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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF NEVADA**

12 **BP America Inc., and Atlantic Richfield**
13 **Company,**

14 **Plaintiffs,**

15 **vs.**

16 **Yerington Paiute Tribe; Laurie A. Thom,**
17 **in her official capacity as Chairman of**
18 **the Yerington Paiute Tribe; Yerington**
19 **Paiute Tribal Court; and Sandra-Mae**
20 **Pickens, in her official capacity as Judge**
21 **of the Yerington Paiute Tribal Court,**

22 **Defendants.**

23 **Case 3:17-cv-00588**

24 **Yerington Paiute Tribal Court’s Points**
25 **and Authorities in Support of Its Motion**
26 **to Dismiss, Pursuant to Rule 12(b)(1),**
27 **FRCP**

28 **I. INTRODUCTION**

The case is before the Court upon the motion of the Yerington Paiute Tribal Court, filed pursuant to Rule 12(b)(1), Federal Rules of Civil Procedure, to dismiss the above-captioned matter with prejudice for the want of this Court’s jurisdiction over the Tribal Court due to tribal sovereign immunity. The instant dispute was brought by the plaintiffs, BP America Inc., (BP) and Atlantic Richfield Company, (Arco), against the Yerington Paiute Tribe (the Tribe), the Tribal Chairman, Laurie Thom, sued only in her official capacity, the Yerington Paiute Tribal Court, sued as the “judicial arm” of the Tribe, and Judge Sandra-Mae Pickens, sued in her official capacity as a Tribal Court judge (collectively, the Tribal defendants). The plaintiffs endeavor to hale these Tribal defendants before this Court seeking declaratory and injunctive relief for the purpose of keeping a lawsuit from proceeding which the Tribe, only, filed in Tribal

1 Court against Arco and BP. *See, Yerington Paiute Tribe v. BP America Inc., and Atlantic*
2 *Richfield Co.*, Case No. YCV 1017, in and for the Yerington Paiute Tribal Court (the Tribal
3 complaint). The Tribal complaint was filed on August 18, 2017. *See*, ECF No. 3-2.

4 In their complaint before this Court, the Federal complaint, Arco and BP aver that "...the
5 principal (sic) question in the case [the instant dispute] is whether the Tribal Court has subject-
6 matter jurisdiction over the claims brought by the Tribe in the Tribal Court Action." Fed. Comp.,
7 ¶ 7, p.3, ECF No. 1. BP and Arco are asking this Court to enjoin the case filed by the Tribe in
8 Tribal Court from proceeding there according to the Federal complaint's prayer for declaratory
9 and injunctive relief.

10 BP and Arco are mistaken, however, in their characterization of the "principal (sic)"
11 question here. For purposes of this Federal complaint, the principle question that must be
12 answered is whether this Court has jurisdiction in the first place to hale one or more of the Tribal
13 defendants before this Court and subject them to declaratory and injunctive relief.

14 Because the Tribal Court is, the plaintiffs concede, Fed. Comp., ¶ 3, p. 3, ECF No. 1,
15 *supra*, an integral part of the governance of the Tribe, the complaint must be dismissed against
16 the Tribal Court with prejudice for the want of jurisdiction due to Tribal sovereign immunity.
17 The Tribe, itself, is, the plaintiffs admit, a Federally recognized Indian Tribe. Fed. Comp., ¶ 1, p.
18 2, ECF No. 1, *supra*. Absent an express waiver of sovereign immunity by either Congress or the
19 Tribe, the Tribe is immune from suit, depriving any court of jurisdiction from haling it into court
20 and subjecting it to suit, including declaratory and injunctive relief. *See, Michigan v. Bay Mills*
21 *Indian Community*, 134 S.Ct. 2024 (U.S. 2014), 2014 U.S. LEXIS 3596. Moreover, the Tribe's
22 umbrella of sovereign immunity extends to the remaining Tribal defendants in the case, absent an
23 express waiver of sovereignty. *See, Cook v. AVI Casino Enterprises, Inc.*, 548 F.3d 718 (9th Dir.,
24 2008); *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046 (9th Dir., 2006).

