held within sixty days after the receipt of the application and notice shall be given to the
11 applicant of the hearing and the issues or concerns to be addressed at the hearing.
12

13 7. At the hearing the Council shall determine the membership of the applicant by
14 vote of the Council with a written decision to follow within sixty (60) days after the hearing
15 and inform the applicant of its decision.
16

17 8. After the written decision of the Council, the applicant may file an appeal to the
18 Inter-Tribal Court of Appeals regarding whether or not the Council abused its discretion in
19 making a decision on the membership of the applicant.
20

21 THESE MATTERS ARE SO STIPULATED BY THE PARTIES AND SHALL BE
22 SUBMITTED TO THE COURT WITHIN TWO DAYS OF THE SIGNATURES OF THE
23 PARTIES.
24

25 
26 Robert R. Hager, Esq.
27 Attorney for the
28 WINNEMUCCA INDIAN COLONY


William Kockenmeister
Representative and counsel for the INTER
TRIBAL COURT OF APPEALS

COPY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THOMAS WASSON, SHARON WASSON,
ELVERINE CASTRO, JUDY ROJO
and MERLENE MAGIERA, in their capacity
as Members of the WINNEMUCCA INDIAN
COLONY COUNCIL, and as individuals;

Plaintiff(s),

vs.

INTER-TRIBAL COURT OF APPEALS OF
NEVADA, WILLIAM KOCKENMEISTER,
PATRICIA STERN, and T. LAURA LUI,
in their official capacity as Judges of the
Inter-Tribal Court of appeals of Nevada,

Defendant(s).

CV-N-04-573-HDM(VPC)

MINUTES OF THE COURT

December 10, 2004

PRESENT: HONORABLE HOWARD D. McKIBBEN, U. S. DISTRICT JUDGEDeputy Clerk: Bette Stewart Reporter/Recorder: Kathryn M. FrenchCounsel for Plaintiff(s): Robert R. Hager and Treva HearneCounsel for Defendant(s): William Kockenmeister

PROCEEDINGS: Oral Argument on Plaintiffs' Motion for a Preliminary Injunction (#4)

9:00 a.m. Court convenes.

Arguments are presented. The court sets forth preliminary findings.

The parties agree to enter into a written stipulation that the Council as recognized by the Specially Appointed Minnesota Panel certify a list of enrolled members of the Winnemucca Indian Colony. Those individuals not included on this list who believe they should have been named as enrolled members may file an appeal with the Inter-Tribal Court of Appeals for determination of this issue. Upon due notice, those individuals will be afforded a hearing. An election will then be scheduled.

22

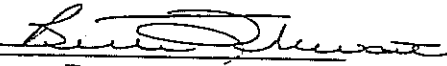
CV-N-04-573-HDM(VPC)
December 10, 2004

Page 2

IT IS ORDERED that the Plaintiff's Motion for a Preliminary Injunction (#4) is denied without prejudice.

9:45 a.m. Court adjourns.

LANCE S. WILSON, CLERK

By: 
Deputy Clerk

EXHIBIT

4

HAGER & HEARNE

Attorneys at Law

Robert R. Hager, Esq.
Treva J. Hearne, Esq.*

910 East Parr Blvd., Suite #8
Reno, Nevada 89512
(775) 329-5800-Telephone
(775) 329-5819-Facsimile

February 26, 2007

Mr. Robert Hunter
United States Department of the Interior
Bureau of Indian Affairs
Western Nevada Agency
311 E. Washington Street
Carson City, Nevada 89701

Re: Winnemucca Indian Colony

Dear Mr. Hunter:

In receipt of your correspondence dated February 23, 2007, and on behalf of the Winnemucca Indian Colony, in regard to carrying out the stipulation, the Tribal Constitution and Bylaws and Tribal Ordinances to satisfy the requirements of the courts, I hereby submit the following in response, to wit:

Enrollment:

Pursuant to our agreement, allowance was made for any person who felt they met qualifications for membership. Also, anyone denied would be allowed an appeal through a recognized tribal court.

