Georgia A. Staton, Bar #004863
Eileen Dennis GilBride, Bar #009220
JONES, SKELTON & HOCHULI, P.L.C.
2901 North Central Avenue, Suite 800
Phoenix, Arizona 85012
(602) 263-1700
gstaton@jshfirm.com
egilbride@jshfirm.com

Patrice M. Horstman
HUFFORD, HORSTMAN, MONGINI,
PARNELL & TUCKER, P.C.
120 N. Beaver Street
Post Office Box B
Flagstaff, Arizona 86002
pmh@h2m2law.com

Attorneys for Plaintiffs Window Rock Unified School District and Pinon Unified School District

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Window Rock Unified School District and Pinon Unified School District, Plaintiff, v. Ann Reeves, Kevin Reeves, Loretta Brutz, Mae Y. John, Clarissa Hale, Michael Coonsis; Barbara Beall; Richie Nez; Casey Watchman, Ben Smith; Peterson Yazzie, Woody Lee, Jerry Bodie, Evelyn Meadows, and John or Jane Does I-V, Current or Former Members of the Navajo Nation Labor Commission,, Defendants.	NO. CV 12-08059-PCT-PGR **PLAINTIFFS' RESPONSE TO NNLC DEFENDANTS' MOTION TO DISMISS** **and** **PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT**

The Plaintiff school districts made employment decisions with respect to their employees, the individual Defendants herein. Rather than avail themselves of state-provided appeal processes for those decisions, the individual employees, who happen to be members of the Navajo or another tribe, filed complaints with the Navajo Nation Labor Commission ("NNLC")[1] alleging that the districts' employment decisions violated the

[1] The NNLC is a fact-finding body and presides over trials. 15 N.N.C. § 304.

Navajo Preference in Employment Act ("NPEA"). The issue here is one of law – whether tribes have jurisdiction to adjudicate, or re-adjudicate, Arizona school districts' employment decisions made pursuant to state law.

No factual record needs to be developed. The facts relevant and material to the jurisdictional issue are established and undisputed. They are (1) the status of the Plaintiffs as non-Indians – here, Arizona political subdivisions who were hailed into tribal court as defendants,[2] and (2) the fact that Plaintiffs' conduct at issue – employment decisions made in the scope of their constitutional obligation to provide a general and uniform public school system to all Arizona children, including those on the Navajo reservation – is not connected to tribal lands.[3] These facts are undisputed; and based on the undisputed facts, tribal court jurisdiction over Arizona school districts' employment decisions is not only "not colorable," but is plainly lacking as a matter of law. Thus, the Court should not only deny the NNLC Defendants' motion to dismiss, but also grant Plaintiffs summary judgment on the merits. The cross-motion is supported by the accompanying Statement of Facts, incorporated herein by reference.

I. FACTS

The Arizona Constitution, Art. 11, §1, mandates that the legislature shall provide for the establishment and maintenance of a general and uniform public school system. Pursuant to that constitutional mandate, Plaintiffs Window Rock Unified School District and Pinon Unified School District operate within the geographical boundaries of the Navajo reservation on land leased from the Navajos. [PSOF ¶ 1.] The Districts are

---

Appeals are taken to the Navajo Supreme Court. *See* 15 N.N.C. § 613; Rule 17, NNLC Rules of Procedure ("The Decision of the Commission shall be final with a right of appeal only on questions of law to the Navajo Nation Supreme Court.")

[2] *MacArthur v. San Juan County*, 497 F.3d 1057, 1070 (9th Cir. 2007) (" . . . the only relevant characteristic for purposes of determining Montana's applicability in the first instance is the membership status of the individual or entity over which the tribe is asserting authority).

[3] *See Smith v. Salish Kootenai College*, 434 F.3d 1127, 1131 (9th Cir. 2005) (recognizing, for jurisdictional purposes, the importance of the status of the parties and the connection between the cause of action and Indian lands)

political subdivisions of the State of Arizona, organized under and governed by Arizona laws for the purpose of the administration, support and maintenance of public schools. A.R.S. § 15-101(21).[4]

A. The Reeves case.

Defendants Ann Reeves, Kevin Reeves, Loretta Brutz, and Mae John ("the Reeves Defendants") are employees of Plaintiff Window Rock USD, but are not certified teachers.[5] [PSOF ¶ 2.] Plaintiff Window Rock USD determined that these Defendants were not entitled to receive school district monies funded by Arizona Proposition 301 ("301 money") – merit pay for teachers – because they are not "teachers" within the meaning of Proposition 301. [PSOF ¶ 5.][6] The Reeves Defendants filed a state court complaint over the issue and lost. The Arizona Court of Appeals held that the Reeves Defendants are not entitled to receive "301 money" because they are not certified teachers. *Reeves v. Barlow*, 227 Ariz. 38, 251 P.3d 417 (App. 2011).

The Reeves Defendants did not seek review in the Arizona Supreme Court. Instead, they filed separate but identical complaints with the Navajo Nation Labor Commission asking that they be included as "teachers" in the distribution of state 301 money, and claiming that the reason the District failed to pay them 301 money was "in

[4] At least eight public school districts are located within the boundaries of tribal reservations, including Cedar Unified, Red Mesa Unified, Ganado Unified, Kayenta Unified, Pinon Unified, Tuba City Unified, Window Rock Unified, and Chinle Unified.

[5] Ann Reeves is a school psychologist. Kevin Reeves is a physical therapist. Loretta Brutz is a speech therapist/pathologist. Mae John is a speech language pathologist. Neither Ann Reeves nor Kevin Reeves is an enrolled member of the Navajo Nation. Kevin Reeves is a member of another tribe. Ann Reeves is not Indian. [PSOF ¶¶ 2-5.] The Navajo Supreme Court allows non-Indians to file in tribal court. *Staff Relief, Inc. v. Polacca*, Navajo S. Ct. No. SC-CV 86-98.

