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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

WINNEMUCCA INDIAN COLONY,
THOMAS R. WASSON, CHAIRMAN

Plaintiffs,

v.

UNITED STATES OF AMERICA ex rel. THE
DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
WESTERN NEVADA AGENCY,
SUPERINTENDENT,
and, THE EMPLOYEES, CONTRACTOR
AND AGENTS OF THE WESTERN
NEVADA AGENCY OF THE BUREAU OF
INDIAN AFFAIRS,

Defendants.

Case No.: 3:11-cv-00622-RCJ-VPC

**PLAINTIFFS' REPLY TO
DEFENDANTS' OPPOSITION
[DOC. 47] TO PLAINTIFFS'
MOTION TO AMEND
COMPLAINT [DOC. 44]**

COMES NOW, Plaintiffs, by and through Counsel, TREVA J. HEARNE, ESQ.,
and hereby file their Reply to the Defendants' Opposition [Doc. 47] to Plaintiffs' Motion
to Amend Complaint [Doc. 44].

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1 The Reply/Response of the BIA to the Motion to Amend is fairly
 2 incomprehensible and does not address the pertinent issues but for one very critical
 3 issue characterizing the fiduciary trust obligation of the U.S. to protect Colony assets,
 4 which the U.S. denies. By carefully parsing words, the U.S. attempts to absolve itself of
 5 the failure to protect the Colony, its lands and economic viability. The first three pages
 6 of the Reply/Opposition to Motion to Amend demonstrate the very issue that Plaintiffs
 7 have asserted in that the BIA purposely and with malicious intent recognized two
 8 persons on the Council, and, knowing the history of this Colony, the BIA knew that
 9 recognition of these two persons would paralyze the Council and further obviate the
 10 existence of the Colony. Appointing William Bills, who is implicated in the murder of
 11 Glenn Wasson with all the circumstantial evidence and motive to kill Glen Wasson
 12 pointing directly at him, and Thomas Wasson, who was the nephew of Glen Wasson,
 13 would result in the very effect the BIA desired which was complete deadlock and the
 14 inability for the Winnemucca Indian Colony to vindicate its rights and re-enter its lands.
 15

16 What is difficult to comprehend is why our government, the government tasked
 17 with the trust responsibility toward Indian tribes, especially in light of this
 18 Administration's verbal commitment to protect Indian country¹ has taken the position
 19 that it will not recognize a viable and lawful government for this Federally recognized
 20 Tribe and, further attempts to negate the Colony's right to appear in this Court and
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22 ¹ "With the passage of the Tribal Law and Order Act, we are witnessing tangible progress toward
 23 healthier, brighter future for Native Americans. I want to reaffirm the Justice Department's commitment
 24 – and my own commitment – to building and sustaining healthy and safe native communities; to
 25 renewing our nation's enduring promise to American Indians and Alaska Natives; to respecting the
 26 sovereignty and self-determination of tribal governments; and to ensuring that the progress we have
 27 achieved in recent years is not derailed."

28 -- Attorney General Eric Holder at the 12th National Indian Nations Conference, December 2010.

1 vindicate its rights. The history of the Western Shoshone, of which Glen Wasson²
2 became an integral part, may explain the deep-seated prejudice with which the BIA and
3 our government have intentionally disregarded this small Colony and allowed havoc to
4 continue on the Colony without a recognized government. Although the failure to
5 recognize a government has caused an island of lawlessness within the City limits of the
6 City of Winnemucca and deprived the Colony of a government for eleven years, the only
7 response of the United States is that Thomas Wasson doesn't speak for the membership,
8 only William Bills does. In essence, the United States' position is that if William Bills
9 states that Thomas Wasson has no authority, then Thomas Wasson has no authority,
10 end of story.
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12 The members of the Colony have persevered beyond any expectation using their
13 own personal funds for the first ten years to continue the litigation and peaceful
14 resolution of the occupation of their Colony that began with violence. As Black Hawk, a
15 Black River Sauk, said so eloquently in 1832, "the white men do not scalp the head, they
16 do worse – they poison the heart." This litigation has poisoned all parties against one
17 another primarily because the BIA refused to resolve the problem by recognizing a
18 government based upon the evidence and the law. Now, by recognizing two
19 diametrically opposed persons who have a bitter historical distrust and inability to work
20 together for the advancement of the Colony, especially since the BIA has determined
21 that only William Bills speaks for the Colony and that he can veto anything done by
22 Thomas Wasson, the BIA has attempted to hammer the final nail in the coffin of the
23 Winnemucca Indian Colony.
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28 ² See, Exhibit 1, excerpts from Western Shoshone history. Glen Wasson was one of the first Western Shoshone to speak to the CERD committee about the U.S. transgressions against the Ruby Valley Treaty.

