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9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF NEVADA  
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13 WASHOE HOUSING AUTHORITY,

14 Plaintiff,

15 vs.

Case No.

**COMPLAINT**

16 UNITED STATES DEPARTMENT OF  
HOUSING AND URBAN  
17 DEVELOPMENT; STEPHEN PRESTON,  
Secretary of Housing and Urban  
18 Development; and PAULA O. BLUNT,  
General Deputy Assistant Secretary for  
19 Public and Indian Housing,

20 Defendants.  
21

22 Plaintiff Washoe Housing Authority, through its attorneys, Story Law Group, alleges and  
23 claims for relief as follows:

24 **I. INTRODUCTION**

25 1) This case seeks a determination that Defendants United States Department of  
26 Housing and Urban Development ("HUD"), Secretary Stephen Preston, and General Deputy  
27 Assistant Secretary for Public and Indian Housing Paula O. Blunt, have and will continue to  
28 improperly and illegally deprive Washoe Housing Authority of federal block grant funding awarded

pursuant to the Native American Housing Assistance and Self-Determination Act (“NAHASDA”),  
25 U.S.C. § 4101 *et seq.*

## **II. PARTIES**

2) Washoe Housing Authority is and at all relevant times was the Tribally Designated Housing Entity (“TDHE”) for the Washoe Tribe of Nevada and California, a federally recognized Indian tribe. As the TDHE for the Washoe Tribe, Washoe Housing Authority receives annual block grant funds from HUD pursuant to NAHASDA. Washoe Housing Authority is located in Douglas County, Nevada.

3) HUD is and at all relevant times was a cabinet level federal agency charged by Congress with, among other things:

a. Promulgating regulations through negotiated rulemaking that establish a formula for allocation of block grant amounts made available each fiscal year to TDHEs.

b. Distributing block grant funds to Indian tribes or their TDHEs in accordance with the established formula.

4) Secretary Preston is the present Secretary of HUD.

5) General Deputy Assistant Secretary Paula O. Blunt is the Deputy Assistant Secretary for Public and Indian Housing of HUD.

## **III. JURISDICTION**

6) This Court has jurisdiction of the subject matter of this action under 25 U.S.C. § 4101 *et seq.* and 28 U.S.C. § 1331.

## **IV. CONDITIONS PRECEDENT**

7) On October 14, 2008, House of Representatives Bill 2786 – a reauthorization of housing assistance for Native Americans under NAHASDA – became law. Among many other things, HR 2786 at § 301 provides that certain formula allocations “shall not apply to any claim arising from a formula current assisted stock calculation or count involving an Indian housing block grant allocation for any fiscal year through fiscal year 2008, if a civil action relating to the claim is filed no later than 45 days after the date of enactment of this subparagraph.”

8) Washoe Housing Authority timely filed this civil action within the 45 day period

1 provided in HR 2786, challenging HUD block grant allocations to Washoe Housing Authority for  
2 fiscal years 1997 through 2008

3 **V. GENERAL ALLEGATIONS**

4 9) Prior to enactment of NAHASDA, HUD provided funds to Indian tribes and TDHEs  
5 through programs established under the United States Housing Act of 1937, 42 U.S.C. § 1437 *et seq.*  
6 (the “1937 Act”). Among those programs were low-rent housing assistance and Mutual Help  
7 homeownership.

8 10) Under the 1937 Act, HUD provided assistance through Annual Contributions  
9 Contracts (“ACC”). HUD awarded funds for each fiscal year in the amount set forth in that fiscal  
10 year’s ACC.

11 11) NAHASDA terminated Indian housing assistance under the 1937 Act, but provided  
12 for annual block grants to Indian tribes in amounts to be determined by an allocation formula to be  
13 established by regulations through a negotiated rulemaking process.

14 12) NAHASDA expressly required that the formula be based upon the need of the Indian  
15 tribes and “[t]he number of low-income housing dwelling units owned or operated at the time  
16 pursuant to a contract between an Indian housing authority for the tribe and the Secretary.” 25  
17 U.S.C. § 4152(b).