[6] In November 2000, voters approved Proposition 301 which, in part, required all districts to adopt a performance-based pay plan for teachers. *See* A.R.S. § 15-977(A), (B). Proposition 301 increased the state sales tax by six-tenths of 1 percent for 20 years to fund educational programs, and defined the priorities for the use of Proposition 301 money, including funding the Classroom Site Fund. The Classroom Site Fund is limited to three major uses: (a) 20% for base increases to teacher salaries, (b) 40% for performance-based pay for teachers, and (c) 40% for strategies for struggling students (e.g., dropout prevention, class size reduction, professional development). *Id.* The tradeoff inherent in Proposition 301 for schools is more resources in exchange for more accountability for student performance. The measure remains in effect through 2021.

retaliation" for their having filed the state court action – though they had filed their state court action after, and as the result of, the non-payment of 301 money to them ("the Reeves Claim"). [PSOF ¶ 7.] The NNLC dismissed all but the "retaliation" portion of the claim. [PSOF ¶ 8.]

Plaintiff Window Rock USD moved to dismiss the retaliation claim for lack of jurisdiction under *Red Mesa Unified School Dist. v. Yellowhair*, 2010 U.S. Dist. LEXIS 104276 (D. Ariz. 2010) (as a matter of law, Navajo Nation has no regulatory or adjudicative jurisdiction over Arizona school districts' employment-related decisions). Instead of dismissing for lack of jurisdiction, the NNLC ordered an evidentiary hearing to take place. [PSOF ¶¶ 8-9.] The NNLC wants to hear extensive evidence on such things as whether the Plaintiffs' leases with the Navajo Nation are "government to government compacts" between sovereigns, and on the ethnic composition of the school districts:

> [The *Yellowhair* decision] did not address the issue of whether the lease between the Navajo Nation and the school districts constituted a government to government compact between two sovereigns. What is the nature of government to government compacts between two sovereigns? How do such compacts affect the jurisdiction of the Navajo Nation? The Commission requests the parties to research the history of government to government compacts between the Navajo Nation and the state of Arizona and how each of those sovereigns negotiate terms and conditions of their compacts. Does the first Montana exception even apply to government to government compacts? The parties are also requested to submit information regarding the demographics of the school district, including the percentage of Navajo students that comprise the population of students, the ethnic composition of the school board, administrators, and teachers.

[PSOF, ¶ 9 and Ex.'s F and G thereto.]

B. <u>The Coonsis case.</u>

Defendant Michael Coonsis was an employee of Plaintiff Window Rock USD. [PSOF ¶ 10.] His employment contract stated that the parties would be governed by federal and state law. [*Id.*] He filed an employment charge with the Office of Navajo Labor Relations (ONLR) alleging that Plaintiff Window Rock USD violated the NPEA.[7]

[7] The responsibilities of the ONLR include "to monitor and enforce the NPEA," to "implement the employment and labor laws, policies, and regulations of the Navajo

The NPEA requires employers to give preference in employment to Navajos. Defendant Coonsis claimed that Plaintiff Window Rock USD District failed to hire him for two other positions in the District for which he was the most qualified Navajo. [PSOF ¶ 11.] The ONLR said it lacked jurisdiction because Defendant Coonsis's charge was untimely. [PSOF ¶ 12.] Nevertheless, Defendant Coonsis filed a complaint with the Navajo Nation Labor Commission. [PSOF ¶ 13.] Window Rock USD moved to dismiss the case for lack of jurisdiction. [PSOF ¶ 14.] The NNLC consolidated the Coonsis case with the Reeves Case and ordered the evidentiary hearing referred to above. [PSOF ¶ 15.]

C. The Hale case.

Defendant Clarissa Hale is also a former employee of Plaintiff Window Rock USD (a data technician). [PSOF ¶ 16.] Hale's employment contract provided not only that it would be governed by federal and state law, and District policies, rules and regulations, but also that the Arizona state and federal courts would exercise exclusive jurisdiction over any and all matters arising out of the contract. [*Id.*] Hale filed an employment charge with the ONLR alleging that Plaintiff violated the NPEA. She claimed that Window Rock USD failed to hire her for another position in the District and that she was the most qualified Navajo for the position. [PSOF ¶ 17.] Defendant Hale resigned but claimed that the resignation was due to intimidation, harassment and a hostile work environment at Plaintiff Window Rock USD. [PSOF ¶ 18.]

The ONLR found no probable cause to conclude that Plaintiff had violated the NPEA. [PSOF ¶ 19.] Hale filed a complaint with the NNLC, which Plaintiff Window Rock USD moved to dismiss for lack of jurisdiction. [PSOF ¶ 20.] The NNLC consolidated the Hale case with the Reeves and Coonsis cases, and ordered the evidentiary hearing described above. [PSOF ¶ 21.]

Nation," and "to act as an administrative agency for matters relating to the enforcement of employment preference in hiring, recruitment, promotion, layoff, termination, transfer and other areas of employment." *See* 15 N.N.C. § 202.

D. The Beall case.

Defendant Barbara Beall is a former employee of Plaintiff Pinon USD. [PSOF ¶ 22.] Pinon USD terminated Beall as a teacher for her continual and repeated failure to comply with school district policies and procedures and for unprofessional conduct. [PSOF ¶ 24.] Beall's employment contract provided not only that it would be governed by federal and state law and District policies, rules and regulations, but also that the Arizona state and federal courts would exercise exclusive jurisdiction over any and all matters arising out of the contract. [PSOF ¶ 23.] Beall unsuccessfully appealed her termination to a hearing officer. After that, under state law, Beall's exclusive remedy for appealing the Board's termination was to file an appeal in Arizona state court. A.R.S. § 15-543(A). But rather than appeal her termination to the superior court, Beall filed an employment charge with ONLR, alleging that Plaintiff Pinon USD violated the NPEA provision stating that employers may not fire Navajo employees without just cause. Beall claimed that she was terminated without just cause. [PSOF ¶ 26] The ONLR issued a Notice of Right to Sue letter, indicating that that the Navajo Nation does not have authority over school employees' personnel decisions pursuant to *Yellowhair*, but stating that the NPEA's procedures allow her to proceed to the Navajo Nation Labor Commission. [PSOF ¶ 27.] Defendant Beall filed a complaint with the NNLC. [PSOF ¶ 28.] Plaintiff Pinon USD moved to dismiss the case for lack of jurisdiction. [PSOF ¶ 29.] The NNLC consolidated the Beall case with the Reeves, Coonsis and Hale cases and ordered the evidentiary hearing referred to above. [*Id.*]

II. EXHAUSTION OF TRIBAL COURT REMEDIES IS NOT REQUIRED WHERE TRIBAL JURISDICTION IS PLAINLY LACKING AND WOULD SERVE NO PURPOSE OTHER THAN DELAY

Exhaustion of tribal court remedies is not required "when it is 'plain' that tribal court jurisdiction is lacking, so that the exhaustion requirement 'would serve no purpose other than delay.'" *Elliott v. White Mountain Apache Tribal Court*, 566 F.3d 842, 847 (9th Cir.) (quoting *Nevada v. Hicks*, 533 U.S. 353, 369 (2001)), *cert. denied*, 130 S. Ct. 624 (2009). When it is plain that a tribal court lacks jurisdiction, "the otherwise

applicable exhaustion requirement must give way." *Strate v. A-1 Contractors*, 520 U.S. 438, 459 n.14 (1997).

