

1 ROBERT A. DOTSON
 Nevada Bar No. 5285
 2 JILL I. GREINER
 Nevada Bar No. 4276
 3 Dotson Law
 One East First Street
 4 Sixteenth Floor
 Reno, NV 89501
 5 Telephone: (775) 501-9400
 Facsimile: (775) 853-2916
 6 rdotson@dotsonlaw.legal
 jgreiner@dotsonlaw.legal
 7

8 Kenzo Kawanabe – *Pro Hac Vice*
 Adam Cohen – *Pro Hac Vice*
 Constance L. Rogers – *Pro Hac Vice*
 9 Kyle W. Brenton - *Pro Hac Vice*
 Davis Graham & Stubbs LLP
 10 1550 17th Street, Suite 500
 Denver, CO 80202
 11 Telephone: (303) 892-9400
 Facsimile: (303) 893-1379
 12 kenzo.kawanabe@dgsllaw.com
 adam.cohen@dgsllaw.com
 13 connie.rogers@dgsllaw.com
 kyle.brenton@dgsllaw.com
 14 *Attorneys for Plaintiffs BP America Inc. and Atlantic Richfield Company*

15 **UNITED STATES DISTRICT COURT**
 16 **FOR THE DISTRICT OF NEVADA**

17 BP AMERICA INC., and)
 ATLANTIC RICHFIELD COMPANY,)
 18 Plaintiffs,)
 v.)
 19 YERINGTON PAIUTE TRIBE; LAURIE A.)
 THOM, in her official capacity as Chairman)
 20 of the Yerington Paiute Tribe; ALBERT)
 ROBERTS, in his official capacity as Vice)
 21 Chairman of the Yerington Paiute Tribe;)
 ELWOOD EMM, LINDA HOWARD, NATE)
 22 LANDA, DELMAR STEVENS, and CASSIE)
 ROBERTS, in their official capacities as)
 23 Yerington Paiute Tribal Council Members;)
 DOES 1-25, in their official capacities as)
 24 decision-makers of the Yerington Paiute)
 Tribe; YERINGTON PAIUTE TRIBAL)
 25 COURT; and SANDRA-MAE PICKENS in)
 26 her official capacity as Judge of the Yerington)
 Paiute Tribal Court,)
 27 Defendants.)

CASE NO. 3:17-cv-0588-LRH-WGC

**AMENDED COMPLAINT FOR
 DECLARATORY AND
 INJUNCTIVE RELIEF**

1 Plaintiffs BP America Inc. (“BPA”) and Atlantic Richfield Company (“ARC”)
2 (collectively, “Plaintiffs”), by and through their undersigned attorneys of record, hereby submit
3 this Amended Complaint for Declaratory and Injunctive Relief (“Amended Complaint”) against
4 Defendants Yerington Paiute Tribe (the “Tribe”); Laurie A. Thom in her official capacity as
5 Chairman of the Tribe; Albert Roberts in his official capacity as Vice Chairman of the Tribe;
6 Elwood Emm, Linda Howard, Nate Landa, Delmar Stevens, and Cassie Roberts in their official
7 capacities as Yerington Paiute Tribal Council Members; Does 1 through 25, in their official
8 capacities as decision-makers of the Yerington Paiute Tribe; the Yerington Paiute Tribal Court
9 (the “Tribal Court”), and the Honorable Sandra-Mae Pickens in her official capacity as presiding
10 Judge of the Tribal Court, and hereby state, assert, and allege as follows:

11 **INTRODUCTION**

12 In this action, Plaintiffs BPA and ARC seek declaratory and injunctive relief against any
13 and all efforts by the Tribe, Tribal Chairman Laurie A. Thom in her official capacity, Tribal Vice-
14 Chairman Albert Roberts in his official capacity, Tribal Council members Elwood Emm,
15 Linda Howard, Nate Landa, Delmar Stevens, and Cassie Roberts in their official capacities, Does
16 1 through 25, in their official capacities, the Yerington Paiute Tribal Court, and Tribal Court Judge
17 Sandra-Mae Pickens in her official capacity, to maintain, prosecute, or exercise jurisdiction over
18 an action currently pending in Tribal Court filed as Case No. YCV1017 (the “Tribal Court
19 Action”). The Tribe has brought claims against BPA and ARC in Tribal Court, but neither BPA
20 nor ARC are members of the Tribe, nor does the Tribe allege that either has engaged in any conduct
21 on the Tribe’s reservation or on any lands owned by or held in trust for the Tribe. Under well-
22 settled United States Supreme Court case law affirming the basic principle that tribal jurisdiction
23 stops at the boundaries of a tribe’s reservation, the subject-matter jurisdiction of the Tribal Court
24 does not encompass claims like those brought by the Tribe, and so BPA and ARC respectfully
25 request that this Court enjoin all further proceedings in Tribal Court. Moreover, the Tribal Court
26 plainly lacks jurisdiction, and so requiring BPA and ARC to exhaust their remedies in tribal court
27 would serve no purpose but delay. Exhaustion is thus not required.
28

1 After BPA and ARC filed their initial complaint in this action, Defendants moved to
2 dismiss and argued, *inter alia*, that “the tribal court lawsuit was filed by the Yerington Paiute Tribe,
3 not by its Chairman,” and that Chairman Thom “does not vote on such resolutions.” (ECF No. 27
4 at 3.) BPA and ARC have no way of verifying this claim, because the Tribe’s laws and rules are
5 not publicly available, and so BPA and ARC face the prospect of defending themselves in a forum
6 in which they do not have full access to the applicable law or rules. To address Defendants’ claim,
7 however, and to supplement certain other factual allegations, BPA and ARC file this Amended
8 Complaint.

9 **PARTIES**

10 1. The Tribe is a federally recognized Indian Tribe headquartered at 171 Campbell
11 Lane, Yerington, Nevada 89447. The Tribe is the plaintiff in the underlying action, filed in the
12 Yerington Paiute Tribal Court, *Yerington Paiute Tribe v. BP America Inc. & Atlantic Richfield*
13 *Co.*, Case No. YCV1017. (Complaint filed August 18, 2017 [“Compl.”] at ¶¶ 1, 4.)¹

14 2. Laurie A. Thom is Chairman of the Yerington Paiute Tribe. Chairman Thom is a
15 tribal official sued herein in her official capacity.

