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Attorneys for Defendant LeClair Irrigation District.

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

DEC -2 2011

Stephan Harris, Clerk
Cheyenne

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

NORTHERN ARAPAHO TRIBE,

Plaintiff,

vs.

STAR TRUCKING, CORPORATION,
a Wyoming corporation,

Defendant,

vs.

JOHN HUBENKA and
LeCLAIR IRRIGATION DISTRICT,

Third Party Defendants.

11 CV 364 -F

Civil Action No. _____

NOTICE OF REMOVAL AND MOTION TO CONSOLIDATE CASES

COMES NOW the Defendant LeClair Irrigation District (hereinafter "LeClair"), by and through its attorneys, and hereby files its *Notice of Removal and Motion to Consolidate Cases* pursuant to 28 U.S.C. § 1362, 28 U.S.C. § 1367, 28 U.S.C. § 1446(b), FED.R.CIV.P. 42(a) and

U.S.D.C.L.R. 42.1. In support of said *Notice of Removal and Motion to Consolidate*, Defendant LeClair states and alleges as follows:

1. Plaintiff, the United States of America, filed an *Amended Complaint* on March 14, 2011, in the United States District Court for the District of Wyoming under Civil Action 10-CV-0093-J and named LeClair as a Defendant.

2. The Northern Arapaho Tribe and Eastern Shoshone Tribe as Plaintiff-Intervenors filed their *Amended Complaint* on March 14, 2011, in the United States District Court for the District of Wyoming under Civil Action 10-CV-0093-J and named LeClair as a Defendant.

3. Prior to the filing of the above referenced amended complaints in the United States District Court for the District of Wyoming, the Northern Arapaho Tribe and Eastern Shoshone Tribe filed a *Complaint* on November 13, 2010, under Civil Action CV-10-0080, in the Shoshone and Arapaho Tribal Court, Wind River Indian Reservation, Fort Washakie, Wyoming. (Attached hereto as Exhibit "A" and incorporated herein by this reference).

4. On or about October 26, 2011, the Northern Arapaho Tribe filed a *Motion to Consolidate Cases*, under Civil Action CV-10-0080, in the Shoshone and Arapaho Tribal Court, Wind River Indian Reservation, Fort Washakie, Wyoming. (Attached hereto as Exhibit "B", and incorporated herein by this reference).

5. Said *Motion to Consolidate* seeks to consolidate a recently filed civil complaint against Star Trucking Corporation under Civil Action CV-11-0075, in the Shoshone and Arapaho Tribal Court, Wind River Indian Reservation, Fort Washakie, Wyoming, with Civil Action CV-10-0080 which is that *Complaint* filed by the Northern Arapaho Tribe and Eastern Shoshone Tribe filed

on November 12, 2010, in the Shoshone and Arapaho Tribal Court, Wind River Indian Reservation, Fort Washakie, Wyoming against LeClair Irrigation District.

6. According to the *Motion to Consolidate* the “cases involve common questions of law and fact and should be consolidated to avoid unnecessary costs, delay and potentially inconsistent verdicts at trial.” (Motion to Consolidate at ¶ 3, attached hereto as Exhibit “B” and incorporated herein by this reference).

7. Most recently, LeClair Irrigation District was served with a *Third Party Complaint* wherein Star Trucking is the third party plaintiff and LeClair is the third party defendant along with John Hubenka. This Third Party Complaint was filed under Civil Action CV-11-0075, in the Shoshone and Arapaho Tribal Court, Wind River Indian Reservation, Fort Washakie, Wyoming. This is the most recent action filed against Star Trucking Corporation by the Northern Arapaho Tribe. (*Third Party Complaint* is attached hereto as Exhibit “C” and incorporated herein by this reference). LeClair filed its *Acceptance of Service* and *Answer* on the 15th day of November, 2011.

8. The facts alleged in the *Complaint* filed in the Tribal Court against Defendant LeClair Irrigation District, are the same set of facts as alleged in the *Amended Complaints* filed in the United States District Court for the District of Wyoming and relate to the same course of events. This also appears to be true with the *Complaint* against Star Trucking Corporation under Civil Action CV-11-0075, in the Shoshone and Arapaho Tribal Court, Wind River Indian Reservation, Fort Washakie, Wyoming,

9. All three *Amended Complaints* filed in the United States District Court, as well as the *Complaints* filed in Tribal Court under Civil Action CV-10-0080 and Civil Action CV-11-0075, name both Hubenka and LeClair as Defendants.

