

RYAN J. MCELHINNEY, ESQ  
NV #12039  
935 Jones St.  
Reno, NV 89503  
Tel: 775-741-7502  
Fax: 775-313-9604  
Attorney for Intervening Defendant WILLIAM BILLS

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

WINNEMUCCA INDIAN COLONY,  
THOMAS R. WASSON,  
  
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  
BUREAU OF INDIAN AFFAIRS,  
  
Defendants.

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

**WILLIAM BILLS'S OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
TEMPORARY RESTRAINING  
ORDER AND MANDATORY  
INJUNCTION**

**Certification**

In accordance with Local Court Rule ("LCR") 12-1(c), this Opposition is timely  
filed.

///

1 COMES NOW, intervening Defendant WILLIAM BILLS, Chairman of the  
2 Winnemucca Indian Colony, in opposition to the Plaintiffs' Motion for Temporary  
3 Restraining Order and Permanent Injunction. This Opposition is based upon the  
4 following Memorandum of Points and Authorities, all pleadings and papers on file in this  
5 action and any oral arguments this Court may deem necessary and proper.

6 Introduction

7 In compliance with this Court's Order of July 9, 2012 (*Order and Injunction*, pg.  
8 13 at 22, ECF No. 105) the Bureau of Indian Affairs ("BIA") designated intervening  
9 Defendant William Bills as interim Chairman of the Winnemucca Indian Colony  
10 ("WIC") (see *Defendant's Notice of Compliance With Court's Order*, pg. 3, ECF No.  
11 110). Said designation was conditioned on performance of several essential Tribal  
12 Government actions of limited scope. These activities include, but are not limited to  
13 appointment of an interim Tribal Council followed by organization and implementation  
14 of Tribal Elections pursuant to Tribal Law.

15 In reasonable reliance on this Court's Order, as well as the subsequent decision by  
16 the BIA, Mr. Bills has taken immediate steps to begin legitimate rehabilitation of the  
17 Colony – steps that are well within the scope delineated by the BIA, and therefore in  
18 compliance with this Court's Order.

19 The Plaintiff has filed a motion for temporary restraining order and preliminary  
20 injunction ("TRO") challenging the decision of the BIA, and by default, undermining the  
21 mandate of this Court. The Plaintiff alleges further, as he has for over a decade, that Mr.  
22 Bills is ". . .not a Native American" (see *Pl's TRO*, pg. 2 at 3, ECF No. 114). It is only at  
23 this late stage that the Plaintiff alleges irreparable and immediate harm described as, ". . .  
24 losing the Colony to a non Native American. . ." *Id.*, pg. 8 at 24-25. In addition, it has  
25 been stated erroneously by the Plaintiff that Chairman Bills does not reside on the  
26  
27  
28

1 Colony, and this fact will negatively affect his ability to conduct the Tribal business as  
2 delineated by the BIA. Chairman Bills does in fact maintain a WIC address (see *Def.'s*  
3 *Exh. 3*)

4 The Plaintiff's Points and Authorities are not properly grounded in law, and serve  
5 only inflammatory purposes. Moreover, the filing of the present TRO is tantamount to  
6 interference with a sovereign nation. Intervening Defendant William Bills respectfully  
7 requests that this court DENY the present Motion for TRO.

#### 8 Background

9 William Bills is the legally adopted son of Ermon Bills who himself is a  
10 descendent of persons whose names appear on the Dec. 9<sup>th</sup>, 1916 census. As will be  
11 shown, the WIC Constitution and By-laws expressly contemplate and allow for  
12 adoptions. According to the law in the State of Nevada adopted children enjoy the same  
13 rights and privileges as would a naturally born child of the same parent.