Signs were posted, in compliance with the Winnemucca Indian Colony Constitution and By-Laws, Article II, Section 1 and 2; such sign and correspondence to the "Minnesota Panel" are attached hereto as Attachment No. 1. Further, a notice was published in *The Humboldt Sun*, the local newspaper in Winnemucca, Humboldt County, State of Nevada; such proof of publication is attached hereto as Attachment No. 2. We have always provided an open forum

Correspondence to Hunter
February 26, 2007
Page 2

and open application. We gave notice to Donald Pope, posted notice at the Inter Tribal Council of Nevada offices, and in the BIA offices. The list of documents provided to the "Minnesota Panel", United States Federal District Judge Howard McKibben, Donald Pope, Thomas Wasson, and BIA Regional Office, Phoenix, Arizona is attached hereto as Attachment 3.

In response to the enrollment notice, applications were sent to any inquiring individuals. There were a total of 36 applications received:

1. There are now eighteen (18) enrolled members of the Winnemucca Indian Colony. The official enrollment list is attached hereto as Attachment No. 4. Further, the recommendation of Judy Rojo, Winnemucca Indian Colony, Enrollment Officer, as presented to the Winnemucca Indian Colony Tribal Business Council, is attached hereto as Attachment No. 5. All enrollment actions are completed through tribal resolution. The enrollment application is ongoing and continually receives inquiries.
2. At this time, there are ten (10) applications pending tribal action. The pending status is due to incomplete applications and the applicants have been notified of the status and requested to provide additional documents.
3. There are eight (8) applicants that do not meet the blood quantum of 1/4, but these applicants have not been denied, as of the date of this correspondence.

We did report our accomplishments to the Federal District Court, ITCN Court of Appeals and the specially appointed appellant court of the Winnemucca Indian Colony, otherwise known as the "Minnesota Panel." Appellate Court. It is our belief that once we regain our Federal Recognition there will be more people applying for enrollment with the Winnemucca Indian Colony.

Elections:

Tribal elections were held on October 2006, according to the Constitution and By-Laws. All enrolled members of the Winnemucca Indian Colony

Correspondence to Hunter
February 26, 2007
Page 3

participated by consensus. The Court has made no decision in a year and we have asked that all matters before it be dismissed so that any further membership process will not be involved in the old dispute.

Thomas Wasson is serving as Chairman, William Bills is presently serving as Vice Chairman, Elverine Castro, Sharon Wasson and Judy Rojo make up the rest of the Council. Our meetings are held on the second Saturday of each month at the offices of Hager and Hearne. This Council is ready to act as the government of the sovereign entity the Winnemucca Indian Colony.

Current Tribal Events:

Winnemucca Tribal Gathering: There are seasonal gatherings on the Winnemucca Indian Colony. These gatherings entail spiritual ceremonies, social interactions among the Tribe's members and community, feasts, traditional dancing and signing. The last gathering was in Fall of 2006. Another gathering is in the planning stage for Spring of 2007.

The site of the Tribal Gatherings is at "The 320", which is located at Hansen and Highland Avenue, Winnemucca.

Winnemucca Indian Colony, et al. -vs- U.S.A: Recently, the Tribe launched a suit against the United States of America government to block the detonation of the "Divine Strake" at the Nevada Test Site. The decision was favorable to the Winnemucca Indian Colony in that the U.S.A. backed down, not once but twice, and ultimately cancelled the blast. The suit was widely publicized in multi-media. The latest decision was made on February 2007, wherein the U.S.A. once and for all, dropped all ambitions to detonate Divine Strake.

Conclusion:

We intend to move our meetings to the Winnemucca Library as soon as the BIA has recognized the government and we no longer have to fear the reprisal of those who occupy our lands unlawfully.

Correspondence to Hunter
February 26, 2007
Page 4


We already have a memorandum of understanding that has been drafted with the Winnemucca Police Department, which will enable us to secure law enforcement services until we are able to recruit and hire our own force as soon as the BIA recognizes the government. It is hereby requested that the Winnemucca Indian Colony, once reinstated, secure the assistance of the BIA to begin the process of acquiring 638 grants in order to reconstitute the Colony.

We are ready to proceed with the re-building of the tribal legal infrastructure, beginning with our tribal court. Our Tribal Judge is Charles Hartman. As soon as we are able to secure our police force, we will then institute criminal court.

We ask that the BIA recognize in the government to government relationship Thomas Wasson, Chairman, William Bills, Vice Chairman, Elverine Castro, Sharon Wasson, and Judy Rojo as the Council of the Winnemucca Indian Colony.

We have also heard that the investigation into the murder and assassination of Glenn Wasson has been reactivated. We appreciate the Federal government taking this matter seriously.