10. The *Complaint* filed in Tribal Court against LeClair alleges claims of trespass, negligence, negligent supervision, nuisance, vicarious liability, as well as joint and several liability. Plaintiff's claim for damages in the Tribal Court case against LeClair also includes compensatory damages for a complete restoration of the Big Wind River and repair of harm to tribal lands and the riparian environment along the Big Wind River in an amount to be established at trial. Furthermore, the Plaintiff requests injunctive relief barring Defendants from entering tribal lands and/or manipulating the flow of the Big Wind River in any manner that unnaturally affects the Big Wind River or tribal lands.

11. The Tribal case against Star Trucking Corporation also alleges claims and causes of action seeking recovery for Trespass, Negligence, Nuisance and Joint and Several Liability.

12. Pursuant to 28 U.S.C. §§ 1332 and 1441(b), the civil actions brought against Defendants LeClair, Hubenka and Star Trucking in the Tribal Court are removable as this Federal District Court has jurisdiction.

13. It is further appropriate to remove said *Complaints* from Tribal Court and join said matters with the *Amended Complaints* filed in the United States District Court for the District of Wyoming under Civil Action 10-CV-0093-J pursuant to 28 U.S.C. § 1367 since this Court may exercise supplemental jurisdiction over said State law claims and has jurisdiction over the Northern Arapaho Tribe under Civil Action 10-CV-0093-J pursuant to 28 U.S.C. § 1362.

14. Removal and consolidation of said Tribal Court Complaints with the matter currently pending in this Court is also appropriate in that it will avoid unnecessary costs, delay and inconsistent judgments.

15. Removal and consolidation of said matters is also in the interest of judicial economy.

DATED this 1st day of December, 2011.



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CERTIFICATE OF SERVICE

This is to certify that on the 15th day of December, 2011, at Rawlins, Wyoming, I served the foregoing instrument by causing to be deposited a full, true and correct copy thereof in the United States Mail, duly enveloped with postage prepaid, and addressed to:

Andrew W. Baldwin
Berthenia Crocker
Kelly Rudd
Terri V. Smith
Baldwin, Crocker & Rudd, P.C.
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519 East 18th Street
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710 North 8th West
Riverton, WY 82501

Mailed By: 


For MacPherson, Kelly, & Thompson, LLC

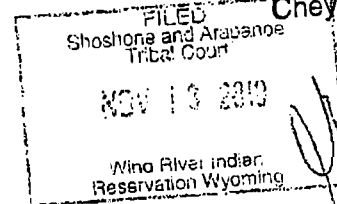
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FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

DEC 02 2011

Stephan Harris, Clerk
CheyenneSHOSHONE AND ARAPAHOE TRIBAL COURT
WIND RIVER INDIAN RESERVATION
FORT WASHAKIE, WYOMINGNORTHERN ARAPAHO TRIBE
and EASTERN SHOSHONE TRIBE,

Plaintiffs,

v.

JOHN HUBENKA; LeCLAIR IRRIGATION
DISTRICT; RAY BLUMENSHINE, President,
LeClair Irrigation District; TERRY L. BETTS,
Vice President, LeClair Irrigation District; and
MIKE McDONALD, Secretary/Treasurer,
LeClair Irrigation District,

Defendants.

Civil Action No. CV-10-0080

11CV364-8

COMPLAINT OF NORTHERN ARAPAHO TRIBE

COMES NOW the Plaintiff, Northern Arapaho Tribe ("NAT"), for its complaint against the above-named Defendants and states as follows:

Jurisdiction

1. NAT is a federally recognized Indian Tribe of the Wind River Indian Reservation.
2. Defendant John Hubenka ("Hubenka") is an individual who unlawfully entered tribal lands and manipulated the flow of the Big Wind River (the "River"), causing damage to tribal property, in furtherance of his employer LeClair Irrigation District's objectives, as well as his own personal objectives.
3. Defendant LeClair Irrigation District ("LeClair") is an irrigation district organized under Wyoming law that was created to help deliver irrigation water pursuant to a contract with

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the United States as trustee for the Northern Arapaho and Eastern Shoshone Tribes ("Tribes") for the benefit of Indian and non-Indian water users.