The NNLC Defendants correctly note that it is their burden to show that tribal court jurisdiction is colorable or plausible. [Dkt. #12 at 4.] As is shown below, they fail to meet that burden. Exhaustion is not colorable or plausible; in fact, it is plainly lacking as a matter of law.

III. TRIBAL JURISDICTION IS PLAINLY LACKING

A. The presumption is against tribal jurisdiction.

As the Court well knows, it may determine as a matter of federal law whether a tribal court has exceeded the lawful limits of its jurisdiction. *National Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 853 (1985). The presumption is against tribal jurisdiction over nonmembers; and Defendants have the burden of overcoming that presumption and demonstrating that tribal court jurisdiction exists. *Plains Commerce Bank v. Long Family Land and Cattle Co*., __ U.S. __ 128 S.Ct. 2709, 2720 (2008). The Supreme Court has "never held that a tribal court has jurisdiction over a nonmember defendant." *Hicks*, 533 U.S. at 358, n.2. "This speaks volumes," as Judge Martone stated recently in *Rolling Frito-Lay Sales LP v. Stover*, 2012 U.S. Dist. LEXIS 9555, *5 (D. Ariz. 2012).

B. Tribal jurisdiction is plainly lacking under the *Montana* test.

Indian tribes' regulatory authority over nonmembers is governed by the principles set forth in *Montana v. United States*, 450 U.S. 544 (1981). *Nevada v. Hicks*, 533 U.S. 353, 358 (2001) (holding *Montana* test applied to suit by a tribal member against state game wardens who entered tribal land to search member's home; tribal jurisdiction lacking under Montana test). *Montana*'s general rule is that Indian tribes have no inherent sovereign powers over the activities of nonmembers like Plaintiffs. *Montana v. United States*, 450 U.S. 544, 563-65 (1981). As Plaintiffs are clearly nonmembers, *Montana*'s general "no jurisdiction" rule applies. Therefore, to show "plausible" jurisdiction, Defendants bear the burden of demonstrating that one of the two exceptions to *Montana*'s

general rule applies. *Id*. at 564-67.

1. There is no colorable jurisdiction under the first *Montana* exception.

Under *Montana*'s first exception, a tribe may regulate "the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements." *Montana*, 450 U.S. at 564. This Court already ruled in *Yellowhair* that regardless of any leases or employment contracts, Arizona school districts' presence on tribal property is not the kind of "consensual relationship" that falls within *Montana*'s first exception. *Red Mesa Unified School Dist. v. Yellowhair*, 2010 U.S. Dist. LEXIS 104276, *15-18 (D. Ariz. 2010) (there is a fundamental difference for tribal jurisdictional purposes between government actors constitutionally mandated to enter tribal lands to fulfill a governmental obligation and private actors operating commercial enterprises on tribal lands). As such, the NNLC Defendants err in arguing that the school district leases create plausible tribal "consent" jurisdiction. [Dkt. #12 at 10-11.] It is undisputed that Plaintiffs made their employment decisions in the scope of their constitutional mandate to provide a general and uniform public education, not in the scope of a private consensual relationship with the tribe.[8] Jurisdiction under *Montana*'s first exception is plainly lacking.

2. There is no colorable jurisdiction under the second *Montana* exception.

a. The exception applies only where tribal power is necessary to avert catastrophic consequences.

Under *Montana*'s second exception, a tribe may retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Montana*, 450 U.S. at 566. The

[8] Furthermore, the Window Rock USD lease (the only one the NNLC Defendants mention), states outright that the District agrees to abide by Navajo law only to the extent Navajo law does not conflict with state or federal law. The District also expressly retained its rights under state or federal law. As is described in the text above, federal law plainly provides for no tribal jurisdiction here. [Dkt. #12-3, p. 6.]

second exception envisions situations where the conduct of the nonmember poses a direct threat to tribal sovereignty. *Philip Morris USA, Inc. v. King Mountain Tobacco Co.*, 569 F.3d 932, 943 (9th Cir. 2009) (finding no tribal jurisdiction). The exception does not broadly permit the exercise of civil authority wherever it might be considered necessary to self-government. *See Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 657 n.12 (2001). Indeed, to fall under this exception, **"tribal power must be necessary to avert catastrophic consequences."** *Plains Commerce Bank*, 128 S. Ct. at 2726 (emphasis added).

In *Strate v. A-I Contractors*, 520 U.S. 438, 459 (1997), the Court explained that the second *Montana* exception applies to these types of issues: "'Indian tribes retain their inherent power to [punish tribal offenders,] to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members. . . . But [a tribe's inherent power does not reach] beyond what is necessary to protect tribal self-government or to control internal relations.'" One example of a direct threat to tribal sovereignty appeared in *Attorney's Process and Investigation Services, Inc. v. Sac & Fox Tribe of the Mississippi in Iowa*, 609 F.3d 927, 938-39 (8th Cir. 2010) (tribal jurisdiction existed under *Montana*'s second exception where tribe claimed that agents of non-member company entered onto tribal trust land without permission, stormed buildings vital to the Tribe's economy and self government, committed violent torts against tribal members, forcibly seized sensitive information related to the Tribe's finances and gaming operations, and damaged tribal property; conduct threatened the political integrity and economic security of the Tribe). Courts in the Ninth Circuit also recognize the importance of land to a tribe: "Whether tribal courts may exercise jurisdiction over a nonmember defendant may turn on how the claims are related to tribal lands." *See Elliott v. White Mountain Apache Tribal Court*, 566 F.3d 842, 848, 849-50 (9th Cir. 2009) (finding plausible tribal jurisdiction over tribe's suit against individual who set Chedeski forest fire which destroyed hundreds of thousands of tribal forest acres representing millions of dollars of tribal resources; "the tribe seeks to enforce its regulations that