16 3. Albert Roberts is Vice-Chairman of the Yerington Paiute Tribe. Vice-Chairman
17 Roberts is a tribal official sued herein in his official capacity.

18 4. Elwood Emm is a member of the Yerington Paiute Tribal Council. Mr. Emm is a
19 tribal official sued herein in his official capacity.

20 5. Linda Howard is a member of the Yerington Paiute Tribal Council. Ms. Howard
21 is a tribal official sued herein in her official capacity.

22 6. Nate Landa is a member of the Yerington Paiute Tribal Council. Mr. Landa is a
23 tribal official sued herein in his official capacity.

24
25 _____
26 ¹ The Tribal Court Complaint is included as Exhibit A to the Second Declaration of Adam
27 Cohen, in support of BPA’s and ARC’s Renewed Motion for Preliminary Injunction, filed
28 contemporaneously herewith. BPA and ARC expressly incorporate by reference herein all
factual assertions made in the Amended Motion for Preliminary Injunction and the exhibits to the
Second Declaration of Adam Cohen.

1 7. Delmar Stevens is a member of the Yerington Paiute Tribal Council. Mr. Stevens
2 is a tribal official sued herein in his official capacity.

3 8. Cassie Roberts is a member of the Yerington Paiute Tribal Council. Ms. Roberts
4 is a tribal official sued herein in her official capacity.

5 9. Plaintiffs are unaware of the true names of Does 1 through 25 and therefore sue
6 each by such fictitious names. On information and belief, each Doe is a member of the Yerington
7 Paiute Tribe and/or a tribal official who has acted with regard to the Tribal Court Action, and/or
8 has been or will be named to replace one or more of the tribal official Defendants listed above.
9 Does 1 through 25 are tribal officials sued herein in their official capacities.

10 10. The Tribal Court is the judicial arm of the tribal government, and is located at 171
11 Campbell Lane, Yerington, Nevada 89447. The Tribal Court Action is pending in the Tribal Court.

12 11. Tribal Court Judge Sandra-Mae Pickens is the presiding judge of the Tribal Court.
13 Judge Pickens is the judge presiding over the Tribal Court Action. Judge Pickens is a Tribal
14 official sued herein in her official capacity.

15 12. Plaintiff ARC is a corporation duly organized and existing under the laws of the
16 State of Delaware. Its principal place of business is 501 Westlake Park Blvd., Houston, Texas
17 77079. ARC is the ultimate corporate successor to The Anaconda Mining Company
18 (“Anaconda”), which once owned and operated the Yerington Anaconda Mine (the “Mine”) in
19 Yerington, Nevada. Anaconda was merged with a wholly owned subsidiary of ARC in 1977, and
20 was merged into ARC in 1981. ARC is a defendant in the Tribal Court Action.

21 13. Plaintiff BPA is a corporation duly organized and existing under the laws of the
22 State of Delaware. Its principal place of business is 501 Westlake Park Blvd., Houston, Texas
23 77079. ARC is a wholly owned subsidiary of BPA. BPA is not now nor has it ever been a
24 corporate successor to Anaconda, or successor to the liabilities, if any, of Anaconda and its
25 predecessors in interest. Nevertheless, BPA was named as a defendant in the Tribal Court Action
26 by the Tribe.

JURISDICTION

1
2 14. The principal question in this case is whether the Tribal Court has subject-matter
3 jurisdiction over the claims brought by the Tribe in the Tribal Court Action. This presents a federal
4 question under 28 U.S.C. § 1331. *See Nat'l Farmers Union Ins. Co. v. Crow Tribe*, 471 U.S. 845,
5 852 (1985) (“The question whether an Indian tribe retains the power to compel a non-Indian . . .
6 to submit to the civil jurisdiction of a tribal court is one that must be answered by reference to
7 federal law, and is a ‘federal question’ under §1331.”). Moreover, the Tribal Court Action at issue
8 here seeks not just to adjudicate the conduct of non-Indians, but to adjudicate their conduct outside
9 of both the Tribe’s reservation and beyond any lands owned or held in trust for the Tribe—all
10 without Plaintiffs having entered into any commercial or consensual relationship with the Tribe.

11 15. The claims asserted within this Amended Complaint arise under federal common
12 law. *See Evans v. Shoshone-Bannock Land Use Policy Com’n*, 736 F.3d 1298, 1302 (9th Cir.
13 2013) (“Non-Indians may bring a federal common law cause of action under 28 U.S.C. § 1331 to
14 challenge tribal court jurisdiction.” (internal quotations omitted)). Plaintiffs may seek remedies
15 pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201. The Court has jurisdiction
16 over the subject matter of such claims pursuant to 28 U.S.C. § 1331.

17 16. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2), because the
18 Tribal Court Action—the event giving rise to BPA and ARC’s declaratory judgment claim—arose
19 in this District.

20 17. The Tribe attempted to serve process by sending a copy of its complaint, without
21 any summons, via Federal Express to BPA’s and ARC’s registered agent in Nevada. In so doing,
22 the Tribe admitted that it was not acting pursuant to Nevada law, stating in a cover letter, “Please
23 note that the lawsuit is filed in Yerington Paiute Tribal Court, and as such, is not subject to the
24 Nevada Rules of Civil Procedure governing service of process.”

FACTUAL ALLEGATIONS

25
26 18. The Tribe initiated the Tribal Court Action on August 18, 2017, seeking
27 compensatory and special damages, punitive damages, and the costs of medical monitoring,
28

1 alleging that BPA and ARC are jointly and severally liable for “acts and omissions in regard to
2 toxic and hazardous substances on and around the site of [Plaintiffs’] former copper mine and ore
3 processing facility located in the Mason Valley, Lyon County, Nevada (the ‘Mine Site’).” (Compl.
4 at ¶¶ 1, 7.) The Tribe alleges, among other things, that BPA and ARC failed to properly remediate
5 toxic and hazardous substances at the Mine.