25 There is no suggestion in the plaintiffs' Federal complaint that either Congress or the
26 Tribe has waived the Tribe's sovereignty to be sued in this instance. Similarly, the plaintiffs'
27 Federal complaint contains no suggestion that the Tribe or Congress has waived the Tribe's
28 sovereignty for purposes of permitting the Tribal Court to be sued, herein. As express

1 Congressional or tribal waivers of sovereignty, *see, Santa Clara Pueblo v. Martinez*, 436 U.S. 49,
2 59, 98 S.Ct. 1670 (1978); *Allen, supra* at 1047, are the only two avenues for hailing the Tribe and
3 entities that are integral to Tribal governance, *see, Kiowa Tribe of Oklahoma v. Manufacturing*
4 *Technologies, Inc.*, 523 U.S. 751, 754, 118 S.Ct. 1700, 140 L.Ed.2d 961 (1998); *Imperial*
5 *Granite Company v. Pala Band of Mission Indians*, 940 F.2d 1269, 1271 (9th Cir., 1991), into
6 this Court and exposing the Tribal Court to declaratory and injunctive relief, and no such waivers
7 of sovereignty present themselves in this dispute, the Federal complaint against the Tribal Court
8 must be dismissed with prejudice for the want of jurisdiction by reason of Tribal sovereign
9 immunity, as elucidated further, below.

10 **II. THE STANDARD FOR DECIDING A MOTION TO DISMISS**

11 In the face of a motion to dismiss, the plaintiffs' well pled facts are to be taken as true.
12 *See, Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). There, the
13 Court laid out the Court's definitive view of the standard by which the adequacy of the pleadings
14 are to be judged when confronted by a motion to dismiss based upon subject matter jurisdiction
15 involving public officials. According to *Iqbal*, courts are not free to pretermitt the question of
16 subject matter jurisdiction. "Subject matter jurisdiction cannot be forfeited or waived and should
17 be considered when fairly in doubt." *Id.* at 671.

18 According to *Iqbal*, the plaintiffs must do more than offer a naked claim that the Court
19 has jurisdiction over the Tribe to subject it to declaratory and injunctive relief. When assessing a
20 complaint, *Iqbal* holds that a court is "not bound to accept as true a legal conclusion couched as
21 a factual allegation...." *Id.*, at 678. "A pleading that offers 'labels and conclusions' or 'formulaic
22 recitations of the elements of a cause of action will not do.'" *Ibid.* Furthermore, "...a complaint
23 does not suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Ibid.*

24 This is the context within which the adequacy of the pleadings must be assessed when a
25 motion to dismiss for the want of jurisdiction based upon Tribal sovereign immunity from suit is
26 before this Court. *See, Bassett v. Mashantucket Pequot Museum and Research Center, Inc.*, 221
27 F.Supp.2d 271, 280, 281 (D.C.Conn., 2002). The plaintiffs must do more than offer a naked
28 claim that the Court has jurisdiction over the Tribal defendants.

1 **III. WHERE A MOTION TO DISMISS FOR THE WANT OF JURISDICTION IS**
2 **BROUGHT, THE BURDEN IS UPON THE PARTY ASSERTING**
3 **JURISDICTION TO AFFIRM THE COURT'S ABILITY TO HEAR THE CASE**