prohibit, among other things, trespassing onto tribal lands, setting a fire without a permit on tribal lands, and destroying natural resources on tribal lands"); *Rogers-Dial v. Rincon Band of Luiseno Indians*, 2011 U.S. Dist. LEXIS 71264, *18-19 (S.D. Cal. July 1, 2011) (finding tribal jurisdiction plausible where evidence showed Plaintiffs' conduct threatened tribe's groundwater resources); *Donius v. Mazzetti*, 2010 U.S. Dist. LEXIS 99789 (S.D. Cal, Sept. 21, 2010) (finding tribal jurisdiction plausible where conduct on Plaintiff's property posed inherent threats to the Tribe's sole water source for its water system and member groundwater wells). *See also Smith v. Salish Kootenai College*, 434 F.3d 1127, 1131 (9th Cir. 2005) (recognizing, for jurisdictional purposes, the importance of the status of the parties and the connection between the cause of action and Indian lands).

On the other hand, tribal jurisdiction is not plausible under *Montana's* second exception where the nonmembers enter tribal land for an important state purpose that does not affect tribal self-government and where land ownership is not particularly relevant to the issue. *See Nevada v. Hicks*, 533 U.S. 353, 358, 414 (2001) (exhaustion not required; no tribal jurisdiction over suit by tribal member against state game wardens who entered tribal land to search member's home; state's interest in executing process is considerable, and tribal regulation of these state officers is not essential to tribal self-government or internal relations).[9] Jurisdiction under the second exception also is also not plausible where the conduct at issue is the employment decisions of a state or political subdivision over its employees when conducting its sovereign duties. *State of Montana Dep't of Transp. v. King*, 191 F.3d 1108, 1114-15 (9th Cir. 1999) (no colorable tribal jurisdiction to regulate State's employment practices in performing construction work on a state highway crossing the reservation; State's activity on highway was within the "scope of the purpose of the right of way as well as the State's sovereign duty."); *MacArthur v. San Juan County*, 497 F.3d 1057, 1074-75 (10th Cir. 2007) (no plausible

[9] "Since it is clear, as we have discussed, that tribal courts lack jurisdiction over state officials for causes of action relating to their performance of official duties, adherence to the tribal exhaustion requirement in such cases 'would serve no purpose other than delay,' and is therefore unnecessary." *Hicks*, at 414.

tribal jurisdiction over Utah political subdivision's employment decisions as to tribal members; relationships were part and parcel of District's duty to provide medical services to residents of San Juan County; "While the Navajo Nation undoubtedly has an interest in regulating employment relationships between its members and non-Indian employers on the reservation, that interest is not so substantial in this case as to affect the Nation's right to make its own laws and be governed by them."). As the *MacArthur* court stated:

> Despite Plaintiffs' attempts to make more of it, this case essentially boils down to an employment dispute between SJHSD and three of its former employees, two of whom happen to be enrolled members of the Navajo Nation. While the Navajo Nation undoubtedly has an interest in regulating employment relationships between its members and non-Indian employers on the reservation, that interest is not so substantial in this case as to affect the Nation's right to make its own laws and be governed by them. This is particularly evident here, when only two members of the Nation were involved and the employment relationships at issue were carried out on non-Indian land. The right at issue in this case is the Navajo Nation's claimed right to make its own laws and have *others* be governed by them, not the right to self-government.

Id. (emphasis in original).[10]

[10] Many other cases have found no plausible tribal jurisdiction where the conduct at issue could not have any significant impact on tribal sovereignty. *See, e.g.*, *Philip Morris, USA v. King Mountain Tobacco Co.,* 569 F.3d 932, 943 (9th Cir. 2007) (no colorable tribal jurisdiction over Philip Morris's trademark infringement claims against Indian company selling similar cigarettes; "Pursuit of federal and state trademark claims hardly poses a [direct threat to tribal sovereignty]."); *Boxx v. Long Warrior*, 2001 U.S. App. LEXIS 24917 (9th Cir. Sept. 6, 2001) (holding exhaustion not necessary, tribal jurisdiction under second exception not plausible over members' tort action arising from accident on fee land within reservation); *Rincon Mushroom Corp. of America v. Mazzetti*, 2012 U.S. App. LEXIS 8034 (9th Cir. April 20, 2012) (holding exhaustion not required as tribal jurisdiction plainly lacking under *Montana*'s second exception; speculation that non-member fee land at issue could potentially contaminate the Tribe's water supply, or exacerbate a future fire that might damage the Rincon Casino did not fall within *Montana*'s second exception; no actual actions significantly impacted the tribe); *Rolling Frito-Lay Sales LP v. Stover*, 2012 U.S. Dist. LEXIS 9555 (D. Ariz. Jan. 26, 2012) (holding tribal jurisdiction not colorable over non-Indian's slip and fall claim against non-Indian owner of store on tribal property); *Chiwewe v. Burlington N. and Santa Fe Ry Co.,* 239 F. Supp. 2d 1213 (D. N.M. 2001) (holding exhaustion not required; tribal jurisdiction under second exception not plausible over Indians' claim against railway for wrongful death on railway right of way). *See also Dolgencorp Inc. v. Miss. Band of Choctaw Indians*, 2011 U.S. Dist. LEXIS 152810, *6-8 (S.D. Miss. Dec. 21, 2011) (no tribal jurisdiction under *Montana*'s second exception; non-member's alleged molestation of Indian boy at store on tribal property did not "'imperil the subsistence' of the tribal community" and tribal jurisdiction thus was not necessary to avert catastrophic consequences).

b. Defendants have not met their burden of showing colorable jurisdiction.

Based on the foregoing, tribal jurisdiction is not colorable – indeed is plainly lacking – under *Montana*'s second exception. The school districts' employment decisions over their employees (who may avail themselves of state law due process procedures) do not impinge on tribal land, do not involve a trespass or destruction of natural resources, and do not strike at the heart of tribal self-governance. Ruling that the tribe lacks jurisdiction over the School Districts' employment decisions will not seriously imperil the tribe's ability to self-govern or to control its internal relations. *See State of Montana Department of Transp. v. King*, 191 F.3d 1108, 1111 (9th Cir. 1999).