4. LeClair employed Hubenka as foreman of the LeClair Irrigation District.

5. Defendants Ray Blumenshine, Terry L. Betts and Mike McDonald ("Blumenshine, Betts and McDonald") are officers and agents of LeClair, responsible for the acts of both LeClair and Hubenka.

6. The acts complained of herein occurred on tribal lands, on property held in trust for the benefit of the Tribes by the United States, or caused damage to such lands.

7. LeClair, along with its employees and officers, maintains contracts with tribal representatives for delivery of irrigation water within the Wind River Indian Reservation.

8. The acts complained of herein constitute a serious threat to the political integrity and general welfare of NAT.

Facts Common to All Causes of Action

9. At some point in 1999, perhaps earlier, Hubenka, acting within the course and scope of his employment with LeClair and in furtherance of the interests of LeClair, began manipulating the streambed of the Big Wind River (the "River") by adding fill material and moving earth.

10. Hubenka, and/or persons acting on his behalf and under his direction, used mechanized equipment to add fill material and move earth for the purpose of altering the channel and streambed of the River.

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11. The actions described in the two preceding paragraphs were performed with the purpose of diverting the waters of the River in an unnatural manner onto tribal lands lying south of the River.

12. On September 20, 2004, the United States charged Hubenka in the U.S. District Court for the District of Wyoming with three criminal counts under the Clean Water Act, and of knowingly discharging dredged and fill material into the River.

13. Hubenka's criminal case was tried to a jury between September 21-28, 2004.

14. Hubenka was found guilty of all three counts.

15. Hubenka's conviction was upheld by the U.S. Court of Appeals Tenth Circuit. See U.S. v. Hubenka, 438 F.3d 1026 (10th Cir. 2006).

16. As part of Hubenka's criminal sentence, he was ordered to remove the dikes that he had constructed from the River and restore the damage caused to the River.

17. Hubenka has never accomplished this task.

18. Hubenka's dikes and other constructions continue to impede the natural flow of the River and constitute a continuing trespass on tribal lands.

19. Hubenka's dikes and other constructions have diverted the flow of the River onto tribal lands – a circumstance which represents a continuing trespass on tribal lands.

20. Hubenka's dikes and other constructions caused serious harm and continue to cause harm to the terrestrial ecology of tribal lands and the aquatic habitat of tribal lands.

21. Hubenka's actions damaged and continue to damage riparian vegetation.

22. Hubenka's actions damaged and continue to damage a spring creek arising on lands adjacent to the natural course of the River.

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23. Hubenka's actions were done without approval of NAT, in blatant disregard of the rights and authority of NAT and have infringed on the sovereign rights of NAT.

24. Hubenka's actions were conducted with the purpose of taking land from NAT, depriving NAT tribal members of access to lands along the River, and destroying property rights with unique economic, recreational and religious significance to NAT and its tribal members.

Claim I. Trespass (against all Defendants)

25. NAT incorporates paragraphs 1-24 of its complaint as if fully stated herein.

26. Hubenka's invasion and use of tribal lands, and unnatural diversion of the waters of the River onto tribal lands, is an unauthorized violation of NAT's rights of ownership.

27. Hubenka's conduct was and is intentional.

28. Hubenka's actions were performed in the course and scope of his employment with LeClair and in furtherance of the interests of LeClair.

29. Hubenka's actions were conducted under the supervision of the president, vice president and secretary/treasurer of LeClair.

30. As a direct result of Hubenka's actions and conduct as stated above, NAT has suffered damages.

31. At the time of the actions and conduct complained of, Defendants had an obligation to respect the property rights of NAT and to abide by the laws of the Shoshone and Arapaho Tribes.

