

William F. Bacon, General Counsel (ISB #2766)
Monte Gray, Asst. General Counsel (ISB #5988)
Shoshone-Bannock Tribes
Tribal Attorneys Office
P.O. Box 306
Fort Hall, Idaho 83203
Telephone: (208) 478-3822
Facsimile: (208) 478-9736
Email: bbacon@sbtribes.com
Email: mgray@sbtribes.com

Mark A. Echo Hawk (ISB #5977)
Joseph T. Preston (ISB #9082)
ECHO HAWK & OLSEN, PLLC
P.O. Box 6119
505 Pershing Ave., Ste. 100
Pocatello, Idaho 83205-6119
Telephone: (208) 478-1624
Facsimile: (208) 478-1670
Email: mark@echohawk.com

Counsel for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

SHOSHONE-BANNOCK TRIBES OF
THE FORT HALL RESERVATION,

Intervenor,

v.

UNITED STATES OF AMERICA,

Plaintiff,

and

UNION PACIFIC RAILROAD
COMPANY,

Defendant.

Case No. 4:18-cv-285-DCN

INTERVENOR COMPLAINT

INTRODUCTION

1. The Shoshone-Bannock Tribes of the Fort Hall Reservation ("Intervenor") intervene to assert their rights and interests in lands subject to rights-of-way granted under the Act of July 3, 1882 ("1882 Act"), which have been misused or abandoned by Defendant Union Pacific Railroad ("UPR"). This action is brought to also seek a quiet title action under the Quiet Title Act, 28 U.S.C. § 2409a, in the name of the United States as Trustee for the benefit of the Shoshone-Bannock Tribes.

JURISDICTION AND VENUE

2. The Court has jurisdiction over this intervenor action pursuant to 28 U.S.C. § 1362 (Actions by Indian Tribes), 28 U.S.C. § 2403 (Intervention by Federal Government in Actions Involving Federal Land Rights), and 28 U.S.C. § 2409a (Quiet Title Act), as this matter involves significant questions of federal law, treaties, and the rights of a federally recognized Indian Tribe to land within the Fort Hall Reservation.

3. The allegations of this Complaint give rise to an actual controversy within the meaning of 28 U.S.C. §§ 2201-2202 (Declaratory Judgments).

4. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2) since the real property in question lies within the District of Idaho.

PARTIES

4. Intervenor, the Shoshone-Bannock Tribes, is a sovereign nation with rights stemming from treaties with the United States, including the 1882 Act, with an interest in the enforcement of these rights.

5. Plaintiff United States of America, acting as Trustee, seeks to enforce the terms of the 1882 Act and the trust responsibilities towards the Tribes on certain parcels which are part of the rights-of-way covered by the 1882 Act.

6. Defendant Union Pacific Railroad is the current holder of the rights-of-way originally granted under the 1882 Act.

FACTUAL ALLEGATIONS

A. Historical Background: The Treaty of Fort Bridger

7. Prior to the significant European settlement in Idaho, Montana, Oregon, Utah, and Washington, the region was home to the Shoshone and Bannock tribes.

8. The United States chose to negotiate with Tribes for portions of their territory in exchange for certain promises. One of these promises was to allow the Shoshone-Bannock Tribes a permanent homeland for their exclusive and absolute use. This land was the original Fort Hall Reservation.

9. In 1834, Fort Hall was established as a trading post, serving as a pivotal point on the Oregon Trail, which later became a focal area for tribal negotiations and settlement.

10. The 1868 Treaty (Fort Bridger Treaty) was signed on July 3, 1868, and ratified on February 26, 1869, and is the definitive agreement (with amendments) between the United States and the Shoshone (Eastern Band) and Bannock tribes, including mixed bands. It established among other things:

- a. Peace: Perpetual peace and mutual respect between the parties.
- b. Reservations: A reservation at Wind River for the Eastern Shoshone and the promise of a future reservation for the Bannocks and associated Shoshone in their current country, ensuring "absolute and undisturbed use and occupation" of these lands.