In *King*, the tribe agreed to transfer property to the state so the state could construct and maintain a highway at its own expense on tribal land. The tribe thereafter attempted to impose on state highway maintenance crews a tribal employment ordinance that regulated employment practices for the crews, including requiring tribal member preferences, hiring quotas and special seniority rules. The Ninth Circuit held there was no tribal jurisdiction under the second *Montana* exception, even though "poverty stalks the reservation," seventy percent of the tribe's members were unemployed, and the high levels of unemployment on the reservation harmed the tribe. *Id.* at 1111, 1114. Because the tribe had consented to the right of way so the state could construct the public highway at its own expense, the imposition of the ordinance impinged on one of the state's sovereign responsibilities – maintaining the public highway. *Id.* at 1114.

This situation is similar. Though it does not involve a property transfer or a right of way, here the tribe not only consented to the State providing schools on the reservation at the State's own expense, but the Navajos (and the Arizona Constitution) have *required* the provision of those schools. To require the Districts to submit to tribal regulatory and adjudicatory jurisdiction over its own employees, simply because the Districts are providing those mandated services on the reservation, goes far beyond the tribe's internal functioning and sovereignty concerns. As in *King*, imposing tribal

jurisdiction in this situation would impinge on one of the State's sovereign responsibilities – providing a general and uniform public school system to all children through its political subdivisions. *See also Glacier County School District No. 50 v. Galbreath*, 47 F. Supp. 2d 1167, 1169 (D. Mont. 1997) (school expelled Indian student; student sought tribal court order compelling his readmission and tribal court held it had jurisdiction; school sought injunctive relief in federal district court; district court held that second *Montana* exception did not justify the exercise of tribal authority over the school district's administration and operation). The *Galbreath* court reasoned:

> [T]he State of Montana, through its administrative agencies and courts, is the authority responsible for safeguarding the inalienable right of children to a public education. Accordingly, the public interest lies in ensuring the responsible state agencies are free to apply their expertise in resolving the various issues associated with providing an education to children of this State.
>
> The process established under the law of the State of Montana for the operation and administration of a public school system is available to all students within that system. **Once enrolled in the State of Montana's public school system, tribal members must comply with the procedures established by state law to resolve any resulting grievance or dispute. Opening the Tribal Court for the optional use of tribal members unhappy with the substance or pace of the proceedings mandated by Montana law is not, despite defendants' argument to the contrary, necessary to protect tribal self government**.

Id. at 1171-72 (emphasis added). The same is true here. This case involves "the Navajo Nation's claimed right to make its own laws and have *others* be governed by them, not the right to self-government." *MacArthur*, 497 F.3d at 1074-75.[11] Tribal jurisdiction is simply not colorable under *Montana*'s second exception.

c. Tribal jurisdiction would impinge on important state interests both on and off the reservation.

When "state interests outside the reservation are implicated, States may regulate the activities even of tribal members on tribal land." *Hicks, supra*, at 362. The

[11] This is especially true with respect to Defendants Ann and Kevin Reeves, who are not even members of the Navajo Nation.

precept applies with force here. The state certainly has a substantial interest in fulfilling its constitutional mandate to educate all Arizona children.[12] It also has a substantial interest in ensuring that its political subdivision School Districts, as employers – and their employees – are protected and governed by the due process procedures that state law and District policy mandate. *See* A.R.S. §§ 15-341(A)(24), 15-539 to -543. Those procedures provide a constitutional and ordered method of ensuring the validity of the Districts' employment decisions.[13]

Equally important is the state interest in ensuring that the Districts' employment decisions made and reviewed under Arizona law remain effective, binding, and not subject to potentially conflicting tribal court rulings. It would seriously disrupt the Districts' ability to carry out their constitutionally mandated duty if the NNLC were to order Districts on the reservations to re-hire employees previously terminated in accordance with Arizona law, on the ground that the NNLC disagrees with the just cause determination or because the NPEA requires employers to give employment preference to Navajos. Not only would this create disorder in the process, but it would unfairly subject the Districts to potential liability if, after being re-hired, the employee again engages in negligent or more culpable conduct in the course and scope of his employment. District liability in such cases can be vicarious,[14] or direct based on a claim that the District

[12] The "[e]ducation of its citizenry" is one of the State's most important functions. *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 351, 35 P3d 105, 112 (App. 2001)

[13] The Legislature has statutorily established local school district governing boards whose responsibilities include to "prescribe and enforce policies and procedures for the governance of the schools, not inconsistent with law or rules prescribed by the state board of education." A.R.S. § 15-341(A)(1). Statutory procedures ensure that a certificated teacher or administrator subject to dismissal receives sufficient notice and an opportunity to be heard to satisfy due process.

[14] The Arizona Reports are replete with cases in which Arizona public school districts have been sued as a result of a district employee's allegedly negligent, grossly negligent, or intentional conduct. *See, e.g.*, *Doe v. Gilbert Unified School Dist.*, 200 Ariz. 174, 24 P.3d 1269 (2001) (parents sued District and State for alleged molestation of son by teacher); *Nolde v. Frankie*, 192 Ariz. 276, 279, ¶8, 964 P.2d 477 (1998) (former students sued school district for alleged molestation by coach); *LaFrentz v. Gallagher*, 105 Ariz. 255, 462 P.2d 804 (1970) (student sued school district for alleged assault and battery by teacher); *Morris v. Ortiz*, 103 Ariz. 119, 437 P.2d 652 (1968) (parents sued school district for injuries sustained by student in auto mechanics class); *Bd. of Tr. Eloy Elementary Sch. Dist. v. McEwen*, 6 Ariz. App. 148, 430 P.2d 727 (App. 1967) (plaintiff

negligently hired, re-hired, and/or retained the employee, knowing of the employee's propensity to act improperly. A.R.S. § 12-820.05(B).[15] The District would be responsible for defending such claim and paying any judgment awarded to a claimant even though it was not the School District's choice to re-hire the employee.

Clearly, the Districts' School Boards need to be free to avoid potential liability by disciplining/terminating employees in accordance with Arizona law and not have that decision "undone" by tribal court adjudicatory jurisdiction. Furthermore, supplanting the State's due process system with a process that permits an employee to bypass his administrative remedies and avoid the state-imposed burden of proof[16] – would seriously infringe upon the State's interest in fulfilling its constitutional mandate to educate all Arizona's children in the manner that the Legislature has determined will best achieve that goal.