32. NAT is entitled to damages in amounts to be established at trial.

Claim II. Negligence (against all Defendants)

33. NAT incorporates paragraphs 1-32 of its complaint as if fully stated herein.

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34. Defendants had a duty to refrain from unreasonable conduct that would damage the River, the riparian ecology of the River, and the property rights of NAT.

35. Defendants' conduct constitutes a breach of that duty.

36. As a result of Defendants' breach of this duty, NAT has suffered harm.

37. Negligent conduct by Defendants was an actual cause, a proximate cause, and a foreseeable cause of the harm suffered by NAT.

38. The harm caused by this negligent conduct of Defendants is continuing and will continue until the dikes and other constructions are removed from the River, and the River and surrounding riparian environment are restored.

39. As a result of this negligent conduct, NAT is entitled to damages in amounts to be established at trial.

Claim III. Negligent Supervision (against Defendants
LeClair, Blumenshine, Betts and McDonald)

40. NAT incorporates paragraphs 1-39 of its complaint as if fully stated herein.

41. LeClair, Blumenshine, Betts and McDonald had a duty to supervise Hubenka to ensure that he caused no harm to the River, riparian habitat, adjacent property or to NAT during the course and scope of his employment with LeClair.

42. LeClair, Blumenshine, Betts and McDonald breached this duty by allowing Hubenka to build and maintain dikes and other constructions in the course of his employment with LeClair.

43. As a result, NAT was harmed and suffered damages.

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44. The harm caused by this negligent conduct of Defendants is continuing and will continue until the dikes and other constructions are removed from the River, and the River and surrounding riparian environment are restored.

45. The negligent supervision of Hubenka by LeClair, Blumenshine, Betts and McDonald was an actual cause, a proximate cause, and a foreseeable cause of the harm and damage suffered by NAT.

46. As a result of the negligent supervision of LeClair, Blumenshine, Betts and McDonald, NAT is entitled to damages in amounts to be established at trial.

Claim IV. Nuisance (against all Defendants)

47. NAT incorporates paragraphs 1-46 of its complaint as if fully stated herein.

48. Defendants' conduct as described herein creates a nuisance.

49. Defendants' conduct has substantially interfered with the right of NAT and its tribal members to make use of and enjoy tribal property damaged by Defendants' conduct.

50. Such interference is unreasonable, is ongoing, and constitutes a continuing harm.

51. As a result of Defendants' interference, NAT has suffered damages in amounts to be proven at trial.

Claim V. Vicarious Liability
(against Defendants LeClair, Blumenshine, Betts and McDonald)

52. NAT incorporates paragraphs 1-51 of its complaint as if fully stated herein.

53. Hubenka's conduct as alleged herein was performed in the course and scope of his employment with LeClair and under the supervision of the officers of LeClair as named herein, or their predecessors, and in furtherance of the interests of LeClair.

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54. As a result of Hubenka's conduct as described herein, LeClair, Blumenshine, Betts and McDonald are both directly and vicariously liable for the conduct of Hubenka.

Claim VI. Joint and Several Liability (as to all Defendants)

55. NAT incorporates paragraphs 1-54 of its complaint as if fully stated herein.

56. Each named Defendant is an agent or principal of every other Defendant.

57. Each named Defendant participated in the plan and project to wrongfully manipulate the River, or has been involved in the management of LeClair during the time when the harm from the illegal manipulation of the River has been ongoing.

58. Each named Defendant is jointly and severally liable for the tortious actions described herein.

WHEREFORE, Plaintiff Northern Arapaho Tribe prays for judgment against Defendants herein as follows:

A. For a declaration stating that each Defendant is liable for trespass, nuisance and negligence as set forth herein;

B. For a declaration stating that the conduct of Defendants as described was willful, wanton, shocking to the conscious, and carried out with blatant disregard to the rights of NAT;

C. For nominal damages in amounts to be established at trial;

D. For actual damages in amounts to be established at trial;

E. For compensatory damages and consequential damages, including damages in amounts that is adequate to accomplish a complete restoration of the Big Wind River, and to

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repair the harm to tribal lands and the riparian environment along the Big Wind River in amounts to be established at trial;

F. For compensatory damages to be trebled under applicable principles of law in amounts to be established at trial;

G. For exemplary and punitive damages in amounts to be established at trial;

H. For injunctive relief barring Defendants from entering tribal lands and/or manipulating the flow of the Big Wind River in any manner that unnaturally affects the Big Wind River or tribal lands;

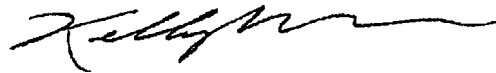
I. For the costs and disbursements of this action;

J. For attorney fees; and

K. For such other and further relief and damages as the Court deems proper.

DATED this 18th day of November, 2010.