1 **I. Thomas Wasson is the only recognized government of the**
 2 **Winnemucca Indian Colony both qualified to serve and serving in**
 3 **an elected office.**³

4 The Winnemucca Indian Colony has held a regular election in compliance with the
 5 Constitution and By-Laws of the Winnemucca Indian Colony. See, Exhibit 2,
 6 documents bates numbered H&H WIC 1-123. Based on the history of the Colony, the
 7 Minnesota Panel Decision and the fact that William Bills has never come to the Colony
 8 meetings since leaving in 2002, the overwhelming evidence available for analysis by the
 9 BIA supports Thomas Wasson as the Chairman and elected government. The Colony
 10 has a right to now have this Court determine if the BIA's decision was arbitrary when it
 11 recognized both Thomas Wasson and William Bills as the only government of the
 12 Winnemucca Indian Colony.

13 First of all, stating that William Bills has stated something without an affidavit,
 14 without an appearance by him in person, supports nothing. The BIA cavalierly recites
 15 statements by William Bills with no proof whatsoever.

16 The case law supports a judicial review of administrative decisions. The BIA
 17 complains that the decision was made under duress by this Court. The BIA has had
 18 eleven years to recognize the government of the Winnemucca Indian Colony and has
 19 failed and refused to do so. The Plaintiffs herein have submitted over one two hundred
 20 pages of documentary history of this dispute and over one hundred pages of briefing
 21 since 2000 to the BIA regarding the issues of government recognition. The BIA was not
 22 rushed into any decision by this Court.

23 ³ The United States asks this Court to strike the affidavit of Thomas Wasson even in the fact of its own
 24 reference to the words of William Bills without any support, affidavit, statement or other evidence. (See,
 25 Motion to Dismiss)

1 Pursuant to the Administrative Procedure Act, “. . . the reviewing court shall. . .hold
2 unlawful and set aside agency action, findings, and conclusions found to be . . .
3 arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the
4 law.” 5 U.S.C. §706(2)(a) “. . . the Court must affirm if a rational basis for the agency’s
5 decision exists.” *Bolden v. Blue Cross & Blue Shield Ass’n*, 848 F.2d 201,205 (D.C. Cir.
6 1988) “The degree of deference a court should pay an agency’s construction is,
7 however, affected by the “the thoroughness, validity, and consistency of an agency’s
8 reasoning.” *Fed. Election Comm’n v. Democratic Senatorial Campaign Comm.*, 454
9 US. 27, 37 102 S.Ct. 38, 70 L.Ed.2d 23, (1981) See, *Aleutian Pribilof Islands Ass’n, Inc.*
10 *v. Kempthorne*, 537 F.Supp.2d 1 (2008). The BIA has failed to submit to this Court any
11 basis whatsoever for its reasoning in recognizing Thomas Wasson and William Bills as
12 the government. This Court cannot review a basis for reasonableness when no file, no
13 analysis is presented by the agency.

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16 In fact, the agency takes the stance that it’s decision cannot be judicially reviewed
17 because by the recognition of two opposing persons, no one person can challenge the
18 arbitrariness of this decision. The Plaintiffs request the right to amend their pleading to
19 add the review of the arbitrary and capricious decision to recognize both Thomas
20 Wasson and William Bills as the government of this federally recognized Tribe.

21
22 In the *Aleutian Pribilof Islands* case cited above, the Federal District Court
23 expressly stated that the agency was required to provide a detailed explanation of the
24 reason for its decision. The Motion to Dismiss is premature until the basis for the
25 decision is provided to the reviewing court. This agency decision is the result of a long
26 protracted process wherein the Plaintiffs had no hope for an administrative remedy
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1 and, thus, must seek a remedy from the federal court. See, . See, *Hein v. Capitan*
 2 *Grande Band of Diegueno Mission Indians*, 201 F.3d 1256, 1258, 1261 (9th Cir. 2000)
 3 cited in the moving papers.