18 13) Congress intended and required through NAHASDA that the number of low-income  
19 housing dwelling units owned and operated as of September 30, 1997, be a floor for funding, not a  
20 ceiling.

21 14) In accordance with NAHASDA, a committee of forty-eight representatives of Indian  
22 tribes and ten HUD representatives developed the allocation formula which consisted of two  
23 components: one, Formula Current Assisted Stock (“FCAS”); and two, need. The FCAS component  
24 is based upon an Indian tribe’s inventory of low-rent units and Mutual Help units. The FCAS  
25 component is calculated by multiplying each type of unit in an Indian tribe’s housing inventory by a  
26 subsidy factor. The need component is based upon seven criteria. The annual funding for an Indian  
27 tribe is the sum of the FCAS component and the need component.

28 15) The allocation formula calculated FCAS as of September 30, 1997, for units which an

1 Indian tribe was receiving assistance under the 1937 Act. The allocation formula further, but  
2 improperly and illegally, required that FCAS be reduced as Mutual Help units are “lost by  
3 conveyance, demolition, or otherwise.” 24 C.F.R. § 1000.318.

4 16) A Mutual Help unit is leased to a qualifying Indian family through a Mutual Help  
5 Occupancy Agreement which is a lease with an option to purchase. At the end of the Mutual Help  
6 Occupancy Agreement, the Indian family has the option to purchase the unit by paying any  
7 remaining balance. If the Indian family exercises the option to purchase, the Indian tribe or TDHE  
8 conveys ownership of the Mutual Help unit to the Indian family.

9 17) HUD initiates the annual allocation process of block grants by sending a “Formula  
10 Response Form” to the Indian tribe or its TDHE. In the Formula Response Form, HUD informs the  
11 Indian tribe or its TDHE how HUD intends to allocate that Indian tribe’s block grant.

12 18) In 2001, HUD’s Office of Inspector General (“OIG”) performed a nationwide audit of  
13 the NAHASDA programs and concluded that Indian block grant funds had been improperly  
14 calculated. According to the OIG, FCASs had been calculated on units Indian tribes and TDHEs no  
15 longer had the legal right to own, operate, or maintain because the units had been or should have  
16 been transferred to Indian families under the Mutual Help Homeownership Program.

17 19) The OIG recommended HUD’s Office of Native American Programs recover funding  
18 from Indian tribes and TDHEs that had inflated FCASs.

19 20) HUD has begun to follow the OIG’s recommendations by asserting that it has  
20 overfunded Indian tribes and TDHEs through improperly calculated FCASs based on units Indian  
21 tribes and TDHEs no longer had the legal right to own, operate, or maintain because those units had  
22 been or should have been transferred to Indian families through the Mutual Help Homeownership  
23 Program.

24 21) Washoe Housing Authority has certain units in its FCAS that have not been  
25 transferred to an Indian family at the end of the initial amortization period, but which may be subject  
26 to improper and illegal enforcement action by HUD to recover and reallocate Indian block grant  
27 funds previously allocated to Washoe Housing Authority.

28 22) Washoe Housing Authority has transferred certain units through its Mutual Help

Homeownership Program, thereby reducing its FCAS from September 30, 1997, through fiscal year 2008, and is subject to improper and illegal enforcement action by HUD to recover and reallocate Indian block grant funds previously allocated to Washoe Housing Authority. HUD has begun the process of requiring Washoe Housing Authority to repay funds to HUD.

23) HUD's governing procedures classify such disputes over Indian block grant formula allocations as disputes over data which do not provide for a hearing.