Respectfully submitted,



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SHOSHONE AND ARAPAHOE TRIBAL COURT
WIND RIVER INDIAN RESERVATION
FORT WASHAKIE, WYOMING

NORTHERN ARAPAHO TRIBE)	
and EASTERN SHOSHONE TRIBE,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. CV-10-0080
)	
JOHN HUBENKA; LeCLAIR IRRIGATION)	
DISTRICT; RAY BLUMENSHINE, President,)	
LeClair Irrigation District; TERRY L. BETTS,)	
Vice President, LeClair Irrigation District; and)	
MIKE McDONALD, Secretary/Treasurer,)	
LeClair Irrigation District,)	
)	
Defendants.)	

MOTION TO CONSOLIDATE CASES

COMES NOW the Plaintiff and respectfully moves the Court for its Order consolidating the case of Northern Arapaho Tribe v. Star Trucking, Corporation into this case for all purposes permitted under the Law and Order Code of the Shoshone and Arapaho Tribes and Rule 42 F.R.Civ.P. In support whereof, Plaintiffs shows the following:

1. Plaintiff is a party to this action and another civil action pending in this Court alleging claims and causes of action seeking recovery for Trespass, Negligence, Negligent Supervision, Nuisance, Vicarious Liability and Joint and Several Liability for manipulating the flow of the Big Wind River. That action was filed November 18, 2010.
2. Plaintiff commenced a civil action against Star Trucking Corporation in this Court on August 25, 2011. The case against Star Trucking Corporation bears docket number CV-11-0075.

In this case, Plaintiff also alleges claims and causes of action seeking recovery for Trespass, Negligence, Nuisance and Joint and Several Liability.

3. The cases involve common questions of law and fact and should be consolidated to avoid unnecessary costs, delay and potentially inconsistent verdicts at trial.

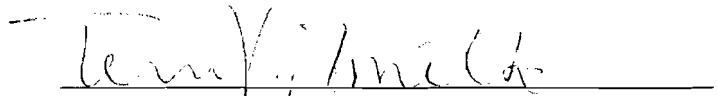
4. Counsel for Star Trucking Corporation does not object to consolidation and acknowledges that the consolidation will avoid unnecessary costs, delay and the potential for inconsistent verdicts at trial.

WHEREFORE, Plaintiff prays for an Order of this Court consolidating Cause Number CV-11-0075 (NAT v. Star Trucking) with Cause Number CV-10-0080 (NAT, EST v. Hubenka, LeClair) and designated under the title of Northern Arapaho Tribe and Eastern Shoshone Tribe v. JOHN HUBENKA; LeCLAIR IRRIGATION DISTRICT; RAY BLUMENSHINE, President LeClair Irrigation District; TERRY L. BETTS, Vice President, LeClair Irrigation District; and MIKE McDONALD, Secretary/Treasurer, LeClair Irrigation District, AND Star Trucking, Corporation, Cause Number CV-10-0080, CONSOLIDATED.

A draft Order is provided herewith.

DATED this 26th day of October, 2011.

Respectfully submitted,



Andrew W. Baldwin
Berthenia S. Crocker
Kelly A. Rudd
Terri V. Smith
Baldwin, Crocker & Rudd, P.C.