C. <u>There is no need for the tribal court to develop a factual record.</u>

The NNLC Defendants err in arguing that the tribal court should develop a factual record before this Court can decide that tribal jurisdiction is plainly lacking. [Dkt. #12 at 5-7.] Defendants do not describe what facts need to be developed; they assert only conclusorily that the Court needs "detailed facts on the Plaintiffs' conduct on Navajo Nation trust land." [*Id*. at p. 6, n.2.] This is incorrect. While the Court should analyze the districts' specific alleged conduct, *Attorney's Process and Investigation Servs., Inc. v. Sac & Fox Tribe of the Mississippi in Iowa*, 609 F.3d 927, 938 (8th Cir. 2010), the merits of

---

sued school district for negligently allowing defendants-teachers to assault plaintiff).

[15] "A public entity is not liable for losses that arise out of and are directly attributable to an act or omission determined by a court to be a criminal felony by a public employee **unless the public entity knew of the public employee's propensity for that action**. This subsection does not apply to acts or omissions arising out of the operation or use of a motor vehicle" (emphasis added).

[16] In a superior court appeal from a termination decision, the **employee** has the burden of proving that the governing board erred. *See Guard v. County of Maricopa*, 14 Ariz. App. 187, 188-89, 481 P.2d 873, 874-75 (1971). In an NNLC action by an employee alleging that his or her discharge violated the NPEA, the **employer** has the burden of proving by a preponderance of the evidence that the discharge complied with the NPEA. *See* 15 N.N.C. § 611(B).

each employment decision are simply not relevant. *See Yellowhair*, 2010 U.S. Dist. LEXIS at *5, n.4. It is the undisputed membership status of the parties and the employment decision's connection (or not) to tribal land that are relevant to deciding whether district employment decisions are the type of claim over which tribal jurisdiction is necessary to avert catastrophic consequences. This is an issue of law, not fact. And its resolution does not – indeed cannot – turn on the demographics of the school district, the student population, or the school board, as the NNLC suggests. [Dkt. #1, Ex. A, p. 3; *see also* Dkt. #12 at 6, n.2.] Jurisdiction is not a flighty, case-by-case issue that might exist if one particular district's school board, students or teachers are mainly Navajo, but might not exist if another district employs a number of non-Indian teachers or administrators. The key facts are the Indian or non-Indian status of the parties, and the type of decision being made – not district's demographics.[17]

The NNLC Defendants also err in arguing that the Court needs to know the "history and nature of agreements between the Nation and the districts to determine if *Montana*'s first exception is met." [Dkt. #12 at 6, n.2.] First, this Court has already

[17] The NNLC Defendants also misplace reliance on *City of Wolf Point v. Mail*, 2011 U.S. Dist. LEXIS 55870 (D. Mont. 2011), and *Ford Motor Co. v. Todecheene*, 488 F.3d 1215 (9th Cir. 2007), in arguing that a factual record needs to be developed. [Dkt. #12 at 6.] In *Wolf Point*, the parties' status was disputed, and it was unclear where the conduct took place. *Id.* at *4. Likewise, in *Todecheene*, which involved the death of a Navajo law enforcement officer on a tribal road, the cause of death was unclear. Ford asserted that Todecheene was not wearing a seatbelt and the Todecheenes believed the vehicle was defective. They filed a product liability lawsuit in tribal court, which found jurisdiction under Montana's first exception – based on the consensual relationship between the manufacturer and the tribe through vehicle lease-sale contracts and advertising targeted toward tribal residents. After Ford sued in federal court, the Ninth Circuit ultimately held, without extended reasoning, that exhaustion was required. Its case citation suggests that tribal jurisdiction was plausible under *Montana*'s first (not second) exception, *Ford Motor Co. v. Todecheene*, 394 F.3d 1170 (9th Cir. 2005), withdrawn, 474 F.3d 1196 (9th Cir. 2007), one that does not apply here. *Admiral Ins. Co. v. Blue Lake Rancheria Tribal Court*, 2012 U.S. Dist. LEXIS 48595 (N.D. Cal. April 4, 2012), which the NNLC Defendants cite [Dkt. #12 at 9], is similarly inapposite. There, it was unclear where the claim against Admiral – one for bad faith denial of insurance coverage – arose (on the reservation where the employees were injured, or off the reservation where the insurer was located). *Id.* at *14-15. It was also unclear whether the insurance policy at issue covered activity on tribal land and whether an insured event occurred on tribal land. *Id.* at *16. These uncertainties led the court to require exhaustion of tribal remedies. *Id.* We do not have such uncertainties here.

recognized that neither the individuals' employment contracts nor the leases for the land on which the schools operate are sufficient to establish tribal jurisdiction under *Montana*'s first exception. *Yellowhair*, 2010 U.S. Dist. at *15-18. Rather, the dispositive factor, as the Court correctly recognized, is that the Districts are not private actors – they are political subdivisions making employment decisions while operating in their governmental capacities pursuant to a constitutional mandate. *Id*. (citing *Nevada v. Hicks*, 533 U.S. 353, 372 (2001)) (The *Montana* court "obviously did not have in mind States or state officers acting in their governmental capacity" when discussing the consensual exception)), *MacArthur v. San Juan County*, 497 F.3d 1057, 1073-74 (10th Cir. 2007) (finding no tribal jurisdiction over Navajo employees' employment-related claims against Utah political subdivision), and *County of Lewis v. Allen*, 163 F.3d 509, 515 (9th Cir. 1998) (finding no tribal jurisdiction over member's tort claim against deputy for actions on tribal land).