With respect,

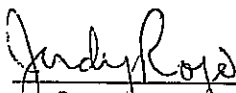


TREVA J. HEARNE, ESQ.

Attorney for Winnemucca Indian Colony

On behalf of

Thomas Wasson, Chairman



Judy Rojo, Enrollment Officer

cc: Fred Drye, Tribal Operations

Membership applications for the Winnemucca Indian Colony shall be requested by sending a letter to THOMAS WASSON, Winnemucca Indian Colony, 910 Parr Blvd., #8, Reno, Nevada 89512 or by fax to 775-329-5819 with the applicant's address.

Within two weeks of receipt of the request for application, the person sending the application shall receive an application packet. This packet must be returned to the Council of the Winnemucca Indian Colony within thirty (30) days for consideration of initial membership. Membership packets will be sent in the order in which they are received. Membership is an on-going consideration and if a person who wishes to be a member does not make application in the first initial round of membership considerations by the Council, that person is encouraged to file a membership application for the next round of considerations by the Council.

Document H1

AFFIDAVIT OF PUBLICATION

State of Nevada

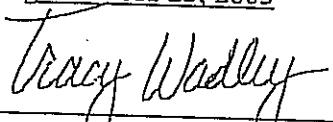
County of Humboldt: ss

Tracy Wadley, Legal Clerk for
The Humboldt Sun, a twice weekly
newspaper, Published in Winnemucca,
Humboldt County, Nevada, duly
swears that the following

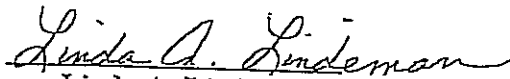
ROBERT HAGER
WINNEMUCCA INDIAN COLONY
3X5 AD

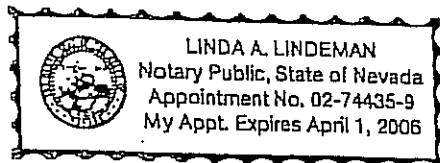
a printed copy of which is affixed,

is scheduled to be published FIVE time(s)
for a period of THREE week(s)
commencing MARCH 8, 2005
and ending MARCH 25, 2005


Tracy Wadley

Subscribed and sworn before me on
MARCH 23, 2005


Linda A. Lindeman



Winnemucca Indian Colony

Home of the Western Band of Western Shoshone

www.winnemuccaindiancolony.com

Winnemucca, Nevada 89446

Thomas R. Wasson--Chairman
910 E. Parr Blvd. Suite 8
Reno, NV. 89512
Phone 530.257.3562
Fax: 775.329.5819
email: twasson@adelphia.net

May 30, 2005

Minnesota Panel:

Thomas R. Wasson -- Chairman, Winnemucca Indian Colony

RE: Official Tribal Roll of the Winnemucca Indian Colony (OTR/WIC) as of May 28, 2005

This letter is to indicate, that the Winnemucca Indian Colony Council, took the following measures to re-certify our OTR/WIC.

1. Two letters to the membership were mailed out, indicating the intent to have an updated enrollment process and election. First letter March 2, 2005, Second Letter March 24, 2005.
2. The process for enrollment and election, was caused to be put in the Local newspaper of Winnemucca, NV. Address and contact information was also on the "public notice"
3. The opposing council was notified thru *Hager & Hearne*, of the intent to proceed with the process of enrollment and election.

We, strongly believe that all necessary and essential parties have been notified and ample time has been give. On May 28, 2005 The Winnemucca Indian Colony did have a Special Meeting, at this meeting, upon the recommendation of the Enrollment Officer, Judy Rojo. Did pass, approve and put into effect the OTR/WIC of May 28, 2005. Upon your certification of this Roll, we will then proceed to cause a Special Election.

Respectfully Submitted,



Thomas R. Wasson, Chairman -- W.I.C.