4 Since Federal Courts are courts of limited jurisdiction, it is presumed that a complaint lies
5 outside the Court's jurisdiction and the "burden of establishing the controversy" rests with the
6 party asserting jurisdiction. *Kokkonen v. Guardian Life Inc. Co., of America*, 511 U.S. 375, 377
7 (1994); *Rightheaven, LLC. v. Newman*, 838 F.Supp.2d 1071, 1074 (D.Nev., 2011). Thus, while
8 the Tribal Court has affirmatively placed the Court's jurisdiction at issue through the Tribe's
9 sovereign immunity, the burden is upon the plaintiffs to establish subject matter jurisdiction of
10 the Court. *See, Pistor v. Garcia*, 791 F.3d 1104, 1111 (9th Cir. 2012); *Stock West, Inc. v.*
11 *Confederate Tribes*, 873 F.2d 1221, 1225 (9th Cir., 1989); *Tosco Corp. v. Communities for a*
12 *Better Environment*, 236 F.3d 495, 499 (9th Cir., 2001) (the plaintiff is required to show this
13 Court, "...affirmatively and distinctly, the existence of what was essential to federal
14 jurisdiction..."). And, "[w]hen a district court is presented with a challenge to its subject matter
15 jurisdiction, '[n]o presumptive truthfulness attaches to [a] plaintiff's allegations' *Robinson*, 586
16 F.3d at 685 (quoting, *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir., 1983))." *Pistor*,
supra at 1111.

17 **IV. IMMUNITY FROM SUIT IS A FUNDAMENTAL ATTRIBUTE OF BEING A**
18 **FEDERALLY RECOGNIZED INDIAN TRIBE**

19 No elaboration is needed to recognize that Tribes retain their inherent sovereignty as
20 distinct sovereign nations in matters of local governance. *Santa Clara, supra*, at 55.
21 Nonetheless, the United States Supreme Court revisited the question of Tribal sovereign
22 immunity in *Michigan v. Bay Mills Indian Community, supra*, when the Court upheld the Sixth
23 Circuit's decision that Tribal sovereign immunity barred the State of Michigan from suing Bay
24 Mills to cease operation of a Class III Tribal casino on what the State claimed were non-Indian
25 lands. Clearly, declaratory and injunctive relief was the subject matter of the dispute.

26 While the case involved an interpretation of the Indian Gaming Regulatory Act (IGRA),
27 in order to reach the decision rendered, it was necessary for the court to squarely tackle the issue
28 of tribal sovereignty and the barrier it creates for haling tribes into court by aggrieved plaintiffs.

1 The Court held that tribal sovereign immunity "...protects Bay Mills from this legal action.
2 Congress has not abrogated tribal sovereign immunity from a State's suit to enjoin gaming off
3 reservation or other Indian lands." *Bay Mills, supra*, at 2028.

4 In reaching this decision, *Bay Mills* explained that while Tribes are subject to the plenary
5 authority of Congress, Tribes, nonetheless, "...remain 'separate sovereigns pre-existing the
6 Constitution.'" *See, Bay Mills, supra* at 2030, quoting *Santa Clara, supra*, at 56. Thus, "...unless
7 and 'until Congress acts, the tribes retain' their historic sovereign authority. *United States v.*
8 *Wheeler*, 435 U.S. 313, 323 (1978)." *Bay Mills, supra*, at 2030. As a consequence, "[a]mong the
9 core aspects of sovereignty that tribes possess — subject, again, to congressional action — is the
10 'common law immunity from suit traditionally enjoyed by sovereign powers.' *Santa Clara*
11 *Pueblo*, 436 U.S., at 58." *Ibid*.

12 Thus, for the plaintiffs to succeed in haling the Tribe into court in this case, they must,
13 first, show that either Congress unequivocally waived, *see, Santa Clara Pueblo, supra*, at 58, the
14 Tribe's sovereign immunity, thereby exposing the Tribe's public fisc to the threat of a suit for
15 damages or declaratory and injunctive relief. Or, the plaintiffs must show that the Tribe, itself,
16 explicitly and unequivocally, *see, Allen, supra* at 1047, waived its sovereign immunity, thereby
17 consenting to be haled into Court to the same effect. Those are the only two avenues open to
18 plaintiff for haling the Tribe into court. *See, Kiowa, supra*, at 754. ("...an Indian tribe is subject
19 to suit **only** where Congress has authorized the suit or the tribe has waived its immunity."
20 (Emphasis added)). A failure by the plaintiffs to make either showing ousts the Court of
21 jurisdiction to hear this dispute against the Tribe and also, the Tribal Court.

