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12 *Tribal Court*

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF NEVADA**

15 BP AMERICA INC., and ATLANTIC
16 RICHFIELD COMPANY,

Case No. 3:17-cv-00588-LRH-WGC

17 Plaintiffs,

18 vs.

19 YERINGTON PAIUTE TRIBE; LAURIE A.
THOM, in her official capacity as Chairman of
20 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;
24 DOES 1-25, in their official capacities as
decision-makers of the Yerington Paiute
25 Tribe; YERINGTON PAIUTE TRIBAL
COURT; and SANDRA-MAE PICKENS in
26 her official capacity as Judge of the Yerington
Paiute Tribal Court,

**DEFENDANTS SANDRA-MAE PICKENS'
AND THE YERINGTON PAIUTE TRIBAL
COURT'S JOINT RESPONSE TO
PLAINTIFFS' MOTION TO ALTER OR
AMEND JUDGMENT, OR FOR RELIEF
FROM JUDGMENT**

27 Defendants.
28

1 Defendant Sandra-Mae Pickens and the Yerington Paiute Tribal Court, by and through their
2 respective counsel of record, respond to Plaintiffs' Motion to Alter or Amend Judgment, or for Relief
3 from Judgment. This Response is based on the following points and authorities and the pleadings and
4 papers on file herein.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. INTRODUCTION**

7 Plaintiffs BP America Inc. and Atlantic Richfield Company's ("BP" and "ARC", collectively
8 "Plaintiffs") have moved the Court to alter or amend its judgment to find that this case presents a live
9 controversy and is not moot, or alternatively to provide relief from the judgment under Rule 60(b)
10 due to the "incorrect representations of opposing counsel." (ECF No. 80, Motion, at 9:17-23.)
11 Plaintiffs are correct that the undersigned erroneously represented, in a July 10, 2018 Supplement to
12 Status Report [ECF No. 77], that the Tribe had not yet filed a second lawsuit against BP and ARC
13 when in fact the Tribe had done so on June 29, 2018. However, that does not require the Court to
14 alter or amend its July 26, 2018 Order. [ECF No. 78.] The Court's Order was based not only on the
15 understanding that no ongoing Tribal Court lawsuit was then on file, but also on the fact that
16 Plaintiffs failed to show any indication that a second lawsuit, once filed "would not then be dismissed
17 by the Tribal Judge." [ECF No. 78, 2:4-6.] The Tribe has filed a second lawsuit, but Plaintiffs are still
18 unable to overcome the fact that they cannot show that the new lawsuit will not also be dismissed by
19 the Tribal Judge.

19 **II. ARGUMENT**

20 **A. Procedural history**

21 Plaintiffs filed this case seeking to prevent Judge Pickens and the Tribal Court from
22 exercising jurisdiction over a lawsuit initiated by the Tribe against BPA and ARC in the Tribal Court.
23 Judge Pickens and the Tribal Court moved to dismiss Plaintiffs' Amended Complaint based on
24 sovereign immunity and failure to exhaust tribal court remedies. [ECF No. 41, Deft. Sandra-Mae
25 Pickens' MTD; ECF No. 53, Defts. Yerington Paiute Tribal Court's MTD.] Briefing on these
26 motions was completed on December 20 and December 21, 2017. [See ECF No. 62, 63, Replies in
27 Support of MTD.] On April 13, 2018, the Court entered an Order in which it stated:

1 The tribal court had scheduled a hearing in January 2018, to determine, in the first
2 part, whether it has jurisdiction over the underlying tribal litigation. The outcome of
3 that determination, as well as the ongoing proceedings in the tribal court, have an
4 impact in this litigation and the parties' arguments for dismissal.

5 [ECF No. 70, Order, 1:24-27.] The Court ordered the parties to file a joint status report within 20
6 days. [*Id.*] The parties did so on May 1, 2018. [ECF No. 72, Joint Status Report.]

7 On June 25, 2018, Judge Pickens entered an Order Granting Motion to Dismiss for
8 Insufficient Service of Process, which dismissed without prejudice the action brought by the Tribe
9 against BP and ARC. [ECF No. 75-1, Order, Ex. A to Pltffs' Supp. to Status Report.] Accordingly,
10 on July 9, 2018, Plaintiffs filed a Supplement to Status Report. [ECF No. 75.] Plaintiffs were clearly
11 unaware that the Tribe had filed a second lawsuit in Tribal Court ten days earlier on June 29, 2018, as
12 evidenced by the statement, "Moreover, it would serve the public interest and judicial efficiency to
13 resolve the dispute over Tribal Court jurisdiction now because it avoids requiring BPA and ARC to
14 refile the instant suit *where the Tribe re-initiates its litigation against BPA and ARC.*" [*Id.*, 3:5-8,
15 emphasis supplied.]