14 Mr. Bills filed his Motion for Intervention on March 9, 2012 (ECF Doc. No. 69)  
15 with timely Opposition filed by the Plaintiff on March 27, 2012 (ECF Doc. No. 78).  
16 This Court granted Mr. Bills's Intervention by Its Order dated July 9, 2012 (ECF Doc.  
17 No. 105). In addition to granting the Intervention, the Court preliminarily enjoined  
18 Defendant BIA to "...recognize one or more Council members as the government of the  
19 Winnemucca Indian Colony." (*Id.*, pg. 13 at 22-24).

20 In accordance with this Court's ruling, the BIA filed its Notice of Compliance  
21 With Court's Order (ECF No. 110) in which BIA Regional Director Bryan Bowker  
22 named William Bills as the interim representative of the WIC. (*Id.*, pg. 3 at ¶ 3). Notice  
23 of Entry of Order was filed on July 19, 2012 (ECF No. 119). Immediately after the BIA's  
24  
25  
26  
27  
28

1 decision was on file, Mr. Bills acted to take on the tasks assigned to him as interim  
2 Chairman.<sup>1</sup>

3 Dissatisfied with the decision, the Plaintiff filed the present TRO alleging *inter*  
4 *alia* that the designation of Mr. Bills as Chairman is arbitrary and capricious, inconsistent  
5 with Tribal Court Rulings and that Mr. Bills is “. . .not Native American.” *Pl.’s TRO*,  
6 pg. 2 at 15-20, ECF No. 114. The Plaintiff continues to represent himself as the  
7 Chairman of the WIC. The ultimate effect of his ongoing stall tactics is to impede the  
8 rightful and long overdue resurrection of the WIC, which is currently being spearheaded  
9 by Mr. Bills under direction by this Court and the BIA.

### 10 Legal Standard

11 The 9<sup>th</sup> Circuit has held that the legal standard for TROs and preliminary  
12 injunctions are not distinct, but rather “. . .two extremes of a single continuum.”  
13 *Bernhardt v. Los Angeles County*, 339 F.3d 920, 925 (9<sup>th</sup> Cir. 2003) (quoting *Immigrant*  
14 *Assistance Project of the L.A. County Fed’n of Labor (AFL-CIO) v. INS*, 306 F.3d 842,  
15 873 (9<sup>th</sup> Cir. 2002)).

16 To prevail on either a TRO or a preliminary injunction, the movant must  
17 demonstrate 1) likelihood of success on the merits, 2) likelihood of irreparable harm in  
18 the absence of preliminary relief, 3) that the balance of equities tips in his favor and 4)  
19 that the injunction is in the public interest. *Winter v. NRDC*, 129 S. Ct. 365, 374-76  
20 (2008). Moreover, as frequently reiterated by the United States Supreme Court, the  
21 movant must demonstrate that irreparable injury is *likely* in the absence of an injunction.  
22 *Id.* at 375. See also *Arcamuzi v. Continental Air Lines, Inc.*, 819 F.2d 935, 937 (9<sup>th</sup> Cir.

---

24  
25 <sup>1</sup> The BIA has since filed its own Opposition (ECF No. 120), attached to which is a declaration by Mr.  
26 Bowker which patently conflicts with his prior designation (ECF No. 110). Given the urgent  
circumstances, Mr. Bills acted immediately in reasonable reliance on the instructions from the initial  
designation.

1 1987) (“However, in any case the movant must demonstrate a significant threat of  
 2 irreparable injury”). The Federal Rules of Civil Procedure additionally require  
 3 “immediate and irreparable injury” to justify the issuance of a TRO. Fed. R. Civ. Pro.  
 4 65(b)(1)(A).

5 A TRO is an extreme remedy and “. . .under federal law should be restricted to  
 6 serving their underlying purpose of preserving the status quo and preventing irreparable  
 7 harm” *Granny Goose Foods, Inc. v. Brotherhood of Teamsters Auto Truck Drivers*  
 8 *Local No 70 of Alameda County 8212 1566*, 415 U.S. 423 (1974).