22 **A. Tribal Sovereignty Is Co-Extensive With The United States And Protects**
23 **Tribes Even When Exceeding Their Authority to Act**

24 As a corollary to the Tribe's status "... as distinct, independent political communities,
25 retaining their original natural rights in matters of local self-government," *Santa Clara Pueblo,*
26 *supra*, at 55, the Tribe's sovereign immunity from suit is also co-extensive with the United
27 States. Tribes are immune from suit, just as the United States is immune from suit. *See,*
28 *Chemehuevi Indian Tribe v. California State Board of Equalization*, 757 F.2d 1047, 1051

1 (9th Cir., 1985), quoting *Kennerly v. United States*, 721 F.2d 1252, 1258 (9th Cir., 1983) ("The
2 common law immunity of [Indian tribes] is co-extensive with that of the United States....").

3 Tribal sovereign immunity, therefore, protects Tribes even when acting outside their
4 authority. *See, Chemehuevi, supra*, at 1052 ("The tribe remains immune from suit regardless of
5 any allegation that it acted beyond its authority or outside of its powers."). Importantly, also,
6 Tribal sovereign immunity applies to a Tribe's commercial as well as governmental activities.
7 *See, Cook, supra* at 725. Punitive damages are also unavailable against the sovereign at common
8 law. *See, City of Newport v. Fort Concerts*, 453 U.S. 247 (1981).

9 **B. The Umbrella of Sovereign Immunity That Emanates From the**
10 **Tribe Extends To Tribal Institutions**

11 Tribal sovereign immunity includes an umbrella of protection which extends to the
12 agencies and instrumentalities of the Tribe. *Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441 (1908)
13 is the seminal case addressing suits against the sovereign. Its doctrine, however, "... has no
14 application in suits against the States and their agencies, which are barred regardless of the relief
15 sought." *Norton v. Ute Indian Tribe of the Uintah and Ouray Reservation*, 862 F.3d 1236, 1251
16 (10th Cir., 2017). The same principle holds for the Tribe's entities, agencies and departments.
17 *See, Native American Distributing v. Seneca-Cayuga Tobacco Co.*, 546 F.3d 1288, 1292(10th
18 Cir., 2008); *Allen, supra*, at 1047 (casino functioning as an arm of the Tribe enjoys Tribal
19 sovereign immunity from suit); *Cook, supra* at 725, 726 (tribal casino); *Allen, supra* at 1046
20 (tribal casino); *Ramey Constr. Co. v. Apache Tribe of the Mescalero Reservation*, 673 F.2d 315,
21 321 (10th Cir., 1982)(inn operating as a sub-entity of the Tribe and not a separate corporate entity
22 enjoyed tribal sovereign immunity from suit), *Garcia v. Akwesasne Housing Authority*, 105
23 F.Supp.2d 12, 15, 16 (N.D.N.Y., 2000), affirmed in rel. part, vacated in part by *Garcia v.*
24 *Akwesasne Housing Authority*, 268 F.3d 76 (2nd Cir., 2001). *See also, Bassett v. Mashantucket*
25 *Pequot Museum & Research Ctr. Inc.*, 221 F. Supp. 2d 271, 277, (D. Conn. 2002) (sovereignty
26 extends to agencies or entities of the Tribe); *Bassett v. Mashantucket Pequot Tribe*, 204 F.3d
27 343, 358 (2nd Cir., 2002); *Dillon v. Yankton Sioux Tribal Housing Authority*, 144 F.3d 581 (8th
28 Cir., 1998)(housing authority immune from suit based upon the Tribe's sovereignty).