16 The undersigned – much to our consternation -- were equally unaware that the Tribe had
17 already filed a second lawsuit in Tribal Court. The undersigned attorneys' incorrect assumption was
18 reflected in the Supplement to Status Report which counsel for Judge Pickens and the Tribal Court
19 filed the very next day, July 10, 2018. [ECF No. 77, Supp. to Status Report, at 2:8-15, fn. 1.]

20 On July 26, 2018, this Court entered its Order dismissing Plaintiffs' Amended Complaint as
21 moot, and denying the Defendants' pending Motions to Dismiss as moot. [ECF No. 78.]

22 On the morning of August 13, 2018, counsel for BP and ARC advised the undersigned that
23 Plaintiffs intended to file the pending Motion to Alter or Amend Judgment, or for Relief From
24 Judgment, and observed that contrary to the factual representations in Judge Pickens' and the Tribal
25 Court's July 10, 2018 Supplement to Status Report, the Tribe had already filed a second lawsuit in
26 Tribal Court on June 29, 2018. Accordingly, Judge Pickens and the Tribal Court promptly filed a
27

1 Second Supplement to Status Report and Correction of Prior Misstatement of Fact in which the
2 undersigned acknowledged their prior mistake and corrected the record. [ECF No. 79.] Later that day,
3 Plaintiffs filed the pending Motion. [ECF No. 80.]

4 **B. The Court should not alter, amend, or set aside its determination that**
5 **Plaintiffs' Amended Complaint is moot.**

6 To the extent the Court's July 26, 2018 Order incorporated incorrect historical facts based on
7 Judge Pickens' and the Tribal Court July 10, 2018 Supplement to Status Report or otherwise, Judge
8 Pickens and the Tribal Court agree that the Court is certainly able to amend its July 29, 2018 Order to
9 accurately reflect the procedural history of the case.

10 However, the Court should not amend, alter, or set aside its conclusion that Plaintiffs'
11 Amended Complaint should be dismissed as moot. As this Court stated in its July 26, 2018 Order:

12 Further, the court finds that even though dismissal in Tribal Court was without
13 prejudice, plaintiffs have failed to show any indication by the Tribe that it will refile
14 the tribal litigation *or that such tribal litigation would then not be dismissed by the*
15 *Tribal Judge.*

16 [ECF No. 78, Order, at 2:4-7, emphasis supplied.] Presumably, BP and ARC will respond to the new
17 Tribal Court lawsuit by filing a motion to dismiss on the same or similar grounds as their original
18 motion. Judge Pickens has not had the opportunity to evaluate and decide Plaintiffs' yet-to-be-filed
19 motion, and there is no indication how Judge Pickens will rule.¹ Unless and until Plaintiffs exhaust
20 their Tribal Court remedies and Judge Pickens rejects BP and ARC's forthcoming jurisdictional
21 arguments, this case remains moot.²

22 //

23
24 ¹ Judge Pickens' June 25, 2018 Order dismissing the original Tribal Court lawsuit was based on
25 insufficiency of process, not subject matter jurisdiction. [ECF No. 75-1, Order, Ex. A to Pltffs' Supp.
to Status Report.]

26 ² By no means is the undersigned suggesting how Judge Pickens views the parties' positions as
27 presented in the prior underlying Tribal Court case, or how she intends to rule. The undersigned is
28 simply pointing out that Judge Pickens ought to be allowed to evaluate her own jurisdiction before
that decision becomes ripe for review by this Court.

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I certify that I am an employee of Laxalt & Nomura, Ltd. and not a party to, nor interested in, the within action; that on the 15 day of August, 2018, a true and correct copy of the foregoing *DEFENDANTS SANDRA-MAE PICKENS' AND THE YERINGTON PAIUTE TRIBAL COURT'S JOINT RESPONSE TO PLAINTIFFS' MOTION TO ALTER OR AMEND JUDGMENT, OR FOR RELIEF FROM JUDGMENT* was filed electronically through the Court's CM/ECF electronic notice system to the attorneys associated with this case.

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