No. 24-1108

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

WINNEMUCCA INDIAN COLONY,
Plaintiff/Appellant,

v.

UNITED STATES,
Defendant/Appellee.

Appeal from the United States Court of Federal Claims
No. 1:20-cv-01618 (Hon. Kathryn C. Davis)

ANSWERING BRIEF AND SUPPLEMENTAL APPENDIX OF THE UNITED STATES

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STATEMENT OF RELATED CASES

No other appeal in this action has been before this Court or any other appellate court, and counsel is unaware of any pending related cases within the meaning of Circuit Rule 47.5.

INTRODUCTION

This case arises from a long-standing internal membership and leadership dispute within the Winnemucca Indian Colony ("WIC" or "Colony"), which in turn has generated "a constellation of litigation involving the Colony spanning decades." *Brown v. Haaland*, No. 3:21-cv-00344, 2024 WL 1330119 (Mar. 28, 2024). In this suit, WIC asserts that the Bureau of Indian Affairs ("BIA") improperly failed to recognize a Colony government among the competing factions, and that this facilitated various encroachments and nonmembers residing on Colony lands and diversion of off-reservation water sources. WIC seeks more than $208 million in monetary damages, as well as declaratory judgment and an accounting.

The Court of Federal Claims ("CFC") correctly dismissed WIC's complaint for lack of jurisdiction, relying on four grounds. First, WIC's claims in this case are based on the same operative facts—the membership and leadership dispute and BIA's actions in response—as a suit WIC filed in the U.S. District Court for the District of Nevada, and which was still pending in the Ninth Circuit when WIC

filed this case. This suit is thus barred by 28 U.S.C. § 1500, which prohibits CFC jurisdiction over a suit "for or in respect to" the same claim as is pending in another court. Second, most of WIC's claims concern encroachments or other events that occurred decades ago, and thus are also barred by the statute of limitations. Third, WIC failed to identify a money-mandating source of law that could support the CFC's jurisdiction over its breach of trust claim associated with its water resources. As recently confirmed by the Supreme Court, the federal government has no obligation to take affirmative actions with respect to availability of water for tribes absent a treaty, statute, or regulation expressly accepting those duties. *Arizona v. Navajo Nation*, 599 U.S. 555 (2023). Since WIC has failed to identify any such source of law, the CFC correctly dismissed this claim for this additional reason. Finally, WIC's claim for an accounting is a request for equitable relief outside the CFC's jurisdiction. Accordingly, the judgment of the CFC should be affirmed.

STATEMENT OF JURISDICTION

The CFC determined that it lacked jurisdiction over Plaintiff's claims and dismissed the Amended Complaint. Appx2-46. The CFC's judgment was final because it disposed of all claims against all defendants. Appx1. This Court has jurisdiction under 28 U.S.C. § 1291.

The judgment was entered on August 28, 2023. Appx1. Plaintiff filed its notice of appeal on October 2, 2023. SAppx424. The appeal is timely under Federal Rule of Appellate Procedure 4(a)(1)(B).

STATEMENT OF THE ISSUES

1. Whether the CFC correctly dismissed Counts One, Two, Three, Five, Six, and Eight under 28 U.S.C. § 1500, where at the time of filing Plaintiff had a suit pending against the United States in the Ninth Circuit Court of Appeals that undisputedly was "for or in respect to" the same claims.

2. Whether the CFC correctly dismissed Counts One, part of Two, Three, Five, and Six because they are barred by the six-year statute of limitations in 28 U.S.C. § 2501.

3. Whether the CFC correctly dismissed Count Three, regarding the alleged diversion of water by a third party, because Plaintiff failed to identify a treaty, statute, or regulation that creates or imposes a money-mandating duty that would support jurisdiction.

4. Whether the CFC correctly dismissed Count Eight, seeking an accounting, because Plaintiff stated no valid claim for damages that would support the court's jurisdiction to order an accounting to quantify damages.

STATEMENT OF THE CASE

A. Statutory Background

1. 28 U.S.C. § 1500

For decades after the Nation's founding, citizens could obtain monetary compensation for claims against the federal government only by petitioning Congress for a private bill that provided them relief. *See United States v. Mitchell*, 463 U.S. 206, 213 (1983). The ability of citizens to seek monetary compensation for claims against the United States was expanded by the creation of the Court of Claims in 1855, which had limited authority to hear claims for monetary relief against the United States, to report its findings to Congress, and, where appropriate, to recommend a private bill providing relief. *Id*. By 1866, the Court of Claims had authority to render final judgments. *Id*. at 213 & n.12.

Two years later, Congress enacted a broad limitation on the Court of Claims' jurisdiction, which is today found in modified form at 28 U.S.C. § 1500. That provision states:

> The United States Court of Federal Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States or any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, directly or indirectly under the authority of the United States.