### 9 Argument

#### 10 **I. Plaintiff fails to satisfy the standard set forth in *Winters***

##### 11 **A. Plaintiff is unlikely to succeed on the merits - Sovereign Immunity**

12 The Plaintiff is not likely to succeed on the merits because, as interim Chairman  
 13 of the WIC, William Bills is shielded from suit and court proceedings by sovereign  
 14 immunity. The Plaintiff’s TRO is no less than court action against a sovereign nation.<sup>2</sup>

##### 15 **1. Interim Chairman Bills is the only recognized representative of the WIC**

16 Absent Congressional authorization, or Tribal waiver, as a federally recognized  
 17 tribe the WIC is immune from lawsuits or court processes in both Federal and State  
 18 Courts. The United States Supreme Court has declared sovereign immunity to be a “. . .  
 19 necessary corollary to Indian sovereignty and self-governance.” Cohen’s Handbook of  
 20 Federal Indian Law §7.05 at pg. 635 (Nell Jessup Newton ed., 2005) (hereinafter,  
 21 Cohen’s Handbook), quoting: *Kiowa Tribe v. Mfg. Technologies, Inc.*, 523 U.S. 751,  
 22 754 (1998); *Three Affiliated Tribes of the Ft. Berthold Reservation v. Wold Eng’g, P.C.*,

---

25 <sup>2</sup> Using identical reasoning, the BIA is protected by Federal Sovereign Immunity in this instance as well.  
 26 Such protection is additional grounds to support the fact that the Plaintiff is unlikely to succeed on the  
 27 merits here.

1 476 U.S. 877, 890 (1986)). Tribal immunity applies to suits for damages as well as those  
 2 for declaratory and injunctive relief. Cohen's Handbook §7.05 at pg. 636.

3 In the narrow procedural context of the Plaintiff's TRO, this has become a suit  
 4 for injunctive relief against a sovereign nation. Mr. Bills should have been shielded by  
 5 sovereign immunity beginning on the day he was named interim Chairman.

6 If this Court finds that Chairman Bills does not possess direct sovereign  
 7 immunity as the only recognized representative of the WIC, then in the alternative it is  
 8 submitted to this Court that Chairman Bills is an "arm," or logical extension of the Tribe  
 9 that is protected by sovereign immunity in exactly the same manner as the Tribe itself.

## 10 **2. Interim Chairman Bills qualifies as an "arm" of the Tribe**

11 A tribe's sovereign immunity extends to entities that can be considered "arms," or  
 12 logical extensions of the Tribe. Such entities are not treated any differently in terms of  
 13 jurisdiction. *Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth.*, 207  
 14 F.3d 21, 27 (1<sup>st</sup> Cir. 2000) ("We see no reason why [an arm of the tribe] should be  
 15 treated any differently for jurisdictional purposes.") (tribal housing authority held as arm  
 16 of tribe)). See also, *Hagen v. Sisseton-Wahpeton Cmty. Coll.*, 205 F.3d 1040, 1043 (8<sup>th</sup>  
 17 Cir. 2000) (Tribal Community College held to be an arm of the Tribe)); *Worrall v.*  
 18 *Mashantucket Pequot Gaming Enter.*, 131 F. Supp. 2d 328, 331 (D. Conn. 2001) and  
 19 *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046-47 (9<sup>th</sup> Cir. 2006) (tribal casino held  
 20 as arm of the tribe). So long as a given entity was not separately incorporated under  
 21 federal, state, or tribal law, said entity is an arm of the tribe and is afforded equal  
 22 protections under the tribe's sovereign immunity. *Worrall*, F.3d 1040, 1043.

23 Here, Mr. Bills was named Chairman of an interim government by the BIA. This  
 24 interim government, a product of this Court's Order and the BIA's designation, must at  
 25 the least be an arm of the Tribe itself: as stated, the interim designations are the only  
 26  
 27  
 28

1 legally recognized entities associated with the WIC. It is reasonable to conclude that as  
2 such, Chairman Bills must be protected by sovereign immunity. Even in his limited  
3 capacity, Chairman Bills represents the will of the Tribe and therefore his actions are  
4 protected by sovereign immunity.