1 **C. To Be Effective, Any Waiver of Tribal Sovereignty Must Be**
2 **Unequivocally Expressed; Waivers By Implication Do Not Pass**
3 **Muster. Any Claim, Therefore, A Tribe Has Waived Sovereign**
4 **Immunity Must Meet This High Standard Before A Party Is Allowed**
5 **To Hale The Tribe, And Perhaps, Other Tribal Defendants, Into**
6 **Court To Be Sued**

7 As explained, both Congress and the Tribe may waive a Tribe's sovereignty. In either
8 case, however, the waiver must be unequivocally expressed. *See, Allen, supra*, at 1047. "Like
9 the United States, an Indian tribe can consent to suit, but such consent must be unequivocally
10 indicated." *Chemehuevi, supra*, at 1052, 1053. "Congress, no less than a tribe itself, cannot
11 imply a waiver of sovereign immunity but must unequivocally express it." *Ibid.* A waiver,
12 therefore, of sovereign immunity will not be implied. *See, Santa Clara Pueblo, supra*, at 58.

13 Thus, as stated in *Department of the Army v. Blue Fox*, 525 U.S. 255, 261, 119 S.Ct. 687,
14 142 L.Ed.2d 718 (1998), in a case discussing the United States' immunity, applicable here, since
15 the Tribe's sovereignty is co-extensive with the immunity of the United States, the Court stated:

16 We have frequently held, however, that a waiver of sovereign immunity is to be
17 strictly construed, in terms of its scope, in favor of the sovereign....Such a waiver
18 must also be 'unequivocally expressed' in the statutory text....Respondent's claim
19 must meet this high standard. (Internal citations omitted).

20 *See also, Garcia, supra*, at 15, 16, applying this principle within the context of a purported
21 waiver of tribal sovereignty.

22 Therefore, to proceed with this dispute, plaintiffs have the burden of meeting this "high
23 standard" by showing the presence of an express and unequivocal waiver of the Tribe's sovereign
24 immunity, Congressional, Tribal or both. Waivers by implication do not pass muster. *See,*
25 *Santa Clara Pueblo, supra* at 58. This is a standard, however, the plaintiffs' complaint is
26 incapable of surmounting.

27 **V. THIS DISPUTE PROVIDES NO EXCEPTION TO THE UMBRELLA OF**
28 **PROTECTION FROM SUIT BY REASON OF THE TRIBE'S**
 SOVEREIGN IMMUNITY WHICH PROTECTS THE TRIBE, AND
 THROUGH IT, THE TRIBAL DEFENDANTS AND, THEREFORE, THE
 COURT IS OUSTED OF JURISDICTION TO HEAR THIS DISPUTE AS
 FRAMED BY THE PLAINTIFFS' COMPLAINT

 It is conceded that the Tribe, alone, brought suit in the Yerington Paiute Tribal Court,
alleging, *inter-alia*, the intrusion upon the Tribe's land, in its water, and in the air, of hazardous

1 materials and waste which the Tribe alleges, threatens the very fabric of the Tribe, its
2 government, and the health and welfare of its members. Tribal Comp., Exhibit A, ECF No. 3-2.
3 The defendants, in the Tribal Court action, then, brought this suit seeking to bar the Tribal Court
4 action from proceeding, there. Fed. Comp., p. 10, ECF No. 1.

5 BP and Arco, the plaintiffs, herein, concede the following undisputed facts:

6 1. The Yerington Paiute Tribe is a Federally recognized Tribe. Fed. Comp., ¶ 1, p.
7 1, ECF No. 1.

8 2. The Yerington Paiute Tribe is the only plaintiff in the Tribal Court proceedings.
9 Fed. Comp., ¶ 2, p. 1, ECF No. 1.

10 3. The Yerington Paiute Tribal Court is an integral part of the governance of the
11 Tribe. Fed Comp., ¶ 3, p. 3, ECF No. 1. “The Tribal Court is the judicial arm of the Tribal
12 government, and is located at 171 Campbell Lane, Yerington, Nevada 89447.” Fed Comp., ¶ 3,
13 p. 3, ECF No. 1.