28 U.S.C. § 1500. The purpose of the statute is to "save the Government from the burdens of redundant litigation." *United States v. Tohono O'odham Nation*, 563 U.S. 307, 315 (2011); *see also Keene Corp. v. United States*, 508 U.S. 200, 206 (1993). As the Supreme Court explained in *Tohono*, Section 1500 imposes a "broad prohibition" on the CFC's jurisdiction over a claim "when related actions are pending elsewhere," reflecting "a robust response" to the problem of the filing of duplicative lawsuits against the United States. 563 U.S. at 312.

2. Statute of Limitations

28 U.S.C. § 2501 provides:

> Every claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.

Section 2501 "is a jurisdictional requirement attached by Congress as a condition of the government's waiver of sovereign immunity and, as such, must be strictly construed." *Hopland Band of Pomo Indians v. United States*, 855 F.2d 1573, 1576-77 (Fed. Cir. 1988).

B. Factual Background

This case stems from a long-running intra-tribal membership and leadership dispute within the Winnemucca Indian Colony, a federally recognized Indian tribe. The dispute has generated substantial litigation in federal and tribal courts, as well

as before the Interior Board of Indian Appeals ("IBIA"). Below is a summary of the most salient facts for the purpose of this appeal.

The Colony was established in 1917. Appx299 (Executive Order 2639 (June 18, 1917)). A 320-acre parcel was set aside for the use of certain Shoshone Indians residing near Winnemucca, Nevada, and in 1928, Congress purchased an additional 20-acre parcel of land near Winnemucca to be used as an Indian colony. *Id.*; Executive Order 2803 (Feb. 8, 1918); Act of May 21, 1928, 45 Stat. 618. The Indians living on this land—generally Paiutes and Shoshones—adopted a representative form of government, and the Tribe's constitution and by-laws were approved by the Assistant Secretary-Indian Affairs in 1972. Appx72-73.

The events underlying the current dispute date from February 2000. At that time, the Colony's governing five-member Council was led by Chairman Glenn Wasson. Appx3, Appx52. After Chairman Wasson died on February 22, 2000, the Bureau of Indian Affairs ("BIA") Superintendent recognized the Vice-Chairman, William Bills, as the Council's chair. Appx4. The Council members then split into two factions—the "Wasson group" and the "Bills group" (which later became known as the Ayer group). Appx4. The Wasson group asserted that Chairman Bills and other members of the Bills group did not qualify for tribal membership and consequently were not eligible to hold tribal leadership positions or to vote in tribal elections. Appx4. Both factions claimed they were entitled, as the proper tribal

government, to exercise exclusive control over the Colony's economic assets, including two smokeshops.

For the next eight years, the intra-tribal dispute was litigated in tribal courts, including before a specially appointed appellate panel. Appx4. During this period, the BIA Regional Director recognized neither faction as the Colony's Council, in part because tribal remedies had not been exhausted. Appx126. The IBIA consistently affirmed the Regional Director's decisions until November 2009, when the IBIA determined that the Wasson group had identified sufficient basis to require a decision on WIC's leadership. *Wasson v. Western Regional Director*, 50 IBIA 342, 352 (2009). Following that ruling, the Regional Director issued a short decision declining to recognize the purportedly elected council as the duly elected leadership. *See Wasson v. Acting Western Regional Dir., Bureau of Indian Affairs*, 52 IBIA 353, 353-54 (2010). On review, IBIA vacated the decision and remanded the matter for proceedings consistent with the IBIA's directions. 52 IBIA at 359-60.

1. Nevada District Court Proceedings

Before the BIA could issue a decision following the 2010 remand from the IBIA, WIC (through the Wasson group) filed suit against the federal government in the U.S. District Court for the District of Nevada ("Nevada action"). *See* Appx48 (Amended Complaint, *Winnemucca Indian Colony v. United States*, No. 3:11-cv-

622 (D. Nev. Aug. 29, 2011)). WIC sought an injunction preventing the BIA from entering Colony lands and a declaration that the BIA's failure to remove non-members from Colony lands violated the Non-Intercourse Act[1] and was a breach of the trust responsibility. Appx62-63. WIC also sought a declaratory judgment that the United States must recognize the Wasson group as the Colony's sole government. Appx60-63. William Bills and the Ayer group intervened in the Nevada action.

The Nevada district court issued a temporary restraining order requiring the BIA to recognize one or more persons as the government representatives of the Colony for purposes of conducting government-to-government relations. *See* SAppx427 (*Winnemucca Indian Colony*, No. 3:11-cv-00622, 2013 WL 1792295 (D. Nev. Apr. 25, 2013)). When the BIA recognized both Thomas Wasson and William Bills, the district court ruled that "the recognition of both Wasson and Bills amounted to the recognition of no government at all" and ordered BIA to choose again. SAppx428. The BIA then looked to the order of the tribal appellate panel and noted that the only surviving council members identified in that order were Vice-Chairman William Bills and member-at-large Thomas Wasson. Since Bills outranked Wasson, the BIA recognized Bills as the Colony's representative

[1] The Non-Intercourse Act, 25 U.S.C. § 177, prohibits the conveyance of tribal land without the consent of the United States.

for government-to-government purposes. SAppx428. In 2012, the district court decided that the BIA had abused its discretion because "the BIA made its decision on improper grounds, i.e., its interpretation of tribal law." SAppx429. The district court ordered BIA to "recognize Thomas Wasson as the representative of the Council until the conclusion of this action" and ordered that Mr. Wasson institute a process for determining membership. SAppx431.