5 If the Court finds that the interim government is not an arm of the WIC then in  
6 the alternative it is submitted that Chairman Bills is a Tribal Official acting within the  
7 scope of his authority.

8 **3. Interim Chairman Bills is a WIC Tribal Official acting within the scope of**  
9 **authority**

10 Tribal officials enjoy sovereign immunity when acting within the scope of  
11 authority, and this protection is undercut only by a plaintiff's provable allegations that the  
12 defendants ". . . acted without any colorable claim of authority." *Chayoon v. Sherlock*,  
13 877 A.2d 4, 10 (Conn. Ct. App. 2005). Unless surrendered by the tribe, or abrogated by  
14 Congress, tribes possess inherent and exclusive power over matters of internal tribal  
15 governance. Cohen's Handbook §4.06(1)(b) at pg. 289 (citing to *Goodface v. Grassrope*,  
16 708 F.2d 335, 339 (8<sup>th</sup> Cir 1983)). "When a tribe conducts elections . . . it engages in a  
17 core governmental function related to internal tribal affairs. In general, the government  
18 lacks authority to interfere in these matters." Cohen's Handbook §4.06(1)(b) at pg. 289  
19 (citing to *Wheeler v. U.S. Dep't of Int.*, 811 F.2d 549, 550-2 (10<sup>th</sup> Cir 1987)).

20 Chairman Bills is not simply a WIC Tribal Official: he is the only WIC Tribal  
21 Official. Incorporated within the BIA's designation were explicit terms for the scope of  
22 interim Chairman Bills's authority to act for the WIC's benefit. While the Plaintiff may  
23 argue that the designation is improper, he cannot say that Chairman Bills acted without  
24 any colorable claim of authority: his actions for the benefit of the Tribe were  
25 accomplished only via the BIA's designation, which was itself mandated by this Court.

1 At no time has Chairman Bills acted outside of these prescribed bounds. At no time has  
2 Chairman Bills attempted to exert control over WIC Tribal bank accounts, or any funds  
3 therein; nor has he made any attempts to wrongfully acquire WIC Tribal lands. It should  
4 be noted that Chairman Bills has made extensive inroads into rendering the WIC a self-  
5 sustaining sovereign nation which, if given the opportunity to flourish will serve as an  
6 exemplar for Native American communities nationwide (see *Def.'s Exhs. 1 & 2*).

7 To reiterate, the Plaintiff's TRO is no less than interference with the  
8 governmental affairs of a sovereign nation – governmental affairs that were authorized by  
9 this Court and the BIA.

#### 10 **4. There has been no waiver**

11 Several recent cases have addressed whether a given tribal agreement, or action  
12 constituted a waiver of sovereign immunity and all have required “. . . unambiguous  
13 waiver before finding the tribe was subject to suit.” Cohen's Handbook 2009 Supplement  
14 §7.05(c) at pg. 63-64. While none of these cases are factually on-point to the current  
15 matter, they are illustrative nonetheless: given that Chairman Bills has engaged  
16 exclusively in activities authorized under his interim status, none of those actions can  
17 constitute a waiver of the sovereign immunity that must have, by operation of law,  
18 shielded Mr. Bills from the day he was named Chairman.