Second, as a matter of law, a lease signed by a school superintendent on behalf of a school district is not a "government to government compact" between sovereigns, as the NNLC suggested. [Dkt. #16, Ex. A at 3.] First, school districts are local governments, not sovereigns or arms of the State. *Savage v. Glendale Union High Sch. Dist. No. 205*, 343 F.3d 1036 (9th Cir. 2003). Moreover, in the interstate context, a compact is "'an agreement between two or more states, entered into for the purpose of dealing with a problem that transcends state lines.'" When adopted by a state, a compact is not only an agreement between that state and the other states that have adopted it, but it becomes the law of that state as well. *State Dep't of Econ. Sec. v. Leonardo*, 200 Ariz. 74, 77, 22 P.3d 513, 516 (App. 2001). Neither the county school superintendent nor the school district's governing board has the authority, on behalf of the State, to enter into a State-tribal compact that will become the law for the entire State of Arizona. Certainly, a school board is authorized to enter into a lease or an intergovernmental agreement for joint cooperative action. *See* A.R.S. §§ 15-342(13), 11-952. But no statute gives the county superintendent or school board authority to enter into a State-tribal compact on

behalf of the State.[18] Indeed, when the legislature has authorized Arizona to enter into a compact with a tribe, it has required the signature of the Governor on behalf of the State. *See, e.g.*, A.R.S. §§ 5-601 (authorizing Governor to enter into State-tribal gaming compact on behalf of State); 15-901 (authorizing Governor to sign with other states in the compact for education); 41-101.02 (authorizing Governor to sign compacts with other states or federal government for police services). As a matter of law, a school board's lease of property is not a compact between sovereigns that establishes law for the entire State. In short, no factual record needs to be developed in tribal court. Tribal jurisdiction is plainly lacking as a matter of law.

D. <u>The *Water Wheel* "inherent authority" precept does not apply.</u>

The NNLC Defendants suggest that the *Montana* test might not apply, citing *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802 (9th Cir. 2011). [Dkt. #12 at 6, n.2 and at 8-10.] This is erroneous as a matter of law for two reasons: First, the NNLC itself stated that the whole reason it has ordered an evidentiary hearing is so it can determine the applicability of *Montana*'s exceptions – which shows that it believes the *Montana* test does apply. [*See* PSOF Ex. F, pp. 2-3 and 4[19]; PSOF Ex. G, p. 2 ("The arguments presented by the Respondent in Section II is (sic) premature as Respondent is addressing and stating its position regarding whether the second leg of Montana applies which is the precise reason why the Commission is requesting discovery in the first place.").] Again, Plaintiffs believe an evidentiary hearing is unnecessary and inappropriate on this issue because jurisdiction is plainly lacking – neither exception

[18] Compare the compact in *County of Lewis v. Allen*, 163 F.3d 509 (9th Cir. 1998) (Idaho passed legislation assuming jurisdiction over cases involving seven specific matters arising in Indian country; two years later Nez Perce Tribe and the State of Idaho entered into a compact extending state criminal jurisdiction to certain minor crimes on the reservation).

[19] "Based on the foregoing, the Commission will allow the parties to engage in discovery to enable them to present facts, which may include witnesses and documentary evidence, to assist the Commission in determining whether it has jurisdiction under the *Montana* exceptions. The parties shall inform the Commission of the completion of discovery; thereafter, an evidentiary hearing concerning the *Montana* exceptions will be scheduled."

applies here as a matter of law. But the point is that the NNLC's own orders undermine its current argument that the *Montana* test might not apply.

Second, jurisdiction is not plausible even under *Water Wheel*, as *Water Wheel* does not support the NNLC Defendants' argument that the tribe might have "inherent authority" to regulate Plaintiffs' employment decisions. *Water Wheel* focused on a tribe's inherent authority to exclude from tribal land a private non-Indian person/company whose private, consensual relationship with the tribe had gone sour. 642 F. 3d at 804. The court held that under those circumstances, "where there are no competing state interests at play," the tribe had the inherent authority to exclude the private non-Indians. *Id*. Indeed, the case involved the tribe's attempt to physically evict the non-Indians from its land, after the non-Indians allegedly breached their lease with the tribe and were therefore trespassing on tribal land, operating a business without either paying rent or sharing profits. *Id*. at 804. Thus, the tribe's status as landowner played a vitally important role in the jurisdictional outcome. *Id*. at 807, 811, 812, n.7, 814, 818-19.

The tribe's status as landowner does not play a vital role in this case. This case has nothing to do with a tribe's attempt to evict from tribal land a non-Indian who is allegedly privately profiting from conducting business there. And the *Water Wheel* court specifically acknowledged an exception to the "inherent authority to exclude" precept which would apply here – that is, the *Nevada v. Hicks* situation where the state has a "considerable interest" in coming onto tribal land, and where land ownership is not dispositive (in *Hicks* it was to execute a search warrant on tribal land for an off-reservation crime). 642 F.3d at 809. Here, of course, the Plaintiff school districts have not only a considerable interest in coming onto tribal land, they have a constitutional mandate to do so at State expense.[20] And land ownership is not dispositive of the employment claims at issue. It is not even particularly relevant. If *Water Wheel*'s

[20] The Navajos have in fact *sued* to make sure they obtain the benefit of this constitutional mandate. *See Meyers v. Bd. of Educ.*, 905 F. Supp. 1544, 1551-56 (D. Utah 1995).

analysis applies,[21] then this case falls within the *Nevada v. Hicks*-type exception. Under the circumstances of this case, where the state interest is compelling and land ownership not relevant, the tribe does not have the inherent power to exclude the school districts as it would a private person trespassing on tribal land for private gain. Jurisdiction is plainly lacking even under *Water Wheel*.

E. The Treaty of 1868 does not apply.

The NNLC Defendants finally err in arguing that Title II of the Navajo Nation's Treaty of 1868 "bolsters the conclusion that Navajo jurisdiction is . . . plausible in this case." [Dkt. #12 at 10, n.4.] That section delineates the boundaries of the reservation, sets apart that land "for the use and occupation of the Navajo tribe of Indians, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit among them;" and provides that "no persons except those herein so authorized to do, . . . shall ever be permitted to pass over, settle upon, or reside in, the territory described in this article."