In 2014, the district court issued an order appointing a tribal judge to adjudicate enrollment or election disputes. SAppx437. An election was conducted in October 2014, selecting as Council members Judy Rojo, Misty Morning Dawn Rojo Alvarez, Katherine Hasbrouck, Eric Magiera, and Thomas Magiera II, and the district court ordered BIA to recognize those results. SAppx440. The Ayer group challenged those election results before the tribal court, which dismissed the challenge for lack of jurisdiction; this dismissal was affirmed on appeal to the Inter-Tribal Court of Appeals of Nevada. SAppx443. In 2018, the district court acknowledged and "extend[ed] comity" to the tribal court rulings. *Winnemucca Indian Colony v. United States*, No. 3:11-cv-00622, 2018 WL 4714755, at *1 (D. Nev. Oct. 1, 2018). The Ayer group filed a notice of appeal to the Ninth Circuit shortly thereafter. SAppx451.

On June 15, 2020, the Ninth Circuit held that the Nevada district court lacked subject matter jurisdiction, remanded with instructions to dismiss, and

vacated the district court's orders. *Winnemucca Indian Colony v. United States ex rel. Dep't of the Interior*, 819 F. App'x 480, 483 (9th Cir. 2020). After WIC's petition for panel rehearing and rehearing en banc was denied, WIC petitioned to stay the mandate pending the filing of a petition for a writ of certiorari, which the Court of Appeals granted on August 3, 2020. SAppx457. WIC did not petition for a writ of certiorari. The Ninth Circuit issued the mandate on December 23, 2020. SAppx459.

2. 2013 Court of Federal Claims Suit

On November 6, 2013, during the pendency of the just-discussed proceedings, the Winnemucca Indian Colony and its Chairman filed suit in the CFC alleging breach of trust, breach of fiduciary duty, and other claims in connection with BIA's alleged improper failure to recognize a tribal government, for allowing non-Colony members to occupy and use Colony land, alleged easements on Colony land, and loss of water rights. SAppx462-481; *Winnemucca Indian Colony v. United States*, No. 13-874, 2014 WL 3107445, at *1 (Ct. Fed. Cl. July 8, 2014). The CFC dismissed the action for lack of subject matter jurisdiction on the basis that the suit was barred by 28 U.S.C. § 1500 because of the pending Nevada action, and because plaintiffs sought equitable relief beyond the jurisdiction of the CFC. *Id.*

C. Proceedings below

The Winnemucca Indian Colony filed this suit on November 18, 2020 asserting ten claims for relief. SAppx421. On March 19, 2021, the United States moved to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim on which relief can be granted. SAppx421. Over the federal government's opposition, WIC amended its complaint on February 1, 2022, eliminating one claim and adding two others, and modifying certain factual allegations. SAppx422; Appx69-106.

Counts One and Two concern alleged encroachments—a road, an electrical substation, and power lines—on the 320-acre parcel. Appx 94-96. Count Three concerns an alleged diversion of a stream and removal of water from wells by a development adjacent to the 320-acre parcel. Appx96-97. Count Four is brought under the Native American Housing Assistance and Self-Determination Act ("NAHASDA"), 25 U.S.C. §§ 4101-4243, and alleges that BIA and HUD caused homes on Winnemucca land (the 20-acre parcel) to be leased to persons whose membership in the Colony Plaintiff disputes. Appx97-98. Count Five alleges breach of trust and violation of the Non-Intercourse Act, alleging that BIA failed to police Colony lands and has improperly conveyed interests in Colony lands to others. Appx98-100. Count Six alleges a breach of fiduciary duty associated with BIA's alleged failure to survey or protect the 20-acre parcel from encroachments,

specifically pointing to a garage, shed, part of a trailer park, road, and driveway. Appx100-101. Count Eight is a demand for documents and accounting. Appx102-103. Counts Seven, Nine, Ten, and Eleven seek declaratory relief as to WIC's rights, damages, and claims to Bureau of Land Management lands near the Colony. Appx102-105. The United States moved to dismiss the amended complaint. Appx108.

On August 25, 2023, the CFC (Judge Kathryn C. Davis) granted the United States' motion to dismiss. *Winnemucca Indian Colony v. United States*, 167 Fed. Cl. 396 (2023). The CFC considered three primary arguments for dismissal and found that each applied to at least one and sometimes numerous claims in the Amended Complaint. First, the CFC determined that it lacked jurisdiction over Counts One through Eight, Ten, and Eleven pursuant to 28 U.S.C. § 1500 because those claims are substantially the same as the claims in the Nevada district court action, which was still pending on appeal when WIC filed its Complaint. Appx11-15. The court noted there was no dispute that the Ninth Circuit appeal was pending, nor that the claims are substantially the same. Appx12. The court rejected WIC's argument that the Ninth Circuit appeal was not pending *against the United States* because the federal government was not an active participant in the appeal, reasoning that the claims at issue in the Ninth Circuit appeal were against the United States whether or not it was an active participant. Appx13-14.