19 Whether the interim government has sovereign immunity as the standing  
20 representatives of the WIC, or as an equally shielded derivative (“arm”) of the WIC, Mr.  
21 Bills is protected by this immunity. At the very least, sovereign immunity should apply  
22 here to protect Chairman Bills from having to respond to sham motions composed of  
23 unsupported and inflammatory rhetoric. Moreover, despite the Order of this Court and  
24 the subsequent decision by the BIA, there is a manifest power vacuum given the limited  
25 scope of authorization granted to Chairman Bills. This may give occasion for other  
26



1 factions to quietly attempt a coup d'état.<sup>3</sup> If these factions are able to establish that they  
 2 conducted Tribal business at any point subsequent to the BIA's designation it may give  
 3 them a colorable claim to leadership of the WIC (see *Rollins and Presbrey v. The United*  
 4 *States*, 23 Ct.Cl. 106 at \*15, 1800 WL 1389 (Ct.Cl.)). The Plaintiff's most recent TRO  
 5 has, intentionally or not, muddied waters initially made clear by this Court's Order  
 6 mandating that the BIA make its decision. Sovereign immunity must attach to the  
 7 interim government at this critical stage where the WIC could easily regress to its former  
 8 state of categorical disarray.

9 **B. Absence of irreparable and/or immediate harm - Adoption of William Bills**

10 The Plaintiff claims that the BIA's decision to name Mr. Bills as Chairman  
 11 constitutes immediate, likely and irreparable harm due to the fact that "... the Plaintiffs  
 12 will be losing the Colony to a non Native American . . ." *Pl.'s TRO*, pg. 8 at 25, ECF  
 13 No. 114.<sup>4</sup> As support for this fallacious assertion, the Plaintiff cites to Exhibit 8 attached  
 14 to his Motion for TRO.<sup>5</sup> Plaintiff's Exhibit 8 purports to be a deposition of Chairman  
 15 Bills from April 2, 2001 and is approximately 77 pages long. The Plaintiff fails to make  
 16 pinpoint citations to this document, which regardless of its intended effect, does little  
 17 more than impede the rightful and efficient resolution to this lawsuit.<sup>6</sup> The Plaintiff's  
 18 allegations as to Chairman Bills's eligibility are without merit.

19 \_\_\_\_\_  
 20 <sup>3</sup> Under information and belief, in the short span of time since the BIA issued its decision, the Ayers  
 21 faction has held meetings in which they hold themselves to be a Council of some sort. Moreover, Mr.  
 22 Wasson continues to represent that he speaks for the WIC.

23 <sup>4</sup> In light of the BIA's designation, there can be no argument that the Plaintiff does not represent the will  
 24 of the WIC and therefore his claim of harm to the Colony is lacking in foundation.

25 <sup>5</sup> It should be noted that attached to the Plaintiff's TRO are approximately 150pp of exhibits. Local Court  
 26 Rule ("LR") 10-3(b) requires that exhibits not exceed 100pp total. In the event that exhibits do exceed this  
 27 number, said exhibits shall be submitted in a separately bound appendix. To Mr. Bills' knowledge, no such  
 28 appendix has been provided.

<sup>6</sup> The lack of pinpoint citation seems endemic within the TRO, especially when in reference to the  
 Plaintiff's own exhibits. As another example, according to the Plaintiff's TRO there is strong evidence that

Additional pertinent facts here can be found in Mr. Bills's *Response to Opposition of Intervention* (ECF No. 79) attached hereto as *Exhibit 4*. However, there are several key facts that should be reiterated. William Bills is the adopted son of Ermon Bills (see *Def's Exh. 5*). Tribal law may prescribe the manner of descent and distribution of property of tribal members. Cohen's Handbook §401(2)(c) at ¶ 2 (quoting *Jones v. Meehan*, 175 U.S. 1, 29 (1899) and *United States ex. rel. Mackey v. Coxe*, 59 U.S. 100 (1856)). The WIC Constitution and By-laws expressly contemplate adoption (see *Def's Exh. 6*, Constitution and Bylaws of the Winnemucca Indian Colony, Art. II §3 pg. 2) (hereinafter "WIC Constitution"). While the by-laws are silent as to what ancillary rights accompany adoption into the Tribe, Nevada State Law is clear. Nevada Revised Statute ("NRS") 127.150 provides in relevant part:

"Upon the entry of an order of adoption, the child shall become the legal child of the persons adopting the child, and they shall become the child's legal parents with all the rights and duties between them of natural parents and legitimate child. By virtue of such adoption the child shall inherit from his or her adoptive parents or their relatives the same as though the child were the legitimate child of such parents, and in case of the death of the child intestate the adoptive parents and their relatives shall inherit the child's estate as if they had been the child's natural parents and relatives in fact. . ." NRS 127.150.<sup>7</sup>

Therefore, even assuming *ad arguendo* that Chairman Bills does not possess some quantum of Shoshone blood, he is a rightful member of the WIC by virtue of the fact that he is the properly adopted son of, ". . . a descendent of persons whose names appear on the Dec. 9<sup>th</sup>, 1916 census." WIC Constitution, Art. II §1, pg. 2. Given the legitimacy of the adoption at its inception, and the fact that it was accomplished within the purview

---

William Bills is not Native American. *Pl.'s TRO*, pg 8 at 15 (ECF No. 114). The Plaintiff then cites to the Affidavit of Treva J. Hearne (*Pl.'s Exh. 7*, ECF No. 114-7) as authority, but fails to include pinpoint citation. The cumulative effect of this practice is vexation and delay.

<sup>7</sup> The adoption in question took place in California; however, the law regarding adopted children in that state is substantially similar to Nevada. See California Probate Code §6450(b).

1 of the Sovereign Colony itself, the Plaintiff must recognize Mr. Bills's adoption into the  
2 Tribe.

3 While not directed at Chairman Bills, the Plaintiff further alleges additional  
4 irreparable harm in that the BIA's designation of Mr. Bills was arbitrary and capricious,  
5 and not in accordance with tribal rulings. Given past communications from the BIA  
6 (attached hereto as *Def.'s Exh. 7*), some of which predate the Minnesota Panel decision,  
7 it is clear that the BIA's intention for over a decade has been to name Mr. Bills as the  
8 Chairman for no other reason than deference to controlling Court decisions and WIC  
9 law. The designation should come as no surprise to the Plaintiffs as it is indeed in  
10 harmony with prior tribal rulings (see *Pl.'s Exh. 4, "The Minnesota Panel,"* pg. 16 at ¶ 2  
11 and 4-5; pg. 19 at 2, ECF No. 114-4).

12 **1. Laches should apply to Plaintiff's claim that Chairman Bills is not a**  
13 **legitimate member of the WIC, or qualified to serve as Chairman.**

14 In various adjudicative forums and for over a decade, the Plaintiff has claimed that  
15 Chairman Bills is not Native American and should be precluded from serving on the  
16 WIC Council. It is only now at the zero-hour that the Plaintiff alleges immediate,  
17 certain and irreparable harm via ". . . losing the Colony to a non Native." *Pl.'s TRO*, pg.  
18 8 at 25, ECF No. 114. According to the Minnesota Panel, the Plaintiff had opportunity  
19 to allege these matters, but failed to adequately do so (see *Minnesota Panel*, pg. 16 at ¶  
20 2).<sup>8</sup> In light of the present circumstances, the Plaintiff's delay in asserting said allegations  
21 is unreasonable.

22 Laches requires a two part showing: 1) lack of diligence by the party against  
23 whom the defense is asserted, and 2) prejudice to the party asserting the defense.

---

24  
25 <sup>8</sup> See also: 1) *Pl's Opp. to Intervention*, pg. 2 at 8-13, ECF No. 78; 2) *Pl's Amended Comp.*, pg. 6 at ¶ 14,  
26 ECF No. 56; 3) *Pl.'s Exh. 4, Minnesota Pannel*, pg. 5 at ¶ 3, , ECF No. 114-4; 4) *Pl.'s Exh. 8*, deposition  
of William Bills (April 2, 2001) (ECF No. 114-8).