14 4. The complaint is devoid of any allegation that Congress has abrogated the Tribe’s
15 sovereign immunity from suit.

16 5. The complaint is devoid of any allegation that the Tribe has waived its sovereign
17 immunity.

18 6. The complaint is devoid of any allegation that Congress or the Tribe has waived
19 the Tribal Court’s sovereign immunity from suit.

20 7. The complaint is devoid of any discussion of Tribal sovereign immunity and its
21 impact on the jurisdiction of the Court for haling the Tribal Court before this Court and
22 subjecting it to declaratory and injunctive relief.

23 **A. There Being No Waiver of Sovereignty By The Tribe, the Yerington**
24 **Paiute Tribe Must Be Dismissed From the Federal Complaint With**
25 **Prejudice**

26 From the undisputed facts, it is clear, the Tribe is a Federally recognized Tribe, which the
27 plaintiffs have conceded, here. Fed. Comp., ¶ 1, p. 1, ECF No. 1. Clearly, they must make this
28 concession. *See*, 82 FR 4915, p. 4919, 01/17/2017.

From any fair reading of the plaintiffs’ complaint, it is abundantly clear it contains no

1 suggestion that the Tribe has waived its sovereignty or that the Federal government has taken any
2 steps to abrogate the Tribe's sovereignty immunity from suit. In a word, the complaint is silent
3 on the subject. To be sure, the complaint alleges under the Federal question doctrine that the
4 Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1331. Fed. Comp., ¶ 7, p. 3,
5 ECF No. 1. Indeed, this Court has jurisdiction to determine its own jurisdiction. That is not to
6 say, however, such inquiry allows the Court to pretermitt a jurisdictional challenge due to
7 sovereign immunity. *See, Blatchford v. Native Village of Noatak*, 501 U.S. 775, 786, 111S.Ct.
8 2578 (1991)(while granting Federal court jurisdiction, generally, "...no one contends that § 1331
9 suffices to abrogate immunity to all federal questions.") That is, § 1331 is not, itself, a waiver of
10 sovereign immunity.

11 There is nothing in the record before this Court that amounts to an explicit waiver in
12 writing of the Tribe's sovereign immunity from suit. As an explicit waiver of sovereignty by
13 either the Tribe or Congress is the only avenue, for haling the Tribe into this Court by the
14 plaintiffs, *Kiowa, supra* at 754, and, as it is their burden to show that such an explicit waiver of
15 sovereignty exists, *Allen, supra* at 1047, there is no plausible basis for asserting jurisdiction over
16 the Tribe and haling it before this Court to defend against the plaintiffs' complaint, herein. *See,*
17 *Bay Mills, supra* at 2028, 2030.

18 The fact that the Tribe initiated suit against the plaintiffs in Tribal Court does not alter
19 this conclusion. A Tribe that initiates a lawsuit to protect its interests does not waive its
20 sovereignty from attack, even if it were in the form of a compulsory counterclaim. *See,*
21 *Oklahoma Tax Comm'n. v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 509, 510, 111
22 S.Ct. 905 (1991). The suit, therefore, against the Tribe must be dismissed with prejudice for the
23 want of jurisdiction due to the Tribe' sovereign immunity from suit. *Mills Bay, supra* at 2028,
24 2030, *Kiowa, supra* at 754.

25 **B. Because The Tribe Is Immune From Suit By Reason of Its Inherent**
26 **Sovereign Status, Because, Unless Waived, Its Immunity Extends to**
27 **Agencies or Tribal Departments or Elements of Its Government and**
28 **Because the Tribe Has Not Waived Sovereignty As To Its Tribal**
Court the Complaint Against the Tribal Court Must Be Dismissed
With Prejudice For the Want Of Jurisdiction Due to Tribal
Sovereignty

1 The analysis, here, builds upon the immediately preceding discussion which establishes
2 that the Tribe has not waived its sovereignty and is immune from suit in this case. The Court
3 lacks jurisdiction to permit the plaintiffs from proceeding against the Tribe. As established in
4 Section IV.B., *supra*, it is beyond dispute that the umbrella of sovereign immunity foreclosing
5 jurisdiction also extends to agencies or entities or other divisions/arms of the governance of the
6 Tribe. *See, Native American Distributing, supra* at 1292; *Norton, supra* at 1251.