Next, the CFC determined that Counts Three, Four, Seven, and Part of Count Six failed to identify a money-mandating fiduciary duty, a requirement for CFC jurisdiction under the Tucker Act, 28 U.S.C. § 1491, and Indian Tucker Act, 28 U.S.C. § 1505. Appx15-30. As to Count Three (the only claim that WIC appeals on these grounds), the CFC rejected WIC's argument that the 1917 Executive Order creating the Winnemucca reservation, along with federal common law principles articulated in *Winters v. United States*, 207 U.S. 564 (1908), imposes fiduciary duties on the United States with respect to water resources. Appx17-21.

Third, the CFC found that Count One, part of Count Two, and Counts Three through Six are barred by the statute of limitations, as they accrued more than six years before the filing of the complaint. Appx31-43. The court relied on maps, deeds, satellite photos, and other documents provided by the federal government, as well as the 2013 Complaint in the CFC, all of which established that the Colony was aware or should have been aware of the claims more than six years prior to filing suit. Appx41-43. WIC did not dispute this evidence. Appx43. The CFC rejected WIC's assertions that its claims were nonetheless saved because (1) the federal government had not repudiated its trust relationship with the Colony; (2) the federal government had not provided the Colony with an accounting; (3) the Wasson Group was not recognized as the Colony's leadership until 2014; or (4) the continuing claims doctrine applied. Appx32-41.

Finally, the CFC concluded that Counts Eight through Eleven request equitable relief that is outside the court's jurisdiction to grant. As relevant to this appeal, the CFC found that Count Eight could only survive as an aid in the assessment of damages, and having concluded that the CFC lacked jurisdiction over the other claims, there were no damages to be assessed. Appx45.

For the Court's convenience, the chart below identifies the bases for the CFC's dismissal of each of the eleven counts in Plaintiff's Amended Complaint. Plaintiff has not appealed the dismissal of Counts Four, Seven, Nine, Ten, and Eleven (shaded in gray) (*see* WIC's Corrected Principal Brief ("WIC Br.") at 8), and has not appealed the dismissal of that part of Count Six dismissed for lack of jurisdiction under the Tucker Act or Indian Tucker Act (similarly shaded in gray) (*see* WIC Br. at 27).

COURT OF FEDERAL CLAIMS' REASONS FOR DISMISSAL

Count	Claim	Sec. 1500	Statute of Limitations	Lack of Tucker Act or Indian Tucker Act Jurisdiction	Lack of Jurisdiction for Relief Requested
1	Violation of 25 U.S.C. § 323 et seq.— unauthorized land use by third parties (road)	X	X		
2	Violation of 25 U.S.C. § 323 et seq.— unauthorized land use	X	X (in part)		

	by third parties (power station, road, utility lines)				
3	Breach of Trust (*Winters* doctrine)—unauthorized water diversion by third parties	X	X	X	
4	Violation of 25 U.S.C. § 4101—unauthorized use of tribal housing by non-members	X	X	X	
5	Breach of Trust under the Indian Non-Intercourse Act (road, power station, utility lines, water diversion, loss of funding, use of buildings)	X	X		
6	Breach of Fiduciary Duty (failure to survey land and prevent encroachment, failure to recognize tribal council, interference with efforts to reopen smokeshop)	X	X	X (in part)	
7	WIC has no other means of recovering the loss of value and income from its property	X		X	
8	Request for equitable relief—demand for	X			X

	documents and accounting				
9	Declaratory judgment—right to royalties for use of land				X
10	Declaratory judgment—loss of use of lands and rights by individual members	X			X
11	Declaratory judgment—right to lands granted other tribes pursuant to repatriation of tribal lands process	X			X

SUMMARY OF ARGUMENT

1. The CFC correctly dismissed Counts One, Two, Three, Five, Six, and Eight under 28 U.S.C. § 1500 because WIC had another suit pending against the government in the Ninth Circuit at the time it filed this case. In the CFC, WIC did not dispute that the Nevada action was "for or in respect to" the same claims as WIC asserts in this case, and thus forfeited any argument that the claims were not the same for purposes of the jurisdictional bar under Section 1500. But if the Court reaches the issue, it should conclude that the Nevada action and this suit concern the same operative facts about who was the Colony's rightful leadership, who had authority to enter Colony lands, and actions BIA took (or did not take) to recognize

a government or address concerns over unauthorized occupation or use of Colony lands. This overlap meets the standard for the application of Section 1500's bar of redundant litigation. The CFC's dismissal of these claims should be affirmed.