24) In *Fort Peck Housing Authority v. United States Department of Housing and Urban Development*, 435 F.Supp. 2<sup>d</sup> 1125, 1135 (D. Colo. 2006), the United States District Court for the District of Colorado entered the following order against HUD:

FURTHER ORDERED that judgment shall enter declaring 24 C.F.R. § 1000.318 invalid, and declaring that all Mutual Help and Turnkey III units the plaintiff owned or operated pursuant to an Annual Contributions Contract as of September 30, 1997, must be included in the formula for determining its allocation of the annual Congressional appropriation for Indian Block Grants, and it is

FURTHER ORDERED that the defendant shall take such administrative action as necessary to implement this ruling.

The District Court granted HUD's Motion to Amend Judgment, limiting the scope of the *Fort Peck* ruling to the Fort Peck Housing Authority. Washoe Housing Authority is informed and believes that HUD may have appealed *Fort Peck Housing Authority v. United States Department of Housing and Urban Development, supra*. As noted in paragraphs 7 and 8 of this Complaint, *supra*, HR 2786 at § 301 extends the scope of the *Fort Peck* ruling to any Indian tribe or TDHE which files suit within 45 days of enactment of HR 2786.

## **VI. CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

#### **(Declaratory Relief)**

25) Washoe Housing Authority hereby incorporates all prior paragraphs of the Complaint.

26) The HUD allocation formula which requires that FCAS be reduced as Mutual Help units are "lost by conveyance, demolition, or otherwise" is contrary to NAHASDA and unlawfully deprives Washoe Housing Authority of Indian block grant funds authorized by Congress.

27) Washoe Housing Authority is entitled to a judicial declaration that the HUD allocation formula is contrary to law and void and cannot be used to recover and reallocate Indian block grant funds previously allocated to Washoe Housing Authority.

28) Washoe Housing Authority has been required to retain the services of an attorney to pursue this action and should be awarded reasonable costs and attorneys' fees.

## **SECOND CLAIM FOR RELIEF**

### **(Injunctive Relief)**

29) Washoe Housing Authority hereby incorporates all prior paragraphs of the Complaint.

30) The HUD allocation formula which requires that FCAS be reduced as Mutual Help units are "lost by conveyance, demolition, or otherwise" is contrary to NAHASDA and unlawfully deprives Washoe Housing Authority of Indian block grant funds authorized by Congress.

31) Pursuant to Fed.R.Civ.P. 65, Defendants, their agents, representatives, servants, attorneys, employees and entities and those persons in active concert or participation with them should be restrained and enjoined temporarily and permanently from enforcing the HUD allocation formula to recapture, through repayment, reduction in future funding, or any other means, any amounts HUD claims that it overfunded Washoe Housing Authority because of a reduction in the number of its FCAS from the number of FCAS Washoe Housing Authority had as of September 30, 1997.

32) Washoe Housing Authority has been required to retain the services of an attorney to pursue this action and should be awarded reasonable costs and attorneys' fees.

## **VII. REQUEST FOR RELIEF**

Washoe Housing Authority respectfully requests that this Court enter judgment in favor of Washoe Housing Authority and against Defendants:

1) That declares all Mutual Help homeownership units under Washoe Housing Authority's ACC as of September 30, 1997, must be included in Washoe Housing Authority's FCAS for the fiscal years 1997 through 2008.

2) That prohibits and enjoins Defendants from recapturing, through repayment,

1 reduction in future funding, or any other means, any amounts HUD claims that it overfunded  
2 Washoe Housing Authority because of a reduction in the number of its FCAS from the number of  
3 FCAS Washoe Housing Authority had as of September 30, 1997.

4 3) For an award of reasonable attorneys' fees, costs, and disbursements.

5 4) For interest at the maximum legal rate and pre-judgment and post judgment interest  
6 on all sums awarded.

7 5) And for such additional relief as may be deemed just and proper by this Court.

8 November 21, 2008

9 STORY LAW GROUP

10  
11 By: 

12 ROBERT W. STORY, ESQ.  
13 LORI M. STORY, ESQ.

14 Attorneys for Plaintiff Washoe Housing  
15 Authority  
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