Attorneys for Northern Arapaho Tribe
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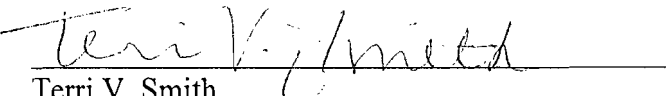
CERTIFICATE OF SERVICE

The undersigned hereby certifies the foregoing *Motion to Consolidate Cases* was served upon the parties herein by depositing a true and correct copy of the same in the U.S. mail, postage prepaid, this 26th day of October, 2011, addressed as follows:

Daniel B. Frank
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William L. Miller
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710 North 8th West
Riverton, WY 82501


Terri V. Smith

SHOSHONE AND ARAPAHOE TRIBAL COURT
SHOSHONE AND ARAPAHOE TRIBES
WIND RIVER INDIAN RESERVATION
FORT WASHAKIE, WYOMING

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

DEC 02 2011

Stephan Harris, Clerk
Cheyenne

NORTHERN ARAPAHOE TRIBE,

Plaintiff,

vs.

Case No. CV-11-0075

STAR TRUCKING, CORPORATION,
a Wyoming corporation,

Defendant.

vs.

JOHN HUBENKA and
LeClair Irrigation District,
Third Party Defendants.

OCT 18 2011

THIRD PARTY COMPLAINT

COMES NOW, the Defendant /Third Party, Plaintiff Star Trucking Corporation, a Wyoming Corporation, hereinafter referred to as "Star", and for its third party complaint against the above named third party defendants states as follows:

1. Star is a Wyoming Corporation with its principle place of business in Fremont County, Wyoming.
2. The Third Party Defendant John Hubenka hereinafter referred to as "Hubenka", is an individual residing near Riverton, Fremont County, Wyoming.
3. On or about August 25, 2011, the Plaintiff, Northern Arapahoe Tribe hereinafter known as "NAT", filed a Complaint against the Defendant Star, a copy which is attached hereto as exhibit "C" and incorporated herein by this reference.
4. At all times relevant to this matter and at all times set out in the "NAT" complaint, Third Party Defendant Hubenka was an agent /employee of Third Party Defendant LeClair Irrigation District, hereinafter "LeClair" a private irrigation

district organized under Wyoming law with its principle place of business in
Riverton, Fremont County, Wyoming.

5. Third Party Defendant Hubenka is and was acting within the scope of his employment in the furtherance of LeClair Irrigation District's interest at all material times pertinent to this action.
6. Third party Defendants Hubenka and LeClair controlled and directed the activities of Star that occurred on real property and upon property owned by the Plaintiff.
7. All the acts of Star complained of in the Complaint were pursuant to the instruction and at the direction of the Third Party Defendants.
8. If any of the acts and omissions of Star alleged by the Plaintiff "NAT" constitute negligence and was the approximate cause of any resulting damages and injuries sustained by the Plaintiff in this case, then the Third Party Defendant's have the obligation jointly and severally to defend and indemnify Star from all claims.
9. In the event any of the acts of Star constitute trespass or nuisance Star is entitled to recover any damages including attorney fees from the judgment which may be entered against it in this matter from Hubenka and LeClair jointly and severally.
10. In the event of a judgment for "NAT" against Star, Star is entitled to judgment against the third party defendants, jointly and severally for the full amount of the damages awarded to plaintiff and its costs of defending this action including attorney fees.

WHEREFORE Star, Defendant / Third Party Defendant prays that it be awarded judgment against the third party Defendants jointly and severally for any judgments that may be rendered against it in this matter, for its costs and attorney fees in defending this action and such further relief as this court deems proper.

DATED this 17th day of October, 2011.

STAR TRUCKING CORPORATION,
a Wyoming Corporation.

By.

William L. Miller

WILLIAM L. MILLER 5-1640

Miller and Fasse, P.C.

710 North 8th West

Riverton, Wyoming 82501

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(307) 856-4284 fax

CERTIFICATE OF SERVICE

I, William L. Miller, hereby certify that on the 17th day of October, 2011, I served the within **THIRD PARTY COMPLAINT** upon the attorney for the Plaintiff by placing a full, true and correct copy thereof, postage prepaid, in the U.S. Mails, addressed as follows:

Andrew W. Baldwin

Berthenia S. Crocker

Kelly A. Rudd

Terri V. Smith

Baldwin & Crocker, & Rudd P.C.