2. The CFC properly dismissed Counts One, Two, Three, Five, and Six for the independent reason that they are barred by 28 U.S.C. § 2501's statute of limitations. These claims concern alleged encroachments on or occupation of Colony lands that commenced more than six years before WIC filed suit—in many cases, decades earlier. The Court should reject WIC's assertions that various exceptions to the statute of limitations apply here.

a. There is no requirement that the federal government formally or expressly "repudiate" a trust for WIC's claim to accrue, and in any event, WIC was aware of the alleged physical encroachments without any such notice.

b. Nor is any accounting required for the limitations period to commence for WIC's claims. WIC's claims do not involve trust funds, and the undisputed evidence shows that WIC was aware or should have been aware of the alleged injuries without the need for any such accounting.

c. WIC incorrectly asserts that its claim could not accrue until the BIA recognized the tribal election results in 2014. The lack of a recognized tribal government does not toll the time for a tribe to bring suit against the federal government. And WIC brought or participated in several suits between 2000 and

2014, including a 2013 suit in the CFC involving similar claims to this case, showing it was under no disability.

d. WIC's claims do not fall within the continuing claims doctrine. WIC alleges injuries from the construction of specific encroachments or the issuance of residential leases to non-members that took place more than six years before this suit. Although these events may have continued effects, WIC has not alleged injuries from a series of distinct events that each give rise to a separate cause of action.

3. The CFC correctly dismissed Count Three, alleging that the federal government failed to stop third parties from diverting water at places upstream of Colony lands, for the additional reason that there is no money-mandating duty that supports jurisdiction under the Tucker Act or Indian Tucker Act. Consistent with the Supreme Court's recent decision in *Arizona v. Navajo Nation*, 599 U.S. 555 (2023), the United States does not have a money-mandating duty to secure water (including by preventing the diversion of water) for WIC.

4. The CFC correctly dismissed Count Eight for an accounting for the additional reason that WIC has not asserted any valid claim that entitles it to damages.

STANDARD OF REVIEW

An order dismissing a case for lack of jurisdiction is reviewed de novo. *Trusted Integration, Inc. v. United States*, 659 F.3d 1159, 1163 (Fed. Cir. 2011). When reviewing such an order, this Court normally considers the facts alleged in the complaint to be true. *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 747 (Fed. Cir. 1988). Nonetheless, the plaintiff bears the burden of establishing jurisdiction. *Taylor v. United States*, 303 F.3d 1357, 1359 (Fed. Cir. 2002).

ARGUMENT

I. The Court of Federal Claims correctly dismissed Counts One, Two, Three, Five, Six, and Eight under 28 U.S.C. § 1500.

Under 28 U.S.C. § 1500, the CFC is "prohibited … from hearing a case" when (1) there is an earlier-filed suit pending in another court; and (2) the claims asserted in the earlier-filed case are "for or in respect to" the claims asserted in the later-filed CFC action. *See* 28 U.S.C. § 1500; *Resource Investments, Inc. v. United States*, 785 F.3d 660, 664 (Fed. Cir. 2015). "Two suits are for or in respect to the same claim, precluding jurisdiction in the CFC, if they are based on substantially the same operative facts, regardless of the relief sought in each suit." *Tohono*, 563 U.S. at 317. WIC's complaints in the Nevada action and in this action are based on the same operative facts. Because the Nevada action was still pending on appeal

when WIC filed its complaint in this case, the CFC properly dismissed Counts One, Two, Three, Five, Six, and Eight pursuant to Section 1500.[2] Appx11-15.

In the CFC, WIC contested only the first factor—whether the earlier-filed suit was pending in another court—and did not contest the second factor. It has reversed its strategy on appeal, asserting for the first time that the two actions are not similar enough to fall within Section 1500's bar but not contesting the "pending suit" factor. WIC Br. at 12-13. WIC has forfeited this argument by not raising it in the CFC. In any event, the argument lacks merit, as the two actions are based on the same operative facts under the standard set forth by the Supreme Court in *Tohono*. *See* 563 U.S. at 317.

A. WIC forfeited this argument by not raising it in the Court of Federal Claims.

In the CFC, WIC did not dispute "that the claims asserted in that case [the Nevada action] are substantially the same as the claims in this case." Appx12. In its opposition to the United States' motion to dismiss, WIC contested only whether the Nevada action was "pending" for purposes of Section 1500[3] and made no argument that the Nevada litigation was not "for or in respect to" the same claims.

[2] The CFC dismissed part of Count Six (those portions related to surveying, recognition of a tribal government, smokeshop operations, and any other matters related to the grant of rights-of-way under 25 U.S.C. § 323) for lack of a money-mandating duty, Appx29-30, and WIC has not appealed that dismissal. Those portions of Count Six are thus not at issue in this appeal.

[3] The CFC correctly rejected this argument, and WIC does not appeal that holding.

Appx191-192. Accordingly, the United States' reply brief addressed only the "pending suit" factor. Appx312-313.