6 19. Chairman Thom has taken and will continue to take substantial actions to initiate
7 the Tribal Court Action on behalf of the Tribe. Acting in her official capacity, Chairman Thom
8 filed the Tribal Court Action on behalf of the Tribe and continues to pursue that lawsuit on behalf
9 of the Tribe. On information and belief, she is now managing and implementing the Tribal Court
10 Action in her official capacity. On information and belief, Chairman Thom’s individual actions
11 undertaken with regard to the Tribal Court Action include or will include, inter alia, authorizing
12 commencement of the Tribal Court Action, retaining counsel for the Tribe, discussing and deciding
13 on litigation strategy, presiding over the tribal council meetings at which the lawsuit was approved
14 by the council, approving pleadings prepared by counsel, reviewing and producing documents,
15 reviewing and attending depositions, providing testimony, hiring expert witnesses, attending trial,
16 and strategizing with the Tribe’s counsel regarding all of the tasks necessary to prosecute a lawsuit.
17 Chairman Thom’s actions have also forced or will force BPA and ARC to defend the Tribal Court
18 Action, incurring costs to engage counsel, respond to the Tribe’s lawsuit, file this action, appear
19 in an unfamiliar forum, and generally defend themselves against the Tribe’s *ultra vires* lawsuit.
20 Chairman Thom has also refused to voluntarily dismiss the Tribal Court Action despite clear
21 evidence and argument that the Tribal Court Action is beyond the power of the Tribe to prosecute.
22 These actions were or will be taken by Chairman Thom beyond the authority the Tribe is capable
23 of bestowing and therefore are beyond the scope of her authority as an official of the Tribe.

24 20. Vice-Chairman Roberts participated in initiating the Tribal Court Action on behalf
25 of the Tribe. He continues to pursue that lawsuit on behalf of the Tribe. On information and belief,
26 he is now managing and implementing the Tribal Court Action in his official capacity. On
27 information and belief, Vice-Chairman Roberts’s individual actions undertaken with regard to the
28

1 Tribal Court Action include or will include, inter alia, authorizing commencement of the Tribal
2 Court Action, retaining counsel for the Tribe, discussing and deciding on litigation strategy,
3 presiding over the tribal council meetings at which the lawsuit was approved by the council,
4 approving pleadings prepared by counsel, reviewing and producing documents, reviewing and
5 attending depositions, providing testimony, hiring expert witnesses, attending trial, and
6 strategizing with the Tribe's counsel regarding all of the tasks necessary to prosecute a lawsuit.
7 Vice-Chairman Roberts's actions have also forced or will force BPA and ARC to defend the Tribal
8 Court Action, incurring costs to engage counsel, respond to the Tribe's lawsuit, file this action,
9 appear in an unfamiliar forum, and generally defend themselves against the Tribe's *ultra vires*
10 lawsuit. Vice-Chairman Roberts has also refused to voluntarily dismiss the Tribal Court Action
11 despite clear evidence and argument that the Tribal Court Action is beyond the power of the Tribe
12 to prosecute. These actions were or will be taken by Vice-Chairman Roberts beyond the authority
13 the Tribe is capable of bestowing and therefore are beyond the scope of his authority as an official
14 of the Tribe.

15 21. Tribal Council Member Emm participated in the initiation of the Tribal Court
16 Action on behalf of the Tribe. On information and belief, he is now managing and implementing
17 the Tribal Court Action in his official capacity. On information and belief, Tribal Council Member
18 Emm's individual actions undertaken with regard to the Tribal Court Action include or will
19 include, inter alia, authorizing commencement of the Tribal Court Action, retaining counsel for
20 the Tribe, discussing and deciding on litigation strategy, approving pleadings prepared by counsel,
21 reviewing and producing documents, reviewing and attending depositions, providing testimony,
22 hiring expert witnesses, attending trial, and strategizing with the Tribe's counsel regarding all of
23 the tasks necessary to prosecute a lawsuit. Council Member Emm's actions have also forced or
24 will force BPA and ARC to defend the Tribal Court Action, incurring costs to engage counsel,
25 respond to the Tribe's lawsuit, file this action, appear in an unfamiliar forum, and generally defend
26 themselves against the Tribe's *ultra vires* lawsuit. Council Member Emm has also refused to
27 voluntarily dismiss the Tribal Court Action despite clear evidence and argument that the Tribal
28

1 Court Action is beyond the power of the Tribe to prosecute. These actions were or will be taken
2 by Council Member Emm beyond the authority the Tribe is capable of bestowing and therefore
3 are beyond the scope of his authority as an official of the Tribe.

4 22. Tribal Council Member Howard participated in initiating the Tribal Court Action
5 on behalf of the Tribe. On information and belief, she is now managing and implementing the
6 Tribal Court Action in her official capacity. On information and belief, Tribal Council Member
7 Howard's individual actions undertaken with regard to the Tribal Court Action include or will
8 include, inter alia, authorizing commencement of the Tribal Court Action, retaining counsel for
9 the Tribe, discussing and deciding on litigation strategy, approving pleadings prepared by counsel,
10 reviewing and producing documents, reviewing and attending depositions, providing testimony,
11 hiring expert witnesses, attending trial, and strategizing with the Tribe's counsel regarding all of
12 the tasks necessary to prosecute a lawsuit. Council Member Howard's actions have also forced or
13 will force BPA and ARC to defend the Tribal Court Action, incurring costs to engage counsel,
14 respond to the Tribe's lawsuit, file this action, appear in an unfamiliar forum, and generally defend
15 themselves against the Tribe's *ultra vires* lawsuit. Council Member Howard has also refused to
16 voluntarily dismiss the Tribal Court Action despite clear evidence and argument that the Tribal
17 Court Action is beyond the power of the Tribe to prosecute. These actions were or will be taken
18 by Council Member Howard beyond the authority the Tribe is capable of bestowing and therefore
19 are beyond the scope of her authority as an official of the Tribe.