B. The 1882 Act and its Implications

11. Railroad Expansion: With the expansion of railroads in the West, the Utah & Northern Railway Company (UNRC), a predecessor to the Union Pacific Railroad (UPR), sought to extend its line through the Fort Hall Reservation.

12. In June 1881, negotiations commenced for an east-west rail line through the reservation. Assistant Attorney General Joseph K. McCammon represented the United States, promising limited land use strictly for railroad purposes.

13. The Tribes agreed to relinquish approximately 772 acres for a right-of-way and station grounds in exchange for \$6,000, under the condition that only a right-of-way was being granted and nothing more.

14. It should be noted the \$6,000 provided was used only to offset prior existing treaty obligations, and therefore no consideration was ever provided to the Tribes.

15. Ratification of the Act: The 1882 Act (Act of July 3, 1882, ch. 268, 22 Stat. 148) was passed, officially granting UNRC:

- a. A right-of-way not exceeding 100 feet in width, with an exception at Pocatello Station where it was 200 feet.
- b. Additional land parcels for depots, stations, and related railroad facilities, with the explicit stipulation that these were to be used solely for railroad

activities.

16. The United States brought its action in the instant proceeding in its capacity as trustee for the Tribes and holds a trust responsibility to the Tribes for the lands covered by the 1882 Act.

C. Misuse, Misappropriation and Abandonment by UPR

17. Over time, UPR and its predecessors have allowed or engaged in uses of the land that do not align with the original intent of the 1882 Act. The Tribes largely recite the following facts from the Complaint of the United States.

18. The 1882 Act granted UNRC parcels of land adjoining the rail right of way for “depots, stations, sidings, and so forth.” *Id.*, at § 3, 22 Stat. at 149. One adjoining parcel, located in what is now central Pocatello, was designated the station grounds for the east-west line (“1882 Station Grounds”). (A map showing the 1882 Station Grounds is attached to the Complaint of the United States as **Exhibit 1** and by reference incorporated herein.)

19. The east-west rail right of way no longer carries passengers, only freight, and the 1882 Station Grounds do not contain a station. UPR built an administrative building on a part of the station grounds. Early on, however, UPR also began authorizing uses of the 1882 Station Grounds to which the Tribes never agreed and Congress never authorized.

20. The Tribes are informed and believes, and on that basis alleges, that UPR began leasing part of the 1882 Station Grounds to the City for planting trees and beautification as early as 1936. The leases apparently began allowing for automobile parking on the Station Grounds in 1943, and UPR expanded the part of the Station Grounds leased to the City in 1953.

21. For at least a short time in the 1950s, UPR permitted the City to install parking meters on the station grounds in exchange for monthly payments of \$100.00.

22. According to a 1989 lease between UPR and the City, the City continues to use the 1882 Station Grounds “for parking and beautification and for other purposes incidental thereto”; maps attached to that lease appear to show that the City’s use extends to a public dog park. The most current iteration of the lease, signed in 2000, is annually self-renewing and requires the City to pay \$250.00 to UPR every 60 months.

23. The Tribes are informed and believes, and on that basis alleges, that another lease between UPR and the City—signed in 1999 for a 20-year term—allowed the City to operate a “municipal bus system and parking area” within the 1882 Station Grounds. That lease, which superseded a prior lease of the same land, included an annual rate of \$5,850 and an annual increase of 3%, subject to readjustment every five years. The bus system is a hub for the Pocatello Regional Transit, which operates urban and rural bus routes throughout southeast Idaho. This portion of the Station Grounds may also be, or may have been, used as a stop for Greyhound buses.

24. The Tribes are informed and believes, and on that basis alleges, that UPR began leasing another part of the 1882 Station Grounds for a federal credit union in 1976. Formerly known as the “Pocatello Railroad Employees Federal Credit Union” and the “Pocatello Railroad Federal Credit Union,” the credit union currently goes by the name “Rails West Federal Credit Union.” The building housing the Credit Union also houses a private law firm.