Arguments not made in the CFC and advanced for the first time in this Court "are normally considered waived." *Gant v. United States*, 417 F.3d 1328, 1332 (Fed. Cir. 2005); *see also Ladd v. United States*, 713 F.3d 648, 655 (Fed. Cir. 2013) (argument raised for the first time on appeal is waived); *Caterpillar Inc. v. Sturman Indus., Inc.*, 387 F.3d 1358, 1368 (Fed. Cir. 2004) ("barring a few exceptions, an appellate court does not consider arguments first made on appeal"). That rule applies here. WIC had ample opportunity to make this argument in the CFC but failed to do so. No exceptions apply. This Court should decline to address this new argument for the first time on appeal.

WIC's Opening Brief attempts to avoid its prior forfeiture of this argument by claiming that it "argued that the litigation did not involve the same set of facts," citing "Appx393 at 54." WIC Br. at 12. WIC is mistaken, as that citation does not document any such argument by WIC.[4] It instead cites to the transcript of the *federal government*'s presentation at the January 19, 2023 hearing on the motion to dismiss. The court asked the federal government's counsel if it was the government's contention that "the same operative facts apply – are implicated in

[4] If WIC intended to reference Appx404, which contains page 54 of the hearing transcript, that passage is discussed below.

both cases because this case sort of stems from the lack of action with respect to the resources and the land use given the tribal government's lack of recognition." Appx393 (p. 12, lines 8-12). Government counsel answered in the affirmative, pointing the court to the similar conclusion reached by the CFC in 2014 on WIC's earlier suit, and noting that the two cases concerned the same core issues. Appx393 (p. 12, lines 13-25).

Nor does the transcript show that WIC's counsel made this argument at any other point during the hearing. WIC's counsel addressed only the first factor, arguing that there was no "pending" suit because an intervenor, not the United States, had appealed the Nevada district court's decision. Appx403-404. In that regard, the CFC confirmed WIC's position "that the matters on appeal being asserted by the third-party intervenor do not overlap with the [] operative facts in this case," Appx404 (p. 53, lines 23-25), but that inquiry did not probe whether *the claims WIC asserted in that earlier-filed case* were "for or in respect to" the claims asserted in the later-filed CFC action. And in any event, arguments raised for the first time at oral argument are forfeited. *E.g.*, *Agility Public Warehousing Co. K.S.C.P. v. United States*, 969 F.3d 1355, 1370 n.5 (Fed. Cir. 2020) (citing *Henry v. Dep't of Justice*, 157 F.3d 863, 865 (1998)). Because WIC did not contest in the CFC that the Nevada action was "for or in respect to" the same operative facts as this suit, it is foreclosed from making this argument for the first time in this appeal.

B. The Nevada action was based on the same operative facts.

If the Court nevertheless addresses WIC's untimely argument, it should hold that the CFC correctly concluded that the Nevada action is "for or in respect to" the same claim and that this suit is thus barred under Section 1500. 28 U.S.C. § 1500. In *Tohono*, the Supreme Court resolved what it means for two suits to be "for or in respect to" the same claim: "Two suits are for or in respect to the same claim, precluding jurisdiction in the CFC, if they are based on substantially the same operative facts, regardless of the relief sought in each suit." 563 U.S. at 317. WIC argues that the actions are not "identical." WIC Br. at 13. But the Supreme Court made clear in *Tohono* that the actions need not be identical: the CFC lacks jurisdiction "not only if the plaintiff sues on an identical claim elsewhere," but also "if the plaintiff's other action is *related* although not identical." 563 U.S. at 317 (emphasis added); *see also id.* at 312 (Section 1500's limitation should not be "rendered useless by a narrow concept of identity" (quoting *Keene*, 508 U.S. at 213)). Rather, if the two suits share substantial factual overlap, the plaintiff must choose between the CFC and the district court.[5]

[5] WIC suggests that this rule is unfair, WIC Br. at 8-9, but the Supreme Court rejected this argument, noting that "considerations of policy" cannot override the statute's meaning and that the Court "enjoys no liberty to add an exception … to remove apparent hardship." *Tohono*, 563 U.S. at 317 (citations omitted).

This case and the Nevada action meet the *Tohono* standard because they have a common factual basis. This case is about the disputes over who constituted the legitimate Colony government, authorizations to occupy, enter, or possess Colony lands, and BIA's actions with respect to these subjects. Appx69-70, Appx99-100, Appx102-103; *see also* WIC Br. at 2-3. So too the Nevada action required resolution of the questions "who, if anyone, constituted the legitimate Colony leadership; whether the individuals in question had authorization from that leadership to enter Colony lands; and when and under what circumstances BIA took (or did not take) action to recognize a government, prevent entry by Colony members, or address concerns over unauthorized occupation." *Winnemucca Indian Colony*, 2014 WL 3107445, at *4. The similar facts alleged are "not mere background facts; they are critical to the plaintiffs' claims in both actions."[6] *Central Pines Land Co., L.L.C. v. United States*, 697 F.3d 1360, 1364-65 (Fed. Cir.