Prejudice is evidenced by the fact that the party asserting laches has altered its behavior in reliance on plaintiff's inaction. *Lyon v. Gila River Indian Cmty.*, 626 F.3d 1059, 1077 (9<sup>th</sup> Cir 2010) (quoting: *United States v. Dang*, 488 F.3d 1135, 1144 (9<sup>th</sup> Cir 2007); *Wauchope v. U.S. Dep't of State*, 985 F.2d 1407, 1412 (9<sup>th</sup> Cir 1993)).

Here, we have two separate Defendants who have acted in reliance on the Plaintiff's failure to establish his allegations that Chairman Bills was a "non Native." As stated immediately above, the Plaintiff's lack of diligence in asserting this allegation has been on-going for over a decade. In the first instance, the BIA acted under Court Order and presumably issued its decision naming Chairman Bills in reliance on the Plaintiff being precluded from making further allegations challenging it, or Chairman Bills. Moreover, Chairman Bills has acted not only in reliance on the BIA's decision, but also by proxy, on the notion that the Plaintiff would not and could not challenge said decision.

In similar fashion, we have two separate Defendant's who are highly prejudiced by the present TRO. The BIA, having been ordered by this Court to issue a decision, is now forced to defend itself against a meritless TRO challenging that decision; and Mr. Bills, who from the moment he was named Chairman took action to reestablish the Colony Government, is forced to do the same to the detriment of the WIC's limited resources.

Therefore, as both the BIA and Chairman Bills have acted in reliance on the Plaintiff's decade long inaction and sufficient prejudicial effect exists, the Plaintiff should be estopped from asserting the claim that Chairman Bills is "non Native" in any legal context due to his lack of diligence and unreasonable delay.

### **C. Proper ascension to Chairman – balance of equities tips in favor of Defendants**

According to the findings of the Minnesota Panel, William Bills rightfully ascended to the position of Chairman following the death of Glenn Wasson. *The*

1 *Minnesota Panel*, pg. 9 at ¶ 5. Moreover, the Panel found that the alleged removal of  
 2 then Vice-Chairman Bills was defective for lack of due process and was therefore  
 3 ineffective. *Id.* at pg. 10 ¶ 1. The Plaintiff continues to mischaracterize this fact and the  
 4 Minnesota Panel decision as a whole, and expressly avers to the fact that Mr. Bills was  
 5 never properly disenrolled pursuant to Tribal law (see *Pl.'s TRO*, pg. 11 at 19-20,  
 6 f.n.#11, ECF No. 114). The Plaintiff further avers to the fact that the motivation behind  
 7 the attempted removal and disenrollment of Mr. Bills was his alleged "non native" status.  
 8 *Id.*

9 In light of the ruling of the Minnesota Panel coupled with the more recent, but  
 10 equally binding Order of this Court and designation by the BIA, the balance of equities  
 11 tips in favor of upholding said rulings, and *ergo*, in favor of Chairman Bills.

12 **D. Allowing Chairman Bills to continue with his efforts preserves the status quo and is**  
 13 **in the public interest**

14 Prior to Chairman Bills's designation the status quo on the WIC was chaos and  
 15 disarray. In the short span of time since he was authorized by the BIA to do so, William  
 16 Bills has done more to set the WIC on a path to self-sufficiency than had been  
 17 accomplished in the previous decade. An interim tribal council is in-place (see *Exh. 1*),  
 18 ready to organize and implement a legitimate tribal election as contemplated by the BIA's  
 19 decision. Allowing said decision to be challenged undermines the newly formed status  
 20 quo, and indeed undermines the Order of this Court.