25. UPR’s misuse and abandonment of the 1882 Station Grounds, as described in the foregoing paragraphs, has been and continues to be contrary to and in violation of the 1881 Agreement and 1882 Act.

26. The Tribes believe there are other sections of the 1882 Act rights-of-way which are not currently being used for a railroad purpose and reserve the right to seek return of those

properties through discovery in this proceeding.

27. These actions are in direct violation of the terms set forth in the Fort Bridger Treaty and the 1882 Act, as they involve non-railroad uses and potentially permanent alienation of land from the Tribes, contrary to the agreements ensuring their land rights and sovereignty.

28. The misuse has led to legal disputes over land rights, economic development opportunities lost to the Tribes, and a degradation of the cultural and environmental integrity of the reservation lands.

CLAIMS FOR RELIEF

COUNT I - DECLARATION OF TRIBAL INTEREST

29. The Tribes seek a declaration that the misuse or abandonment by UPR of the rights-of-way has resulted in the reversion of these lands to the United States in trust for the benefit of the Shoshone-Bannock Tribes according to the terms set forth in the 1882 Act and recognizing all the lands under the 1882 Act rights-of-way are being held by the United States in Trust for the Tribes with UPR only holding rights-of-ways on the portions being used for a railroad purpose.

COUNT II – EJECTMENT

30. Intervenor requests an order of ejectment against UPR from the lands where the rights-of-way have been used for non-railroad purposes.

COUNT III- QUIET TITLE ACTION

31. Pursuant to the Quiet Title Act, 28 U.S.C. § 2409a, the Shoshone-Bannock Tribes, seek a judicial determination that the title to the entire 1882 Act rights-of-way land is held by the United States in trust for the Tribes. This action aims to remove any cloud on the title and establish the Tribes' rights to these lands

free from any claims by UPR other than those lands under the 1882 Act which are being used for a railroad purpose. The Tribes understand this to coincide with the legal position of the United States in this proceeding except as opposed to the named parcels, the Tribes seek to have their interest in the entire 1882 Act recognized. The Tribes do not seek to terminate the railroad right-of-way for those portions which are still being used for a railroad purpose.

COUNT IV – MANDAMUS

32. Plaintiff seeks a writ of mandamus compelling the United States and its agencies to honor fulfill their legal obligations under the Treaty of 1868 and the Acts of 1882, including the protection of the Tribes' land rights and prosecuting those who have violated the Bad Man provisions of the treaty and federal law. For clarification under this Count and Count V, Intervenor does not seek to name the United States nor its agents as violating the Bad Man provisions, but only to require it to fulfill its treaty obligations to bring those persons and agents of the Defendant to justice on behalf of the Tribes.

COUNT V - VIOLATION OF THE "BAD MAN" PROVISIONS OF THE FORT BRIDGER TREATY OF JULY 3, 1868

33. Plaintiff asserts a claim under the "Bad Man" provisions of the Fort Bridger Treaty of July 3, 1868, against as yet unknown railroad employees who have made adverse claims to lands which were to revert to the Tribes under the Acts of Congress of 1882. These individuals, by virtue of their actions or inactions, have violated the stipulations of the Treaty, which promises protection to the Tribes

from wrongful acts committed by non-tribal individuals. The Plaintiff seeks to hold these individuals accountable for their detrimental actions against the Tribes' interests and rights as stipulated in the Treaty, and for any damages or losses incurred by the Tribes as a result of these violations.

34. The only way for the railroad to misuse and misappropriate the 1882 Act rights-of-way is to commit a federal offense.

35. 11 U.S.C. § 1163 states it is a federal crime for:

Whoever embezzles, steals, knowingly converts to his use or the use of another, willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, goods, assets, or other property belonging to any Indian tribal organization or intrusted to the custody or care of any officer, employee, or agent of an Indian tribal organization; or
Whoever, knowing any such moneys, funds, credits, goods, assets, or other property to have been so embezzled, stolen, converted, misapplied or permitted to be misapplied, receives, conceals, or retains the same with intent to convert it to his use or the use of another—"

36. In the current action, the United States of America asserted UPR and its employees have misused, misapplied and misappropriated abandoned and no longer used portions of the rights-of-way which resulted in the Tribes interests in property and lands being affected negatively.