7 Inasmuch as the plaintiffs' complaint fails to even hint at a waiver of sovereignty and the
8 Tribe, itself, is clearly immune from suit by reason of its sovereignty, the plaintiffs have supplied
9 the Court with no plausible basis for the exercise of its jurisdiction over the Tribal Court. The
10 Tribe, itself, has not waived sovereignty for the purpose of permitting suit to be brought in this or
11 any other Court against the Tribal Court. The plaintiffs' complaint makes clear, the Tribal Court
12 is an extension of the Tribe and integral to its governance. Fed. Comp., ¶ 3, p. 3, ECF No. 1.
13 Without question, then, the plaintiffs have failed in their burden to make out a case for the
14 exercise of jurisdiction in these proceedings against the Tribal Court and the case should,
15 therefore, be dismissed for the want of jurisdiction over the Tribal Court due to Tribal sovereign
16 immunity from suit. *See*, Section IV.B.

17 **VI. TRIBAL COURT EXHAUSTION ALSO REQUIRES DISMISSAL OF THE**
18 **PLAINTIFFS' FEDERAL COURT COMPLAINT (THE INSTANT DISPUTE).**

18 In the event the Court determines that tribal sovereignty does not preclude the Court from
19 asserting jurisdiction over the Tribal Court to permit this case to go forward, that is still not the
20 end of the matter. Tribal Court exhaustion also obtains to leave this case before the Tribal Court,
21 dismissing these proceedings against the Yerington Paiute Tribal Court.

22 On this point, the Tribal Court concurs with and adopts the analysis set forth in the points
23 and authorities supporting the Tribal Judge's motion to dismiss discussing jurisdiction over the
24 Tribal Judge, ECF No. 26, pp., 9 through 14 and the Tribal Judge's argument concerning
25 exhaustion, set out at pages 14 through 15, EDF No. 26. Those pages are attached hereto, as
26 Exhibit 1.

27 The Tribal Court would only add that where, as here, the Tribal Judge argues the second
28 *Montana* exception to tribal court jurisdiction over non-Indians where the non-Indian's conduct

1 “...threatens or has some direct effect on the political integrity, the economic security or, the
2 health or welfare of the Tribe[,]” *Montana v. United States*, 450 U.S. 544, 566, 101 S.Ct. 1245
3 (1981), the issue before this Court for purposes of the application of the deference to the Tribal
4 Court to make that determination is not for this Court to decide, now, whether the Tribal Court
5 actually has jurisdiction over the plaintiffs, herein, the defendants in the Tribal Court
6 proceedings. Rather, the only question before this Court, presently, is “merely whether ...[the
7 Tribal Court] can ‘make a colorable claim that [it has] jurisdiction.’ [*Thlopthlocco Tribal Town*
8 *v. Stidham*, 762 F.3d 1226, 1240 (10th Cir., 2014).” *Norton, supra* at 1246.

9 Clearly, the Yerington Paiute Tribe (the Tribe), the plaintiff, before the Tribal Court, has
10 met this standard. The plaintiff alleges harm to the Tribe of epic proportions. That is to say, the
11 Tribe’s complaint alleges conduct resulting in harm that is severe, catastrophic, and a threat to
12 tribal governance, as well as the health and welfare of the Tribe’s membership. *See*, Tribal
13 Comp., ECF No. 3-2, ¶¶ 3, 8, 9, 10, 16, 17, 20, 21, 22, 29, 36-39, 41, 61 and 69. These
14 allegations are sufficient to place the Tribe’s complaint, below, squarely within the second prong
15 of *Montana*. *See, Evans v. Shoshone-Bannock Land Use Policy Comm’n.*, 736 F.3d 1298, 1306
16 (9th Cir., 2013); *Elliott v. White Mountain Apache Tribal Ct.*, 566 F.3d 842, 846 (9th Cir., 2009);
17 *FMC Corp. v. Shoshone-Bannock Tribes*, 2017 U.S. Dist. Lexis 161387 (D. Idaho, Sept. 28,
18 2017).