20 23. Tribal Council Member Landa initiated the Tribal Court Action on behalf of the
21 Tribe. On information and belief, he is now managing and implementing the Tribal Court Action
22 in his official capacity. On information and belief, Tribal Council Member Landa's individual
23 actions undertaken with regard to the Tribal Court Action include or will include, inter alia,
24 authorizing commencement of the Tribal Court Action, retaining counsel for the Tribe, discussing
25 and deciding on litigation strategy, approving pleadings prepared by counsel, reviewing and
26 producing documents, reviewing and attending depositions, providing testimony, hiring expert
27 witnesses, attending trial, and strategizing with the Tribe's counsel regarding all of the tasks
28

1 necessary to prosecute a lawsuit. Council Member Landa's actions have also forced or will force
2 BPA and ARC to defend the Tribal Court Action, incurring costs to engage counsel, respond to
3 the Tribe's lawsuit, file this action, appear in an unfamiliar forum, and generally defend themselves
4 against the Tribe's *ultra vires* lawsuit. Council Member Landa has also refused to voluntarily
5 dismiss the Tribal Court Action despite clear evidence and argument that the Tribal Court Action
6 is beyond the power of the Tribe to prosecute. These actions were or will be taken by Council
7 Member Landa beyond the authority the Tribe is capable of bestowing and therefore are beyond
8 the scope of his authority as an official of the Tribe.

9 24. Tribal Council Member Stevens initiated the Tribal Court Action on behalf of the
10 Tribe. On information and belief, he is now managing and implementing the Tribal Court Action
11 in his official capacity. On information and belief, Tribal Council Member Stevens's individual
12 actions undertaken with regard to the Tribal Court Action include or will include, inter alia,
13 authorizing commencement of the Tribal Court Action, retaining counsel for the Tribe, discussing
14 and deciding on litigation strategy, approving pleadings prepared by counsel, reviewing and
15 producing documents, reviewing and attending depositions, providing testimony, hiring expert
16 witnesses, attending trial, and strategizing with the Tribe's counsel regarding all of the tasks
17 necessary to prosecute a lawsuit. Council Member Stevens's actions have also forced or will force
18 BPA and ARC to defend the Tribal Court Action, incurring costs to engage counsel, respond to
19 the Tribe's lawsuit, file this action, appear in an unfamiliar forum, and generally defend themselves
20 against the Tribe's *ultra vires* lawsuit. Council Member Stevens has also refused to voluntarily
21 dismiss the Tribal Court Action despite clear evidence and argument that the Tribal Court Action
22 is beyond the power of the Tribe to prosecute. These actions were or will be taken by Council
23 Member Stevens beyond the authority the Tribe is capable of bestowing and therefore are beyond
24 the scope of his authority as an official of the Tribe.

25 25. Tribal Council Member Roberts initiated the Tribal Court Action on behalf of the
26 Tribe. On information and belief, she is now managing and implementing the Tribal Court Action
27 in her official capacity. On information and belief, Tribal Council Member Roberts's individual
28

1 actions undertaken with regard to the Tribal Court Action include or will include, inter alia,
2 authorizing commencement of the Tribal Court Action, retaining counsel for the Tribe, discussing
3 and deciding on litigation strategy, approving pleadings prepared by counsel, reviewing and
4 producing documents, reviewing and attending depositions, providing testimony, hiring expert
5 witnesses, attending trial, and strategizing with the Tribe's counsel regarding all of the tasks
6 necessary to prosecute a lawsuit. Council Member Roberts's actions have also forced or will force
7 BPA and ARC to defend the Tribal Court Action, incurring costs to engage counsel, respond to
8 the Tribe's lawsuit, file this action, appear in an unfamiliar forum, and generally defend themselves
9 against the Tribe's *ultra vires* lawsuit. Council Member Roberts has also refused to voluntarily
10 dismiss the Tribal Court Action despite clear evidence and argument that the Tribal Court Action
11 is beyond the power of the Tribe to prosecute. These actions were or will be taken by Council
12 Member Roberts beyond the authority the Tribe is capable of bestowing and therefore are beyond
13 the scope of her authority as an official of the Tribe.

14 26. The above allegations regarding Chairman Thom, Vice-Chairman Roberts, and the
15 individual members of the tribal council are made in the alternative, because any or all of the
16 named tribal officials could have undertaken any or all of the actions discussed above with regard
17 to the Tribal Court Action.

18 27. On information and belief, Does 1 through 25 assisted in the decision to initiate the
19 Tribal Court Action on behalf of the Tribe and took and/or will take personal actions similar to
20 those alleged regarding the tribal council members above. These actions were or will be taken by
21 Does 1 through 25 beyond the authority that the Tribe is capable of bestowing and therefore are
22 beyond the scope of each individual's authority as an official of the Tribe. Does 1 through 25 may
23 also be individuals selected to replace any individual defendant named above in their official
24 capacity, and may be named individually in subsequent pleadings if and when such individuals
25 succeed the Defendants listed above.

26 28. As the judge presiding over the Tribal Court Action, Judge Pickens is a tribal
27 official involved in an assertion of jurisdiction over non-Indians BPA and ARC that violates
28

1 federal jurisdictional limitations on tribal courts. Judge Pickens is the tribal official charged with
2 presiding over the *ultra vires* lawsuit filed by the Tribe, and possesses the authority to dismiss that
3 lawsuit, including *sua sponte*. On November 2, 2017, Judge Pickens entered an Amended
4 Scheduling Order in the Tribal Court Action, indicating that she will continue to entertain the
5 Tribal Court Action in ongoing violation of federal law. These actions were or will be taken by
6 Judge Pickens beyond the authority that the Tribe and Tribal Court are capable of bestowing and
7 therefore are beyond the scope of her authority as an official of the Tribe and/or Tribal Court.

8 29. BPA never had any ownership or operating interest in the Mine. ARC has not had
9 any operating interest in the Mine since the Mine's closure in 1978 (other than to perform
10 government-required environmental response actions), and no ownership interest since 1982.

11 30. In the Tribal Court Action, the Tribe maintains claims for strict liability, trespass,
12 battery, negligence, and nuisance.