LAW OFFICES OF HAGER & HEARNE

TREVA J. HEARNE
ATTORNEY AT LAW
910 East Parr Blvd., Suite #8
Reno, Nevada 89512
Telephone #775/329.5800
Facsimile # 775/329.5819

May 31, 2005

The Honorable Lenor Scheffler
BEST & FLANAGAN
225 South 6th Street, #4000
Minnesota, MN 55402

Re: Winnemucca Indian Colony

Dear Honorable Scheffler:

Enclosed you will find the following documents for your review and certification:

1. May 28, 2005 letter from the enrollment committee that has worked for the last sixty days.
2. Letter of May 30, 2005 from Chairman Thomas Wasson regarding notice.
3. Membership Roll of the Winnemucca Indian Colony recommended by the enrollment committee and approved by the Council.
4. Minutes of the United States Federal District Court, December 10, 2004.
5. Minutes of the United States Federal District Court-will be overnighted on June 1st, 2005.
6. Affidavit of Publication from the Winnemucca newspaper.
7. Stipulation to Reinstate the Council of the Winnemucca Indian Colony entered into between the Inter-Tribal Court of Appeals and the Winnemucca Indian Colony.
8. Transcript of the hearing before the United States District Court, District of Nevada, December 10, 2004.

LAW OFFICES OF HAGER & HEARNE

TREVA J. HEARNE
ATTORNEY AT LAW
910 East Parr Blvd., Suite #8
Reno, Nevada 89512
Telephone #775/329.5800
Facsimile # 775/329.5819

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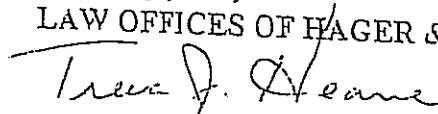
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Honorable Lenor Scheffler
May 31st, 2005
Page 2

If the panel desires anything else for its certification process, please inform me.

Very truly yours,

LAW OFFICES OF HAGER & HEARNE



Treva J. Hearne

cc: The Honorable Howard McKibben, United States District Court, District of Nevada
Donald Pope, Esq.
Thomas Wasson, Chairman, Winnemucca Indian Colony
Regional Director, Bureau of Indian Affairs, Phoenix, Arizona.

Winnemucca Indian Colony

www.winnemuccaindiancolony.com

Home of the Western Band of Western Shoshone

Winnemucca, Nevada 89446

Judy Rojo - Enrollment Officer
910 E. Parr Blvd. Suite 8
Reno, NV. 89512
Phone 530.257.3562
Fax: 775.329.5819

May 28, 2005

TO: Winnemucca Indian Colony Tribal Business Council

FROM: Judy Rojo
Enrollment Officer

RE: RECOMMENDATION FOR OFFICIAL TRIBAL ROLL OF THE WINNEMUCCA INDIAN COLONY

It is my recommendation to remove the deceased members from the last Official Tribal Roll of the Winnemucca Indian Colony (OTR/WIC). The following names should be deleted from the OTR/WIC.

Lucy Wasson Lowry D.O.D. 6-29-2000
Thomas William Magiera D.O.D. 6-30-2002
Ida Snodgrass Whiterock Deceased Date Unknown
Glenn Earl Wasson D.O.D. 2-22-2000
Carlene Provchy Likins Deceased Date Unknown

It is recommended that Marlene L. Navarro LeFebvre, be removed from the OTR/WIC, at her request in the letter of April 7, 1995.

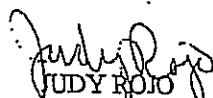
It is recommend that the following list of names be removed from the OTR/WIC because their files are incomplete at this time. Upon receipt of updated applications and certified birth certificates their names should reappear onto the OTR/WIC.

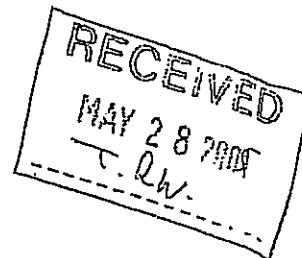
Andrea L. Davidson
Paulette Anne Kelley
Marlene Bridget Magiera
Richard Patrick Tom
Alyce Wasson Williams

On April 24, 2005; May 22, 2005; and May 28, 2005, I reviewed applications for membership into the WIC. It is my recommendation that after reviewing these applications, the following list of names should be add as members onto the OTR/WIC as follows:

Judy A. Rojo
Misty Morning Dawn Rojo
Carl Provchy II
Sandra Gail Allen
Katherine Gertrude Hasbrouck
Myra Jean Kimsey

Mark Edward Gregory
Thomas William Magiera II
Lisa Louise Provchy
Myrtle Phillis Mc Guffee
Eric Christian Magiera
Ruth LaVerne Evans Martin


JUDY ROJO
Enrollment Officer



Winnemucca Indian Colony

www.winnemuccaindiancolony.com

Home of the Western Band of Western Shoshone

Winnemucca, Nevada 89446

Thomas R. Wasson—Chairman
910 E. Parr Blvd. Suite 8
Reno, NV. 89512
Phone 530.257.3562
Fax: 775.329.5819
email: twasson@adelphia.net

May 30, 2005

Minnesota Panel:

Thomas R. Wasson -- Chairman, Winnemucca Indian Colony

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Respectfully Submitted,



Thomas R. Wasson, Chairman -- W.I.C.