19 That is to say, these allegations in the Tribe’s complaint pending before the Tribal Judge
20 mean the Tribal Court complaint plausibly smacks of jurisdiction over the non-Indian defendants,
21 there. *See, Montana v. EPA*, 137 F.3d 1135, 1139040, (9th Cir., 1998). As such, the principles of
22 comity and tribal self governance apply to give the Tribal Judge at least the chance to assess the
23 plausibility of jurisdiction in the Tribal Court. *See, Iowa Mut. Ins., Co. v. La Plante*, 480 U.S. 9,
24 14 (1987)(citations omitted); *Nat’l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S.
25 845, 857 (1985); *Boozer v. Wilder*, 381 F.3d 931, 935 (9th Cir., 2004). “Whether such
26 allegations are sufficiently catastrophic would benefit from full consideration in the Tribal
27 Court.” *Norton, supra* at 1246.

28 The Tribal Court, through the Tribal Court Judge Sandra Mae-Pickens, should be given

1 the opportunity, therefore, to assess jurisdiction of the Tribal Court over Arco and BP in the
2 Tribe's case in the Tribal Court. The Tribal Court, itself, should, therefore, not be haled into this
3 Court, either, for the same reasoning.

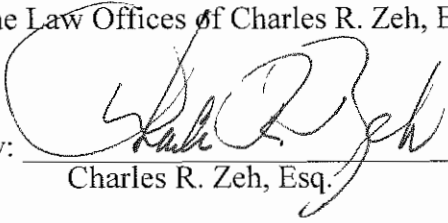
4 **CONCLUSION**

5 As for the Tribal Court, the complaint should be dismissed with prejudice. There is no
6 plausible basis for the exertion of jurisdiction in this matter over the Court. It is an integral part
7 of the Yerington Paiute Tribe's government, as the plaintiffs admit, their complaint in no way
8 suggests a Congressional or Tribal waiver of the Tribe's sovereign immunity that it inherently
9 possesses, and as a result, the Court is ousted of jurisdiction over the Tribal Court by reason of
10 sovereign immunity. Should this Court find, however, it retains jurisdiction over the Tribal
11 Court, the case should nevertheless not proceed in this Court in order to allow the Tribal Court
12 Judge Sandra-Mae Pickens, the opportunity to assess the Tribal Court's jurisdiction over the
13 Tribal Court case on the grounds of exhaustion of tribal remedies.

14 As to the Tribal Court, however, at bottom, the instant matter before this Court should be
15 dismissed with prejudice.

16 Dated this 26th day of October, 2017.

The Law Offices of Charles R. Zeh, Esq.

17
18 By: 
19 Charles R. Zeh, Esq.

Attorneys for Yerington Paiute Tribal Court

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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing *Yerington Paiute Tribal Court's Points and Authorities in Support of Its Motion to Dismiss, Pursuant to Rule 12(b)(1), FRCP*, was made through the court's electronic filing and notice system (CM/ECF) or, as appropriate, by first class mail from Reno, Nevada, addressed to the following on October 26, 2017.

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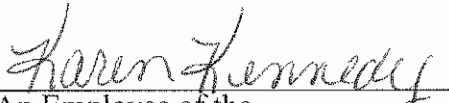
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Dated this 26th day of October, 2017.


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Exhibit List

Exhibit No.	Document	Page(s)
1.	Excerpts of Defendant Sandra-Mae Pickens' Motion to Dismiss Plaintiffs' Complaint, ECF No. 26, Pages 9-15	7

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