13 31. Without waiving any defenses or conceding the jurisdiction of the Tribal Court,
14 BPA and ARC responded to the Tribal Court Action by filing a motion to dismiss, or in the
15 alternative, asking the Tribal Court to stay the Tribal Court Action for lack of subject-matter and/or
16 personal jurisdiction.

17 32. BPA and ARC are not members of the Tribe (and the Tribe does not allege
18 otherwise).

19 33. The Tribe does not allege that BPA or ARC engaged in any conduct or activity on
20 the Tribe's reservation or any lands owned by or held in trust for the Tribe, and BPA and ARC did
21 not engage in any conduct or activity on or affecting such lands.

22 34. The property on which Anaconda conducted its mining operations does not include
23 any portion of the Tribe's reservation or any lands owned by or held in trust for the Tribe.

24 35. The northern boundary of the Mine Site boundary is approximately 2.5 miles south
25 of the southern boundary of the Tribe's Campbell Ranch property; the eastern boundary of the
26 Mine Site is approximately 1 mile east of the Town of Yerington and the Tribe's Yerington Colony
27 property.
28

1 36. Upon information and belief, Anaconda, BPA, and ARC have not entered or
2 conducted any operations of any kind on any portion of the Tribe's reservation or any lands owned
3 by or held in trust for the Tribe, with the exception of environmental investigations and response
4 actions performed by ARC under the Comprehensive Environmental Response, Compensation,
5 and Liability Act ("CERCLA"), 42 U.S.C. §§ 9604, 9606, at the direction and under the oversight
6 of the Nevada Division of Environmental Protection and the United States Environmental
7 Protection Agency.

8 37. The government-directed CERCLA investigations confirm that the plume of
9 impacted groundwater that may be associated with the Mine Site is generally stable (not
10 expanding) and has not reached any portion of the Tribe's reservation, any other lands owned by
11 or held in trust for the Tribe, or any water-supply wells owned or operated by the Tribe.

12 38. Anaconda, BPA, and ARC have not transported, disposed of, or stored, or arranged
13 for the transportation, disposal, or storage of any mining waste materials or hazardous substances
14 onto any portion of the Tribe's reservation or any lands owned by or held in trust for the Tribe.

15 39. Anaconda, BPA, and ARC never owned, operated, constructed, maintained, or
16 realigned, any ditch, water conveyance, or other structure or facility on any portion of the Tribe's
17 reservation or any lands owned by or held in trust for the Tribe.

18 40. The government-directed CERCLA investigations include sampling of sediments
19 in the Wabuska Drain, which is an agricultural return-flow ditch constructed and operated by the
20 Walker River Irrigation District, not Anaconda, BPA, or ARC. The Wabuska Drain originates on
21 private lands north and outside of the Mine Site boundary. It extends to the north, eventually
22 crossing lands acquired in 1979 for the Tribe before intersecting with the Walker River. Surface
23 water runoff does not leave the Mine Site and enter the Wabuska Drain. The government-directed
24 CERCLA investigations confirm that, to the extent mine-related constituents are detectable in the
25 bottom sediments of the Wabuska Drain, they are not observed north of Luzier Lane, which is
26 approximately 2.5 miles south of the southernmost boundary of the Tribe's property composed
27 largely of the former Campbell Ranch and other acquired property.
28

1 41. No treaty or federal statute authorizes the Tribe or its courts to exercise jurisdiction
2 over tort claims against non-members for claims arising from conduct or activities undertaken off
3 the Tribe's reservation.

4 42. The Tribal Court Action does not arise from any consensual relationship between
5 the Tribe and either of the Plaintiffs, through commercial dealing, contracts, leases, or other
6 arrangements, nor have BPA or ARC entered into any such consensual relationships with the Tribe
7 or its members. In its Complaint, the Tribe concedes that BPA and ARC "have neither sought nor
8 obtained [the Tribe's] consent to transport or store their toxic and hazardous substances and wastes
9 on Plaintiff's property." (*Id.* at ¶ 39).

10 43. BPA and ARC have not engaged in any conduct that has substantially affected the
11 health, welfare, political integrity, or economic security of the Tribe in a manner that has caused
12 or will cause catastrophic consequences for tribal self-government. Despite the contamination and
13 acts and omissions alleged by the Tribe, which the Tribe asserts began in the early 1950s, decades
14 before the limited involvement of ARC, the Tribe has continued to exist and self-govern through
15 the present.

16 44. The Tribal Court action is also *ultra vires* because it was never properly instituted
17 through lawful service of process. There is a "bedrock principle: An individual or entity named
18 as a defendant is not obliged to engage in litigation unless notified of the action, and brought under
19 a court's authority, by formal process." *Murphy Bros., Inc. v. Michetti*, 526 U.S. 344, 347 (1999)
20 (a "courtesy copy" received by fax was insufficient service); *see also id.* at 351 ("Unless a named
21 defendant agrees to waive service, the summons continues to function as the *sine qua non* directing
22 an individual or entity to participate in a civil action or forego procedural or substantive rights.");
23 *Omni Capital Int'l, Ltd. v. Rudolf Wolf & Co.*, 484 U.S. 97, 104 (1987) ("Before a . . . court may
24 exercise personal jurisdiction over a defendant, the procedural requirement of service of summons
25 must be satisfied."); *Mississippi Publ'g Corp. v. Murphree*, 326 U.S. 438, 444-45 (1946)
26 ("[S]ervice of summons is the procedure whereby a court . . . asserts jurisdiction over the person
27 of the party served.").

1 45. The Tribe admits that its attempt to serve process was not done pursuant to Nevada
2 law. Nor does the Tribe even attempt to explain how its method of service could possibly comport
3 with federal law. Here, the Tribe attempted to serve its Complaint by “Federal Expressing a file-
4 stamped copy of the complaint” to BPA and ARC’s registered agent, all the while asserting that
5 the Tribe “is not subject to the Nevada Rules of Civil Procedure governing service of process.”
6 Yet it is also undisputed that the Tribe attempted to serve its Complaint beyond the boundaries of
7 the Tribe’s reservation. Service of process therefore was unlawful. A valid proceeding requires
8 that service of process be performed consistent with law, but here, the Tribe’s legal authority to
9 create rules for serving process does not and cannot extend beyond the reservation’s physical
10 boundaries. If the Tribe wishes to serve process beyond those physical boundaries, it must comply
11 with a lawful rule of the place in which it attempts to serve process. Yet by the Tribe’s own
12 admission, it has not done so here.