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Document H1

AFFIDAVIT OF PUBLICATION

State of Nevada

County of Humboldt: ss

Tracy Wadley, Legal Clerk for
The Humboldt Sun, a twice weekly
newspaper, Published in Winnemucca,
Humboldt County, Nevada, duly
swears that the following

ROBERT HAGER

WINNEMUCCA INDIAN COLONY

3X5 AD

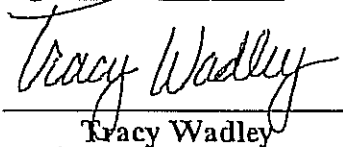
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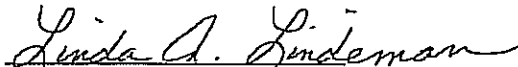
commencing MARCH 8, 2005

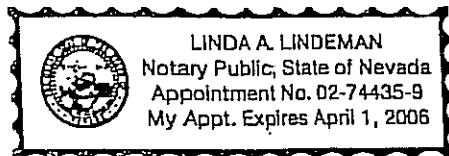
and ending MARCH 25, 2005


Tracy Wadley

Subscribed and sworn before me on

MARCH 23rd, 2005

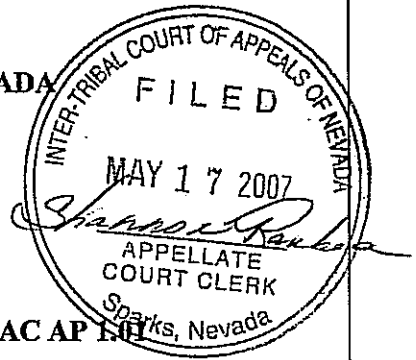

Linda A. Lindeman



EXHIBIT

5

INTER-TRIBAL COURT OF APPEALS OF NEVADA



SHARON WASSON, et al.,

APPELLANT,

v.

WILLIAM BILLS,

APPELLEE,

Case No. ITCN AC AP 101

PER CURIAM

BEFORE: Associate Justice Gary Bass, Associate Justice Cheryl Fairbanks, Associate Justice Eric P. Swenson.

This matter is before this Court on its own motion to revisit the granting of jurisdiction. It is apparent that jurisdiction was improvidently assumed. Accordingly, we withdraw the mandates of all orders and rulings. We recognize that this ruling leaves the issues raised in this and other proceedings uncertain in terms of finality and effect. Nevertheless, this Court may proceed no further once it is determined there is no appellate jurisdiction.¹

It is SO ORDERED, this 7th day of May, 2007.

¹ We also note the failure to comply with this Court's order of September 8, 2006 provides additional ground to dismiss this appeal and strike all pleadings from the record.

INTER-TRIBAL COURT OF APPEALS OF NEVADA
IN AND FOR THE WINNEMUCCA
TRIBAL COURT
WASHOE COUNTY, SPARKS, NEVADA

SHARRON WASSON, LUCY
(WASSON) LOWERY, ELVERINE
CASTRO AND THOMAS WASSON,
BUSINESS COUNCIL OF THE
WINNEMUCCA INDIAN COLONY,
V.

Case No. ITCN / AC AP 1.01

WILLIAM BILLS, an individual,

Shannon R. Rambeau, hereby deposes and says: That she is a citizen of the United States of America, over the age of 21, not a party to, nor interested in, the above entitled matter, and that she mailed by first-class postage, delivered in person, or sent by facsimile transmission (as noted), a file-stamped copy of the attached document(s) entitled:

AFFIDAVIT OF SERVICE

to the following individual(s):

Donald K. Pope, Esq.

1385 Haskell St. 118 CALIF. AVE

Reno, NV 89509

Treva Hearne, Esq.

Hearne & Hager

910 East Parr Blvd. Suite 8


Reno, NV 89512

Sarah Lawson, Esq.

Rosette & Associates

6124 East Brown Road Suite 101

Mesa, AZ 85205


Shannon R. Rambeau, Court Coordinator

Dated: May 17, 2007