37. Tribes allege such actions by the employees of UPR are illegal and request appropriate action, including criminal charges, be brought against those bad actors.

COUNT VI – RESTITUTION

38. Plaintiff seeks restitution against UPR for all losses incurred as a result of the Defendants' actions, including the return of lands and financial compensation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Shoshone-Bannock Tribes of the Fort Hall Reservation respectfully requests the Court to grant the following relief:

A. Declaratory Judgments: Declare the 1882 Act rights-of-way are held in trust by the United States for the benefit of the Shoshone-Bannock Tribes, and UPR no longer has any interest in the abandoned, unused, misapplied and/or misused portions of the rights-of-way.

B. Quiet Title Actions: For lands under the Act of 1882: Order title to these lands be quieted in favor the United States for the benefit of the Shoshone-Bannock Tribes recognizing their ownership in the of the property and removal of any clouds on the portions of the rights-of-way which have been abandoned, misused, misappropriated and no longer used for a railroad purpose.

C. Relief for Ejectment:

1. Ejectment Order: Issue an order for the ejectment of Defendant UPR who are in improper possession of the lands in question, compelling them to vacate the lands and cease any and all unauthorized use.

2. Restoration of Possession: Order the restoration of possession of these lands to the Tribes, affirming the Tribes' rights and interests in these lands.

3. Damages for Unlawful Occupation: Award damages to the Plaintiff for any losses incurred due to the unauthorized occupation of these lands by the Defendants, including but not limited to lost use, enjoyment, and benefits of the land.

D. Restitution and Other Equitable Relief: Order restitution for any damages or losses sustained by the Tribes and/or benefits derived by the Defendant UPR from their unlawful occupation, misuse, and misappropriation and any other equitable relief deemed just and appropriate by the Court.

E. Mandamus: Issue a writ of mandamus compelling the United States and its agencies to adhere to their legal obligations under the Treaty of 1868 and the Acts of 1882, including protecting the Tribes' land rights, and prosecuting the UPR under the Bad Man provisions of the Treaty which implicate 11 U.S.C. § 1163.

F. Relief for Violation of the "Bad Man" Provisions of the Fort Bridger Treaty of July 3, 1868:

1. Identify and Hold Accountable: Order the identification of the unknown UPR employees who have misapplied, misused, and misappropriated the lands designated under the Acts of Congress of 1882, in violation of the "Bad Man" provisions of the Fort Bridger Treaty, including but not limited to a violation of 18 U.S.C. § 1163.

2. Compensation for Damages: Award compensation to the Tribes for any damages or losses incurred as a result of these individuals' wrongful acts against the Tribes' interests and rights as stipulated in the Treaty.

3. Injunctive Relief: Issue an injunction to prevent further violations of the "Bad Man" provisions of the Treaty and to protect the Tribes' rights under the Treaty and the Acts of Congress.

4. Restitution and Remedies: Order appropriate restitution and remedies for the harm caused to the Tribes by the actions of these individuals, including but not limited to, the return of lands, financial compensation, and other equitable relief

G. Costs and Attorney's Fees: Award the costs of this litigation, including reasonable attorney's fees, to the Plaintiff under the applicable statutes and rules.

H. Any Further Relief: Grant any other and further relief the Court deems just and equitable under the circumstances, including but not limited to, compensatory damages for the past and ongoing harm suffered by the Tribes due to the Defendants' actions.

DATED this January 17, 2025.

SHOSHONE-BANNOCK TRIBES

By: /s/ Bill Bacon

William F. Bacon

General Counsel

By: /s/ Monte Gray

Monte Gray

Asst. General Counsel