P O. Box 1229

Lander, WY 82520-1229

☒ U.S. Mail, Postage Prepaid

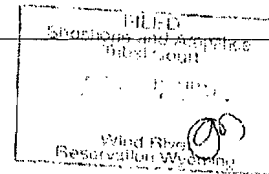
☐ Federal Express

☐ Fax

☐ Hand Delivery

William L. Miller
WILLIAM L. MILLER

SHOSHONE AND ARAPAHOE TRIBAL COURT
WIND RIVER INDIAN RESERVATION
FORT WYOMING, WYOMING



NORTHERN ARAPAHO TRIBE,

Plaintiff,

v.

STAR TRUCKING CORPORATION,
a Wyoming corporation,

Defendant.

Civil Action No. CV-11-0075

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

DEC 02 2011

Stephan Harris, Clerk
Cheyenne

COMPLAINT OF NORTHERN ARAPAHO TRIBE

COMES NOW the Plaintiff, Northern Arapaho Tribe ("NAT"), for its complaint against the above-named Defendant and states as follows:

Jurisdiction

1. NAT is a federally recognized Indian Tribe of the Wind River Indian Reservation.
2. Defendant Star Trucking Corporation ("Star Trucking") is a corporation that unlawfully entered tribal lands and manipulated the flow of the Big Wind River (the "River"), causing damage to tribal property, at the direction of John Hubenka ("Hubenka") acting in his capacity as foreman for the LeClair Irrigation District ("LeClair").
3. Curtis Neal ("Neal"), an agent employee, and equipment operator for Star Trucking, used a bulldozer to build the illegal dikes at issue in this case.
4. Neal and Star Trucking were directed to build dikes in the River by LeClair and Hubenka.



5. The acts complained of herein occurred on tribal lands, on property held in trust for the benefit of the Northern Arapaho and Eastern Shoshone Tribes by the United States, or caused damage to such lands.

6. The acts complained of herein constitute a serious threat to the political integrity and general welfare of NAT.

Facts Common to All Causes of Action

7. At some point in 2000, perhaps earlier, Hubenka and LeClair began manipulating the streambed of the River by adding fill material and moving earth with equipment provided and operated by Star Trucking and/or its employees.

8. Star Trucking, and/or persons acting on their behalf and under Hubenka and LeClair's direction, used mechanized equipment to add fill material and move earth for the purpose of altering the channel and streambed of the River.

9. The actions described in the two preceding paragraphs were performed with the purpose of diverting the waters of the River in an unnatural manner onto tribal lands lying south of the River.

10. On September 20, 2004, the United States charged Hubenka in the U.S. District Court for the District of Wyoming with three criminal counts under the Clean Water Act, and of knowingly discharging dredged and fill material into the River.

11. Neal testified that he has been an employee of Star Trucking for twenty-seven years. Hubenka Transcr. 121:3-6 (Sep. 22, 2004).

12. Neal testified that he was sent by Star Trucking to do some cat work on the River. Hubenka Transcr. 123:6-11 (Sep. 22, 2004).

13. Neal testified that he built the dikes that diverted the River under direction of

Hubenka. Hubenka Transer, 124:2-5 (Sep. 22, 2004).

14. Hubenka's criminal case was tried to a jury between September 21-28, 2004.

15. Hubenka was found guilty of all three counts.

16. Hubenka's conviction was upheld by the U.S. Court of Appeals Tenth Circuit.

See U.S. v. Hubenka, 438 F.3d 1026 (10th Cir. 2006).

17. As part of Hubenka's criminal sentence, he was ordered to remove the dikes that he directed Star Trucking to construct from the River and restore the damage caused to the River.

18. Hubenka has never accomplished this task.

19. The dikes, constructed by Star Trucking, continue to impede the natural flow of the River and constitute a continuing trespass on tribal lands.

20. The dikes, constructed by Star Trucking, have diverted the flow of the River onto tribal lands -- a circumstance which represents a continuing trespass on tribal lands.

21. The dikes, constructed by Star Trucking, caused serious harm and continue to cause harm to the terrestrial ecology of tribal lands and the aquatic habitat of tribal lands.

22. The dikes, constructed by Star Trucking, damaged and continue to damage riparian vegetation.

23. The dikes, constructed by Star Trucking, damaged and continue to damage a spring creek arising on lands adjacent to the natural course of the River.