[6] For example, the complaints in the two actions contain identical or nearly identical allegations about the key events of 1999 and 2000 regarding the makeup of the Council before and after Glen Wasson's death, BIA's actions in response, and subsequent tribal and federal court proceedings. *Compare* Appx76-78 *with* Appx51-53; *compare* Appx80-82 *with* Appx53. The complaints also contain identical or nearly identical allegations (sometimes with additional detail) regarding the membership review conducted in the 1980s. *Compare* Appx73-75 *with* Appx51-52. And the two complaints contain the same allegations about BIA's alleged refusal to allow certain individuals to access Colony lands. *Compare* Appx84-85 *with* Appx54-55.

2012). Section 1500 bars overlapping suits with common operative facts like these because the statute's aim is to "save the Government from burdens of redundant litigation" and "[d]eveloping a factual record is responsible for much of the cost of litigation." *Tohono*, 563 U.S. at 315.

WIC seeks to distinguish this suit from the Nevada action based on differences in the relief sought, not differences in operative facts. WIC Br. at 12-13. But the Supreme Court rejected reliance on different relief to escape the prohibition under Section 1500: "[a]n interpretation of § 1500 focused on the facts rather than the relief a party seeks preserves the provision as it was meant to function, and it keeps the provision from becoming a mere pleading rule, to be circumvented by carving up a single transaction into overlapping pieces seeking different relief." *Tohono*, 563 U.S. at 315; *Trusted Integration*, 659 F.3d at 1164. For example, WIC points to various alleged encroachments that are mentioned in its CFC complaint, but not specifically identified in its Nevada action. WIC Br. at 12-13. But WIC's right to damages for those encroachments would turn on proving its allegations about BIA's alleged failure to recognize the proper Council and take related actions to protect Colony lands, all of which were at issue in the Nevada action. Appx51-61. Section 1500 bars claims based on the same operative facts, regardless of changes to the relief sought or the underlying legal theories. *Tohono*, 563 U.S. at 314-15.

WIC suggests that there is some inconsistency—or unfairness—in the CFC's conclusion that this case was brought "too early" because of the Section 1500 bar, but also "too late" because of the statute of limitations. WIC Br. at 6,7. This is incorrect. Federal law requires litigants to choose between seeking equitable relief against the government in the district courts or monetary damages in the CFC. *Tohono*, 563 U.S. at 316-17. WIC elected to pursue equitable relief in the Nevada district court; thus, WIC's own choices precluded it from filing suit in the CFC regarding the same operative facts until the Nevada action had concluded. WIC's petitions for review and to stay the mandate in the Ninth Circuit further extended the pendency of that action. And as described below in Section II, even if WIC did not have a pending case against the government when it filed this suit, the CFC correctly concluded that most of WIC's claims had accrued well over six years prior and thus were barred by 28 U.S.C. § 2501.

This Court should affirm the dismissal of Counts One, Two, Three, Five, Six, and Eight as barred by Section 1500. If the Court affirms the dismissal of these claims based on Section 1500, it need not address WIC's challenges to the CFC's dismissal of these counts on the additional grounds addressed below.

II. The Court of Federal Claims correctly dismissed Counts One, Two, Three, Five, and Six for the additional independent reason that they are barred by the statute of limitations.

The Court of Federal Claims correctly dismissed Counts One, Two, Three, Five, and Six as barred by the statute of limitations.[7] Appx31-43. Clear undisputed evidence demonstrates that WIC was aware of (or should have been aware of) the claimed encroachments and harms to their land and interests long before November 2014, six years before the filing of WIC's complaint.

The six-year statute of limitations in 28 U.S.C. § 2501 begins to run when a "claim first accrues," which is "when all the events which fix the government's alleged liability have occurred and the plaintiff was or should have been aware of their existence." *San Carlos Apache Tribe v. United States*, 639 F.3d 1346, 1350 (Fed. Cir. 2011) (quoting *Hopland Band*, 855 F.2d at 1577). Plaintiff bears the burden of showing by a preponderance of the evidence that its encroachment and

[7] The CFC dismissed only "part of Count Two" on statute of limitations grounds because it was unclear whether Plaintiff based that claim on the construction of a road "different from Highland Road" and constructed within the six years prior to filing the complaint. Appx31. On appeal, WIC has not pointed to any road other than Highland Road that is at issue in this Count, and the CFC's order should be treated as a dismissal of all of Count Two on statute of limitations grounds. Also, as discussed in footnote one, WIC did not appeal the CFC's dismissal of a portion of Count Six for failure to state a claim, and those portions of Count Six are thus not at issue here.

trespass claims accrued within the statute of limitations. *Fidelity & Guarantee Ins. Underwriters, Inc. v. United States*, 805 F.3d 1082, 1087 (Fed. Cir. 2015).