21 **E. Plaintiff seeks equitable relief with unclean hands**

22 "Clean-Hands Doctrine: The principle that a party cannot seek equitable relief or  
 23 assert an equitable defense if that party has violated an equitable principle, such as good  
 24 faith." *Black's Law Dictionary*, 268 (Bryan A. Gardner ed., 8<sup>th</sup> ed., West 2007). The  
 25 application of the equitable doctrine of unclean hands is within the discretion of the trial  
 26  
 27  
 28

1 court and is reviewed for abuse of that discretion. *Seller Agency Council, Inc. v. Kennedy*  
 2 *Ctr. for Real Estate Educ., Inc.*, 621 F.3d 981, 986 (9<sup>th</sup> Cir. 2010) (quoting: *Trans*  
 3 *World Airlines, Inc. v. Am. Coupon Exch., Inc.*, 913 F.2d 676, 694 (9<sup>th</sup> Cir 1990)).

4 Here, the Plaintiff seeks declaratory and injunctive relief against both the BIA  
 5 and Chairman Bills. According to documents provided by the Bishop Tribal Council in  
 6 Stockton, California, the Plaintiff (and many within his Faction) currently have  
 7 membership applications pending with the Bishop Tribe. (see *Exhibit 8*). This is a  
 8 potential violation of the WIC Constitution and Bylaws which state that no person is  
 9 eligible for membership in the WIC if he has received land or money as a result of having  
 10 been enrolled as a member of some other tribe. *WIC Constitution*, Art. II §2.

11 Additionally, it can and will be argued that this is a breach of the good faith implicit in  
 12 this action. The Plaintiff cannot possibly expect to be named to any part of the WIC  
 13 interim government when it is clear that he is attempting to make inroads with other  
 14 tribes. This is highly disingenuous behavior and drastically undercuts the authenticity of  
 15 the Plaintiff's overall position.

## 16 **F. Conclusion**

17 Rather than continuing with this suit in pugilistic futility, Chairman Bills hopes  
 18 that the Court will allow the WIC to continue rebuilding itself under the leadership of a  
 19 duly elected Council.

20 Based on the foregoing analysis, intervening defendant WILLIAM BILLS  
 21 respectfully request that this Court DENY the Plaintiffs' Motion for TRO and  
 22 Preliminary Injunction.

23 Dated this 26<sup>th</sup> day of July, 2012.

24 Respectfully submitted,

25 /s/ Ryan J. McElhinney  
 26 RYAN J. MCELHINNEY, ESQ.

**Schedule of Exhibits**

**Exhibit 1:** Acceptance letters re: interim council appointment;

**Exhibit 2:** Conor Shine "Solar Energy Project Approved on Tribal Land near Las Vegas," Las Vegas Sun, June 21, 2012;

**Exhibit 3:** William Bills, proof of Winnemucca residency;

**Exhibit 4:** William Bills's *Reply in Support of Intervention*, ECF No. 79;

**Exhibit 5:** William Bills's adoption proceedings;

**Exhibit 6:** Constitution and Bylaws of the Winnemucca Indian Colony;

**Exhibit 7:** Department of Interior letters indicating William Bills is properly Chairman of the WIC.

**Exhibit 8:** Wasson, et al. dual enrolment (Bishop Tribe, Stockton, CA)

**CERTIFICATE OF SERVICE**

It is hereby certified that copies of the attached documents were filed and served via the Court's electronic filing and notice system on the persons hereinafter named, or as appropriate, by sending a copy of the same by first class mail to the following addresses which are the last known addresses of said persons.

Addressees:

TREVA J. HEARNE  
ROBERT R. HAGER  
Hager & Hearne Law Office  
245 E. Liberty St., Ste. 450  
Reno, NV 89501  
thearne@hagerhearnelaw.com

DANIEL G. BOGDEN, U.S. Attorney  
HOLLY A. VANCE, Asst. U.S. Attorney  
100 West Liberty St., Ste. 600  
Reno, NV 89501  
Holly.A.Vance@usdoj.gov

WES WILLIAMS, JR.  
Law Offices of Wes Williams, Jr.  
3119 Lake Pasture Rd.  
P.O. Box 100  
Schurz, NV 89427  
wwilliamslaw@gmail.com

/s/ Ryan J. McElhinney  
RYAN J. MCELHINNEY, ESQ.