13 46. Moreover, the Tribal Code contains no provision (analogous to Nevada Revised
14 Statutes § 14.065(2)) that would permit the Tribal Court to exercise jurisdiction over a party served
15 with process outside the boundaries of the Tribe’s reservation. Because the Tribe lacks statutory
16 authority to serve process beyond its reservation, the Tribe cannot cure the deficiency of service
17 noted above.

18 47. In the absence of a preliminary injunction issued by this Court, BPA and ARC will
19 incur considerable litigation expenses, and will waste time and judicial resources litigating in a
20 court that lacks jurisdiction, and be subject to unknown, unavailable, and potentially as-yet-
21 unenacted tribal law, an unfamiliar forum, and the lack of due process.

FIRST CLAIM FOR RELIEF

Declaratory Judgment that the Tribal Court Lacks Subject-Matter Jurisdiction

1
2 48. BPA and ARC incorporate by reference the allegations set forth in Paragraphs 1-
3 47 herein.

4 49. The Tribe is a dependent and limited sovereign subordinate to the authority of the
5 United States. As such, federal law defines the outer limits of tribal power over non-members of
6 the Tribe.

7 50. BPA and ARC are not tribal entities or tribal members.

8 51. The Tribe does not allege that BPA or ARC engaged in any conduct or activity on
9 the Tribe's reservation, or any lands owned by or held in trust for the Tribe.

10 52. BPA and ARC did not engage in any conduct or activity on or affecting either the
11 Tribe's reservation or any lands owned by or held in trust for the Tribe.

12 53. Under federal law, the Tribe lacks authority to assert and the Tribal Court lacks
13 subject matter jurisdiction over claims against BPA and ARC, non-members of the Tribe, arising
14 from alleged conduct occurring off the reservation.

15 54. Under federal law, the Tribe and Tribal Court lack authority to bestow on any tribal
16 official any authority to authorize, initiate, maintain, or preside over such claims against BPA and
17 ARC.

18 55. The Tribal Court Action does not arise from a consensual relationship between the
19 Tribe and BPA and ARC, through commercial dealing, contracts, leases, or other arrangements.
20 Nor have any acts or omissions of BPA and ARC so substantially affected the health, welfare,
21 political integrity, or economic security of the Tribe that they have caused or will cause
22 catastrophic consequences for tribal self-government.

23 56. Accordingly, the Tribal Court lacks subject-matter jurisdiction over the Tribal
24 Court Action. *See, e.g., Philip Morris USA, Inc. v. King Mountain Tobacco Co.*, 569 F.3d 932,
25 938 (9th Cir. 2009) (“[T]ribal jurisdiction is, of course, cabined by geography: The jurisdiction of
26 tribal courts does not extend beyond tribal boundaries.”); *UNC Resources, Inc. v. Benally*, 514 F.
27 Supp. 358, 362 (D.N.M. 1981) (the tribal court's jurisdiction “stops at the reservation boundary,”
28

1 and the tribe “cannot assert jurisdiction over UNC based on its off-reservation uranium milling
2 operations”).

3 57. Because the Tribal Court plainly lacks jurisdiction over the subject matter of the
4 Tribal Court Action, it is without authority to conduct any proceedings in the Tribal Court Action.
5 *See Evans*, 736 F.3d at 1306 (plain lack of jurisdiction makes exhaustion unnecessary); *Burlington*
6 *N. Ry. Co. v. Red Wolf*, 196 F.3d 1059, 1065-66 (9th Cir. 1999) (no exhaustion required where
7 “tribal courts plainly do not have jurisdiction over this controversy”).

8 58. Moreover, exertion of Tribal Court jurisdiction over the Tribe’s claims would be
9 “violative of express jurisdiction prohibitions,” *see Nevada v. Hicks*, 533 U.S. 353, 369 (2001),
10 because the Tribe’s claims are more properly claims under CERCLA, subject to the exclusive
11 jurisdiction of this Court. *See* 42 U.S.C. § 9613(b) (“the United States District Courts shall have
12 exclusive jurisdiction over all controversies arising under this chapter”); *AT&T Corp. v. Coeur*
13 *d’Alene Tribe*, 295 F.3d 899, 905 (9th Cir. 2002) (no tribal court jurisdiction over Federal
14 Communications Act claim subject to concurrent exclusive federal-court and FCC jurisdiction).
15 BPA and ARC need not exhaust tribal court remedies before proceeding directly with this cause
16 of action in this Court because the Tribal Court plainly lacks subject-matter jurisdiction over the
17 Tribe’s claims, and requiring exhaustion would serve no purpose but delay, and because exertion
18 of Tribal Court jurisdiction here would be violative of express jurisdictional prohibitions.

19 59. Whether the Tribal Court has subject-matter jurisdiction over BPA and ARC
20 constitutes an actual controversy between the parties involving the rights of the parties that is
21 concrete and ripe for judicial determination.

22 60. Judge Pickens is acting, has acted, threatened to act, or may act under the purported
23 authority of the Tribal Court beyond the scope of her or its lawful authority in presiding over the
24 Tribal Court Action. The Tribal Court lacks subject-matter jurisdiction over the claims asserted
25 by the Tribe, and by presiding over that action, Judge Pickens is engaged in an ongoing violation
26 of federal law in her official capacity as a Tribal Court Judge. On November 2, 2017, Judge
27 Pickens entered an Amended Scheduling Order in the Tribal Court Action with deadlines for
28

1 briefing on the motion to dismiss filed by BPA and ARC, indicating that she intends to continue
2 presiding over the case, and thus violating federal law.

3 61. Chairman Thom is acting, has acted, threatened to act, or may act under the
4 purported authority of the Tribe, in her official capacity, beyond the scope of her and its authority,
5 and in ongoing violation of federal law, because she continues to manage and supervise the Tribal
6 Court Action in a court that lacks subject-matter jurisdiction. On information and belief, Chairman
7 Thom has the authority to instruct the Tribe's counsel to voluntarily dismiss the Tribal Court
8 Action, but has not done so.