The power to exclude persons from tribal lands does include the lesser power to "tax or to place other conditions on the non-Indian's entry or continued presence on the reservation." *Babbitt Ford, Inc. v. Navajo Indian Tribe*, 710 F.2d 587, 592 (9th Cir. 1984) (holding tribe has power to regulate non-Indians who come upon tribal land to repossess vehicles purchased off reservation) (citing *Merrion v. Jicarilla Apache Tribe*,

[21] One federal district court has held that *Water Wheel*'s analysis cannot be squared with the U.S. Supreme Court's post-*Montana* decisions, which **reject** the idea that *Montana* applies only to non-Indian fee land within a reservation. *Rolling Frito-Lay Sales LP v. Stover*, 2012 U.S. Dist. LEXIS 9555, *7-8 (D. Ariz. Jan. 26, 2012) (applying *Montana* to find no plausible jurisdiction over non-Indian's claim against non-Indian company for slip and fall on tribal property; "To the extent that the *per curiam* opinion in *Water Wheel* departs from Supreme Court jurisprudence in the area of Federal Indian Law, we are constrained by the Supremacy Clause, Art. VI, and Article III ('one supreme Court') to follow the Supreme Court."). *See Hicks*, 533 U.S. at 360 ("*Montana* applies to both Indian and non-Indian land"); *see also id.* at 388 (O'Connor, J., concurring in part) ("[T]he majority is quite right that *Montana* should govern our analysis of a tribe's civil jurisdiction over nonmembers both on and off tribal land."); *and id.* at 381 (Souter, J., concurring) ("After *Strate*, it is undeniable that a tribe's remaining inherent civil jurisdiction to adjudicate civil claims arising out of acts committed on a reservation depends in the first instance on the character of the individual over whom jurisdiction is claimed, not on the title to the soil on which he acted.").

455 U.S. 130, 141-44 (1982)). For example, nonmembers lawfully entering tribal lands pursuant to a contract with the tribe remain "'subject to the tribe's *power* to exclude them.'" *Id.* (emphasis in original). When it applies, then, the power to exclude persons from tribal lands "necessarily includes the lesser power to place conditions on entry, on continued presence, or on reservation conduct, such as a tax on business activities conducted on the reservation. When a tribe grants a non-Indian the right to be on Indian land, the tribe agrees not to exercise its ultimate power to oust the non-Indian as long as the non-Indian complies with the initial conditions of entry." *Merrion v. Jicarilla Apache Tribe*, 455 U.S. at 144 (1982).

As is noted above, the "power to exclude" in the tribe's 1868 Treaty with the United States does not operate to confer tribal jurisdiction over the School Districts, because the tribe does not *have* the power to exclude the Districts as it does for individuals voluntarily entering the reservation. The political subdivision Districts must enter the reservation in order to fulfill their constitutional mandate of educating all Arizona children. This constitutional mandate derives from the federal Enabling Act, Act of June 20, 1910, c. 310, 36 U.S. Stat. 557, 568-579, which authorized creation of the State of Arizona. That Act imposed certain conditions on Arizona's admission to the United States. *Roosevelt Elementary Sch. Dist. v. Bishop*, 179 Ariz. 233, 239, 877 P.2d 806, 812 (1994). One of those conditions required Arizona to adopt a constitution with provisions "for the establishment and maintenance of a system of public schools which shall be open to all the children of said State." Act of June 20, 1910, ch. 310, § 20, 36 Stat. 557, 570. Section 26 of the Act requires "That the schools, colleges, and universities provided for in this Act **shall forever remain under the exclusive control of the said State**" (emphasis added).

Arizona's Constitution, Article XI, fulfills the promise of the Enabling Act. As a matter of federal and constitutional mandate, then, the state must provide a general and uniform system of public education to *all* children of this state, including children on the Navajo reservation. *Meyers*, 905 F. Supp. at 155. And because the Enabling Act

requires Arizona to educate all children in Arizona and maintain "exclusive" control over state public schools, *Roosevelt*, 179 Ariz. at 239, 877 P.2d at 812, the tribe's authority under the Treaty to exclude non-tribal members does not operate to extend tribal jurisdiction to state School Districts making employment decisions on the reservation. *MacArthur v. San Juan County*, 497 F.3d 1057, 1073 (10th Cir. 2007) (no tribal jurisdiction over employment decisions of health district political subdivision of the state of Utah operating on tribal land; court "adhere[d] to the distinction between private individuals or entities who voluntarily submit themselves to tribal jurisdiction and 'States or state officers acting in their governmental capacity.'"). Though the *MacArthur* court was addressing the first *Montana* exception (consensual relationship) rather than the 1868 Treaty, the distinction remains important. State political subdivisions, like the School Districts here, that are providing mandated services on the reservation are simply not like private individuals or entities that voluntarily come to the reservation to do business, and thereby subject themselves to tribal regulation or risk being excluded. Under the Enabling Act, and Arizona's Constitution, the tribe cannot choose to prevent the Districts from carrying out their constitutional mandate on the reservation. Therefore, the 1868 Treaty provision allowing the exclusion of non-members does not apply to confer tribal jurisdiction.

CONCLUSION

For the foregoing reasons, Plaintiffs Window Rock Unified School District and Pinon Unified School District respectfully request the Court to deny the NNLC Defendants' motion to dismiss and to grant Plaintiffs summary judgment.

. . .

. . .

. . .

. . .

RESPECTFULLY SUBMITTED this 7th day of June, 2012.

JONES, SKELTON & HOCHULI, P.L.C.

By /s/ Eileen Dennis GilBride

Georgia A. Staton
Eileen Dennis GilBride
2901 North Central Avenue, Suite 800
Phoenix, Arizona 85012

Patrice M. Horstman
HUFFORD, HORSTMAN, MONGINI, PARNELL & TUCKER, P.C.
120 N. Beaver Street
Post Office Box B
Flagstaff, Arizona 86002

Attorneys for Plaintiffs Window Rock USD and Pinon USD

ORIGINAL electronically filed
this 7th day of June, 2012.

COPY mailed/e-mailed
this 7th day of June, 2012, to:

Hon. Paul G. Rosenblatt
United States District Court
Sandra Day O'Connor U.S. Courthouse
401 West Washington Street, SPC 56
Suite 621
Phoenix, AZ 85003-2156

David R. Jordan, Esq.
THE LAW OFFICES OF DAVID R. JORDAN, P.C.
309 E. Nizhoni Blvd.
P. O. Box 840
Gallup, NM 87503-0840
Attorney for Defendants Reeves, Reeves, Brutz, John, Hale, Coonsis and Beall

Paul Spruhan, Esq.
NAVAJO NATION DEP'T OF JUSTICE
Post Office Drawer 2010
Window Rock, Arizona 86515-2010
Attorney for Navajo Nation Labor Commission Defendants

/s/ Ginger Stahly