

1 Treva J. Hearne, NV State Bar No. 4450
2 245 E. Liberty - Suite 110
3 Reno, Nevada 89501
4 Tel: (775) 329-5811
Fax: (775) 329-5819
Attorney for Winnemucca Indian Colony

5 **IN THE UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**
7

8 WINNEMUCCA INDIAN COLONY,
9 THOMAS R. WASSON, CHAIRMAN

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

10 Plaintiffs,

11 v.

**OPPOSITION TO MOTION FOR
RECONSIDERATION**

12
13 UNITED STATES OF AMERICA ex rel. THE
14 DEPARTMENT OF THE INTERIOR,
15 BUREAU OF INDIAN AFFAIRS,
16 WESTERN NEVADA AGENCY,
17 SUPERINTENDENT, THE EMPLOYEES,
18 CONTRACTOR AND AGENTS OF THE
19 WESTERN NEVADA AGENCY OF THE
BUREAU OF INDIAN AFFAIRS, LINDA
AYER, ALLEN AMBLER, JIM AYERS,
LAURA AMBLER and CHERYL
APPERSON-HILL

20 Defendants,

21 v.

22 LINDA AYER, ALLEN AMBLER, JIM
23 AYERS, LAURA AMBLER and CHERYL
24 APPERSON-HILL,

25 INTERVENORS

26
27 A motion for reconsideration under Rule 60(b) may be invoked
28 only upon a showing of “exceptional circumstances,” and a motion to alter or amend a
judgment under Rule 59(e) is reserved for “highly unusual circumstances.” Fed. R. Civ.

1 Proc. 60(b) & 59(e). The Ayer Group has failed to supply the Court with any newly
2 discovered evidence nor presented any argument warranting the extraordinary remedy
3 of reconsideration. See *Peoples v. Wells Fargo Bank*, No. 2:07-CV-01025-RCJ-PAL,
4 2008 WL 5050675, at *2 (D. Nev. Nov. 20, 2008, J. Robert C. Jones) (denying motion
5 for reconsideration where plaintiff failed to: present Court with newly discovered
6 evidence, demonstrate how Court's order was clear error or manifestly unjust, or show
7 an intervening change in controlling law); *Kenneweg v. Indymac Bank*, No. 3:10-CV-
8 0475-LRH-RAM, 2011 WL 1750712, at *1 (D. Nev. May 6, 2011, J. Larry R. Hicks)

10 The Ayer group has as its primary goal the obstruction of progress by the Council
11 of the Winnemucca Indian Colony. The Colony Council has now compiled all
12 documents of membership of the Ayer group and will be returning them to their
13 Counsel as soon as he determines the means by which that can be accomplished. The
14 Ayer group needs to forego further motions and work on the task at hand.
15 The Court has made every attempt to resolve this matter so that the Winnemucca
16 Indian Colony can once more be a safe and economically sound retreat for its members.
17 The Colony Council have taken the Court's direction seriously and are expending funds
18 to make their website accommodate the membership application process for the
19 convenience of the applicants. Further, the publication will be in the Winnemucca
20 newspaper within two weeks according to the schedule of the work on the website.
21 The counsel for the Colony Council and the Ayer group have discussed how to choose a
22 judge for the membership appeals. This, too should be resolved by the end of the
23 month.
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27 Finally, counsel for the Colony Council has communicated with the United States
28 Attorney and requested the cooperation of the BIA in getting the easements signed for
water service, files on the history of the Colony and assistance in resolving the law

This Court has jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 706(2)(A) to find that the BIA could abuse its discretion under the Administrative Procedures Act (“APA”) by failing to take sides and give interim recognition to some purported trial leadership when the leadership was in dispute between two or more factions. *Goodface v. Grassrope*, 708 F.2d 335, 337–38 (8th Cir. 1983). *Wheeler v. BIA*, 811 F.2d 549, 553 (10th Cir. 1987) Also see, *Hein v. Capitan Grande Band of Diegueno Mission Indians*, 201 F.3d 1256 (9th Cir. 2000).

Dated this 5th day of February, 2013.

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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 February 5, 2013

/s/ Jennifer Sharp