9 62. Vice-Chairman Roberts is acting, has acted, threatened to act, or may act under the
10 purported authority of the Tribe, in his official capacity, beyond the scope of his and its authority,
11 and in ongoing violation of federal law, because he continues to participate in the management
12 and supervision of the Tribal Court Action in a court that lacks subject-matter jurisdiction.

13 63. Tribal Council Member Emm is acting, has acted, threatened to act, or may act
14 under the purported authority of the Tribe, in his official capacity, beyond the scope of his and its
15 authority, and in ongoing violation of federal law, because he continues to participate in the
16 management and supervision of the Tribal Court Action in a court that lacks subject-matter
17 jurisdiction.

18 64. Tribal Council Member Howard is acting, has acted, threatened to act, or may act
19 under the purported authority of the Tribe, in her official capacity, beyond the scope of her and its
20 authority, and in ongoing violation of federal law, because she continues to participate in the
21 management and supervision of the Tribal Court Action in a court that lacks subject-matter
22 jurisdiction.

23 65. Tribal Council Member Landa is acting, has acted, threatened to act, or may act
24 under the purported authority of the Tribe, in his official capacity, beyond the scope of his and its
25 authority, and in ongoing violation of federal law, because he continues to participate in the
26 management and supervision of the Tribal Court Action in a court that lacks subject-matter
27 jurisdiction.
28

1 trial and possibly appeal in an unfamiliar forum without the usual protections; could be subject to
2 application of unfamiliar, unavailable, and perhaps as-yet-unformulated law and tribal custom in
3 the resolution of the Tribe's claims; and could potentially be subject to a judgment and
4 enforcement thereof with no avenue for redress. Thus, BPA and ARC will suffer immediate and
5 irreparable harm unless this Court enters an injunction (i) prohibiting the Tribe and anyone
6 claiming by, through, or under it, from pursuing any further proceedings against BPA and ARC
7 arising from the incidents that form the basis of the Tribal Court Action in any court of the Tribe;
8 and (ii) prohibiting the Tribal Court and Trial Court Judge from entertaining any such action.

9 72. Judge Pickens is acting, has acted, threatened to act, or may act under the purported
10 authority of the Tribal Court beyond the scope of her and its lawful authority in presiding over the
11 Tribal Court Action. The Tribal Court lacks subject-matter jurisdiction over the claims asserted
12 by the Tribe, and by presiding over that action, Judge Pickens thus is engaged in an ongoing
13 violation of federal law in her official capacity as a Tribal Court Judge. On November 2, 2017,
14 Judge Pickens entered an Amended Scheduling Order in the Tribal Court Action with deadlines
15 for briefing on the motion to dismiss filed by BPA and ARC, indicating that she intends to continue
16 presiding over the case, and thus violating federal law.

17 73. Chairman Thom is acting, has acted, threatened to act, or may act under the
18 purported authority of the Tribe, in her official capacity, beyond the scope of her and its authority,
19 and in ongoing violation of federal law, because she continues to manage and supervise the Tribal
20 Court Action in a court that lacks subject-matter jurisdiction. On information and belief, Chairman
21 Thom has the authority to instruct the Tribe's counsel to voluntarily dismiss the Tribal Court
22 Action, but has not done so.

23 74. Vice-Chairman Roberts is acting, has acted, threatened to act, or may act under the
24 purported authority of the Tribe, in his official capacity, beyond the scope of his and its authority,
25 and in ongoing violation of federal law, because he continues to participate in the management
26 and supervision of the Tribal Court Action in a court that lacks subject-matter jurisdiction.
27
28

1 75. Tribal Council Member Emm is acting, has acted, threatened to act, or may act
2 under the purported authority of the Tribe, in his official capacity, beyond the scope of his and its
3 authority, and in ongoing violation of federal law, because he continues to participate in the
4 management and supervision of the Tribal Court Action in a court that lacks subject-matter
5 jurisdiction.

6 76. Tribal Council Member Howard is acting, has acted, threatened to act, or may act
7 under the purported authority of the Tribe, in her official capacity, beyond the scope of her and its
8 authority, and in ongoing violation of federal law, because she continues to participate in the
9 management and supervision of the Tribal Court Action in a court that lacks subject-matter
10 jurisdiction.

11 77. Tribal Council Member Landa is acting, has acted, threatened to act, or may act
12 under the purported authority of the Tribe, in his official capacity, beyond the scope of his and its
13 authority, and in ongoing violation of federal law, because he continues to participate in the
14 management and supervision of the Tribal Court Action in a court that lacks subject-matter
15 jurisdiction.

16 78. Tribal Council Member Stevens is acting, has acted, threatened to act, or may act
17 under the purported authority of the Tribe, in his official capacity, beyond the scope of his and its
18 authority, and in ongoing violation of federal law, because he continues to participate in the
19 management and supervision of the Tribal Court Action in a court that lacks subject-matter
20 jurisdiction.

21 79. Tribal Council Member Roberts is acting, has acted, threatened to act, or may act
22 under the purported authority of the Tribe, in her official capacity, beyond the scope of her and its
23 authority, and in ongoing violation of federal law, because she continues to participate in the
24 management and supervision of the Tribal Court Action in a court that lacks subject-matter
25 jurisdiction.

26 80. Does 1-25 are acting, have acted, threatened to act, or may act under the purported
27 authority of the Tribe, in their official capacities, beyond the scope of their and its authority, and
28

1 in ongoing violation of federal law, because they continue to participate in the management and
2 supervision of the Tribal Court Action in a court that lacks subject-matter jurisdiction.

3 81. BPA and ARC are likely to succeed on the merits because the Tribal Court does
4 not have subject-matter jurisdiction over the Tribal Court Action.

5 82. Plaintiffs are not required to exhaust their tribal court remedies, because the absence
6 of Tribal Court jurisdiction is plain, and exhaustion of tribal court remedies would serve no purpose
7 other than delay, and because exertion of Tribal Court jurisdiction would be violative of express
8 jurisdictional prohibitions.