4 **II. The rules favor allowing a party to amend.**

5 The United States has stated no argument as to why it would be prejudiced if the
 6 Plaintiffs are allowed to amend their complaint. In fact, the only argument put forward
 7 is that Thomas Wasson cannot represent the Winnemucca Indian Colony now that the
 8 BIA has attempted to create a “Catch 22” by appointing Thomas Wasson and William
 9 Bills allowing William Bills to dictate who can speak for the Colony. The BIA is fully
 10 aware of the conflict between Wasson and Bills given the filings with the BIA Regional
 11 office pursuant to their long denied resolution of recognition of a government. (See,
 12 Exhibit 2)
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14 The United States District Court, District of Arizona, recently reminded litigants that
 15 “Again, Rule 15 of the Federal Rules of Civil Procedure is very liberal regarding allowing
 16 leave to amend pleadings.” *First Franklin Financial Corp. v. Dreamscape Mortgage,*
 17 *LLC.*, 70 Fed. R. Serv. 3d 1077,2008 WL 2277878, *2(U.S.D.C. Ariz. 2008). The
 18 Plaintiffs in this case request leave to amend their pleading in order to finally and
 19 completely resolve this eleven year old issue by this reviewing court under the
 20 Administrative Procedure Act.
 21

22 **III. The smokeshop is on Tribal trust lands and is the only means for**
 23 **the Colony at this time to have an economic base, thus for the BIA**
 24 **to state this is not trust land is a breach of the trust relationship.**
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26 The Federal Indian Law Handbook is instructive regarding the importance of land
 27 base to Tribal existence. “Land forms the basis for social, cultural, religious, political
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1 and economic life for American Indian nations. The interests that Indian tribes hold in
2 real and personal property represent a unique form of property right in the American
3 legal system, shaped by the federal trust over tribal land and statutory restraints against
4 alienation.” *Cohen’s Handbook of Federal Indian Law*, (2005 ed.), page 965.

5 The U.S. parses words by stating that there is no trust land at risk since the
6 smokeshop is not trust property and for which the agency can be held as in breach of
7 the trust relationship. The BIA has allowed and condoned a conveyance of the
8 possessory interest of the lands of the Winnemucca Indian Colony to non members and
9 non Indians. This is a violation of the statute which protects against the alienation of
10 Indian real property. ⁴ Clearly, the possessory interest in the lands of the Winnemucca
11 Indian Colony has been transferred by occupation to persons who are not members of
12 the Tribe and not Indians and this has been allowed to occur in contravention of the law
13 by the BIA.

14 The BIA has breached the trust responsibility by allowing trust lands, the source
15 of the economic welfare of this Colony to be occupied by non members and non Indians.
16 The BIA parses the words by stating that the smokeshop itself is not trust property. The
17 right to occupy the trust lands and to operate a smokeshop is trust property and that
18 right has been lost for eleven years and the BIA breaches the trust responsibility for
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24 ⁴ No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian
25 nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or
26 convention entered into pursuant to the Constitution. Every person who, not being employed under the
27 authority of the United States, attempts to negotiate such treaty or convention, directly or indirectly, or to
28 treat with any such nation or tribe of Indians for the title or purchase of any lands by them held or
claimed, is liable to a penalty of \$1,000. The agent of any State who may be present at any treaty held
with Indians under the authority of the United States, in the presence and with the approbation of the
commissioner of the United States appointed to hold the same, may, however, propose to, and adjust
with, the Indians the compensation to be made for their claim to lands within such State, which shall be
extinguished by treaty. 25 U.S.C. § 177

1 each and every day it continues and no weasel-like interpretation of “trust” saves the
2 BIA from this obvious breach.

3 WHEREFORE, FOR THE ABOVE-STATED REASONS, the Plaintiffs respectfully
4 request that the Court grant its Motion for Leave to Amend the Complaint with
5 additional claims based on recently revealed facts and admissions by the Regional
6 Director of the Western Regional Office of the Bureau of Indian Affairs.
7

8 DATED this 9th day of December, 2011.

9 /s/ TREVA J. HEARNE

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Certificate Of Service

I hereby certify that on today' date the attached document was electronically transmitted to the Clerk of the Court using the CM/ECF System which will send notification of such filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

Dated December 9, 2011

/s/ Jennifer Sharp