24. The construction of the dikes was done without approval of NAT, in blatant disregard of the rights and authority of NAT and have infringed on the sovereign rights of NAT.

25. The construction of the dikes was conducted with the purpose of taking land from NAT, depriving NAT tribal members of access to lands along the River, and destroying property rights with unique economic, recreational and religious significance to NAT and its tribal members.

Claim I. Trespass

26. NAT incorporates paragraphs 1-25 of its complaint as if fully stated herein.

27. Star Trucking's construction of the dikes invaded tribal lands, and unnaturally diverted the waters of the River onto tribal lands, and is an unauthorized violation of NAT's rights of ownership.

28. Hubenka's conduct, authorizing the dikes to be constructed by Star Trucking, was and is intentional.

29. Hubenka's actions were performed with the equipment and help of Star Trucking and/or its employees.

30. As a direct result of Hubenka and LeClair's actions and Star Trucking's construction of the dikes as stated above, NAT has suffered damages.

31. At the time of the actions and conduct complained of, Star Trucking had an obligation to respect the property rights of NAT and to abide by the laws of the Shoshone and Arapaho Tribes.

32. NAT is entitled to damages in amounts to be established at trial.

Claim II. Negligence

33. NAT incorporates paragraphs 1-32 of its complaint as if fully stated herein.

34. Star Trucking had a duty to refrain from unreasonable conduct that would damage

the River, the riparian ecology of the River, and the property rights of NAT.

35. Star Trucking's conduct constitutes a breach of that duty.

36. As a result of Star Trucking's breach of this duty, NAT has suffered harm.

37. Negligent conduct by Star Trucking was an actual cause, a proximate cause, and a foreseeable cause of the harm suffered by NAT.

38. The harm caused by this negligent conduct of Star Trucking is continuing and will continue until the dikes and other constructions are removed from the River, and the River and surrounding riparian environment are restored.

39. As a result of this negligent conduct, NAT is entitled to damages in amounts to be established at trial.

Claim III. Nuisance

40. NAT incorporates paragraphs 1-39 of its complaint as if fully stated herein.

41. Star Trucking's conduct as described herein creates a nuisance.

42. Star Trucking's conduct has substantially interfered with the right of NAT and its tribal members to make use of and enjoy tribal property damaged by Star Trucking's conduct.

43. Such interference is unreasonable, is ongoing, and constitutes a continuing harm.

44. As a result of Star Trucking's interference, NAT has suffered damages in amounts to be proven at trial.

Claim IV. Joint and Several Liability

45. NAT incorporates paragraphs 1-44 of its complaint as if fully stated herein.

46. Star Trucking participated with LeClair and Hubenka in the plan and project to wrongfully manipulate the River.

47. Star Trucking is jointly and severally liable with LeClair and Hubenka for the tortious actions described herein.

WHEREFORE, Plaintiff Northern Arapaho Tribe prays for judgment against Star Trucking herein as follows:

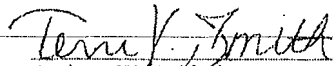
- A. For a declaration stating that Star Trucking is liable for trespass, nuisance and negligence as set forth herein;
- B. For a declaration stating that the conduct of Star Trucking as described was willful, wanton, shocking to the conscious, and carried out with blatant disregard to the rights of NAT;
- C. For nominal damages in amounts to be established at trial;
- D. For actual damages in amounts to be established at trial;
- E. For compensatory damages and consequential damages, including damages in amounts that are adequate to accomplish a complete restoration of the Big Wind River, and to repair the harm to tribal lands and the riparian environment along the Big Wind River in amounts to be established at trial;
- F. For compensatory damages to be trebled under applicable principles of law in amounts to be established at trial;
- G. For exemplary and punitive damages in amounts to be established at trial;
- H. For injunctive relief barring Star Trucking from entering tribal lands and/or manipulating the flow of the Big Wind River in any manner that unnaturally affects the Big Wind River or tribal lands;
- I. For the costs and disbursements of this action;

J. For attorney fees; and

K. For such other and further relief and damages as the Court deems proper.

DATED this 24th day of August, 2011.

Respectfully submitted,



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