9 83. The Tribe will not sustain any substantial injury through the issuance of a
10 preliminary injunction because the Tribal Court Action is plainly beyond the jurisdiction of the
11 Tribal Court. Maintenance of clear boundaries imposed by federal law on the tribal court system
12 does not injure the Tribe or the Tribal Court in any way. Thus, the balance of hardships tips in
13 favor of BPA and ARC, not the Tribe, Chairman Thom, Vice-Chairman Roberts, Tribal Council
14 Member Emm, Tribal Council Member Howard, Tribal Council Member Landa, Tribal Council
15 Member Stevens, Tribal Council Member Roberts, the Tribal Court, or the Tribal Court Judge.

16 84. Injunctive relief will serve the public interest by clarifying that a non-member
17 defendant who did not act on a tribe's reservation may not properly be sued in Tribal Court.

18 85. BPA and ARC request that the Court set a hearing, as soon as possible, on
19 Plaintiffs' Motion for Preliminary Injunction, filed concurrently herewith.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs pray for the following relief:

22 A. A declaration that the Tribal Court lacks subject-matter jurisdiction over the Tribal
23 Court Action;

24 B. Preliminary and permanent injunctive relief prohibiting the Tribe or any party or
25 entity claiming by, through, or under it, from pursuing any further proceedings in the Tribal Court
26 Action or filing any other case in Tribal Court arising from the same operative facts as the Tribal
27 Court Action;

1 C. Preliminary and permanent injunctive relief prohibiting Chairman Thom, in her
2 official capacity, from taking any further actions with regard to the Tribal Court Action, other than
3 dismissing the Tribal Court Action;

4 D. Preliminary and permanent injunctive relief prohibiting Vice-Chairman Roberts, in
5 his official capacity, from taking any further actions with regard to the Tribal Court Action, other
6 than dismissing the Tribal Court Action;

7 E. Preliminary and injunctive relief prohibiting Tribal Council Member Emm, in his
8 official capacity, from taking any further action with regard to the Tribal Court Action, other than
9 dismissing the Tribal Court Action;

10 F. Preliminary and injunctive relief prohibiting Tribal Council Member Howard, in
11 her official capacity, from taking any further action with regard to the Tribal Court Action, other
12 than dismissing the Tribal Court Action;

13 G. Preliminary and injunctive relief prohibiting Tribal Council Member Landa, in his
14 official capacity, from taking any further action with regard to the Tribal Court Action, other than
15 dismissing the Tribal Court Action;

16 H. Preliminary and injunctive relief prohibiting Tribal Council Member Stevens, in
17 his official capacity, from taking any further action with regard to the Tribal Court Action, other
18 than dismissing the Tribal Court Action;

19 I. Preliminary and injunctive relief prohibiting Tribal Council Member Roberts, in
20 her official capacity, from taking any further action with regard to the Tribal Court Action, other
21 than dismissing the Tribal Court Action;

22 J. Preliminary and injunctive relief prohibiting Does 1-25, in their official capacities,
23 from taking any further action with regard to the Tribal Court Action, other than dismissing the
24 Tribal Court Action;

25 K. Preliminary and permanent injunctive relief prohibiting the Tribal Court from
26 taking any further actions with regard to the Tribal Court Action, other than dismissing the Tribal
27 Court Action;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

L. Preliminary and permanent injunctive relief prohibiting Judge Pickens, in her official capacity, from taking any further actions with regard to the Tribal Court Action, other than dismissing the Tribal Court Action; and

M. For such other and further relief as the Court deems just and proper.

DATED: November 16, 2017

DOTSON LAW

By: 

ROBERT A. DOTSON
Nevada Bar No. 5285
JILL I. GREINER
Nevada Bar No. 4276

*Attorneys for Defendants
BP America Inc. and Atlantic Richfield Company*

DATED: November 16, 2017

DAVIS GRAHAM & STUBBS LLP

By: /s/ KENZO KAWANABE

KENZO KAWANABE *
ADAM COHEN *
CONSTANCE L. ROGERS *
KYLE W. BRENTON *
* *Pro Hac Vice*

*Attorneys for Defendants
BP America Inc. and Atlantic Richfield Company*

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I hereby certify that I am an employee of DOTSON LAW, and that on this date; I caused to be served a true and correct copy of the foregoing by:

- (BY MAIL) on all parties in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Dotson Law, mail placed in that designated area is given the correct amount of postage and is deposited that same date in the ordinary course of business, in a United States mailbox in the City of Reno, County of Washoe, Nevada.
- By electronic service by filing the foregoing with the Clerk of Court using the CM/ECF system, which will electronically mail the filing to the following individuals.
- (BY PERSONAL DELIVERY) by causing a true copy thereof to be hand delivered this date to the address(es) at the address(es) set forth below.
- (BY FACSIMILE) on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the address(es) noted below.
- Reno/Carson Messenger Service.
- By email to the email addresses below.

Daniel T. Hayward
 Laxalt & Nomura Ltd.
 9600 Gateway Drive
 Reno, NV 89521
dhayward@laxalt-nomura.com
Attorney for Sandra-Mae Pickens

Charles R. Zeh
 Law Offices of Charles R. Zeh
 575 Forest Street, Suite 200
 Reno, NV 89509
crzeh@aol.com
Attorney for Yerington Paiute Tribal Court

Michael Angelovich, Esq.
 Austin Tighe, Esq.
 NIX, PATTERSON & ROACH, LLP
 3600 N. Capital of Texas Highway, Suite 350
 Austin, TX 78746
mangelovich@nixlaw.com
atighe@nixlaw.com
Attorneys for Yerington Paiute Tribe and Laurie A. Thom

Robert F. Saint-Aubin, Esq.
 Saint-Aubin Chtd.
 3753 Howard Hughes Parkway, Suite 200
 Las Vegas, NV 89169
rfsaint@me.com
Attorneys for Yerington Paiute Tribe and Laurie A. Thom

DATED this 16 day of November, 2017.


 L. MORGAN BOGUMIL