With its motion to dismiss, the United States provided maps, deeds, satellite photos, and other documents establishing that the various claimed encroachments on or harms to the Colony's land existed more than six years before WIC filed suit on November 18, 2020, and that WIC was aware or should have been aware of this. The United States submitted satellite images revealing that, as of 2013, all of the claimed encroachments on the 320-acre parcel were already constructed. *See* SAppx483-484 (Highland Road (Count One, Five)); SAppx487-490 (overhead powerlines (Count Two, Five)); SAppx485-486 (subdivision ingress/egress (Count One)); SAppx491-492 (electrical substation (Count Two, Five)). And uncontroverted evidence showed that most of these structures had been present for decades: for example, a 1989 map shows Highland Road, SAppx493-495; a 1989 quitclaim deed and 1997 right-of-way application address the overhead powerlines, SAppx496-507; and a 1974 land survey includes the electrical substation, SAppx508-509. The 2013 satellite images of the Colony's residential 20-acre plot similarly reveal the existence of a trailer park, road, driveway, sheds, and other structures that are the subject of Count Six. SAppx510-511. And WIC's 2013 Complaint in the CFC referenced an upstream subdivision's diversion of water that is the subject of Counts Three and Five. SAppx465 ¶ 15. Indeed, most of the

claimed encroachments, as well as the allegedly trespassing non-member residents, were referred to in the 2013 CFC Complaint (filed November 6, 2013, more than six years before the filing of this suit), demonstrating WIC's awareness of the alleged injuries at that date. SAppx476-480; *Winnemucca Indian Colony*, 2014 WL 3107445, at *1.

WIC does not dispute that the claimed encroachments were in place, and the alleged non-members occupying Colony land, well over six years before it filed suit. It instead suggests that various exceptions to the usual standards of claim accrual apply. None save WIC's claims.

A. No formal "repudiation" is required.

WIC argues that its claim did not accrue until the United States "repudiated its trust relationship with the Colony." WIC Br. at 13. But "an action for breach of fiduciary duty accrues when the trust beneficiary knew or should have known of the breach." *Jones v. United States*, 801 F.2d 1334, 1335 (Fed. Cir. 1986); *see also Menominee Tribe v. United States*, 726 F.2d 718, 721 (Fed. Cir. 1984) (trust relationship does not toll the statute of limitations in the absence of concealment or unknowable facts). There may be circumstances—typically involving management of funds—in which the trustee "can breach his fiduciary responsibilities of managing trust property without placing the beneficiary on notice that a breach has occurred." *Shoshone Indian Tribe of Wind River Reservation v. United States*

(*Shoshone I*), 364 F.3d 1339, 1348 (Fed. Cir. 2004). In those circumstances, a breach of trust claim accrues "when the trustee 'repudiates' the trust and the beneficiary has knowledge of that repudiation." *Id.* (citing *Hopland Band*, 855 F.2d at 1579). But even then, the "repudiation" need not be a formal statement and does not require wholesale termination of the trust relationship; rather, it may be "by express words or by taking actions inconsistent with" one or more of the trustee's responsibilities. *Id.*

This case does not involve management of trust funds or other subjects as to which WIC might reasonably have been unaware of its injuries absent notification by the government. The alleged encroachments, water diversion, and trespassers are overt issues affecting WIC's own land. The CFC correctly found that WIC's complaint alleged that the government "made limited, specific repudiations of its trust responsibilities" by its actions, and that "these alleged repudiations determine when the statute of limitations period for each claim begins." Appx33. As described above, uncontroverted evidence shows that these actions took place more than six years before WIC filed its complaint.

In *San Carlos Apache Tribe*, 639 F.3d 1346, this Court rejected an argument similar to that advanced by WIC. The *San Carlos* Court distinguished *Shoshone I* as involving a situation in which the beneficiary had not been placed on notice that a breach had occurred, and thus "a final accounting is necessary to put the Tribe on

notice of the breach." *Id.* at 1355 (cleaned up). But where the circumstances are "objectively sufficient to notify the Tribe of the alleged breach," no further "repudiation" or accounting is required. *Id*. That is the case here—the presence of the road, electrical lines and substation, and residents on the Colony are "objectively sufficient to notify" WIC about the encroachments. Similarly, in *Jones v. United States*, 801 F.2d at 1335-36, this Court rejected the argument WIC makes here, finding that the plaintiff's "interpretation of the term 'repudiate' is too narrow" because a trustee can repudiate a trust "by actions inconsistent with his obligations under the trust." *Id.* at 1336.

WIC relies primarily on out-of-Circuit law, including a 1973 California district court case, but this case does not aid WIC. WIC Br. at 14-15 (citing *Manchester Band of Pomo Indians, Inc. v. United States*, 363 F. Supp. 1238 (N.D. Cal. 1973)). *Manchester Band* involved a claim of mismanagement of trust funds, and the district court applied the general rule that the statute of limitations does not begin to run until the Tribe knew or reasonably could have known of the factual basis of its claim. *Id.* at 1249. WIC brings no claim for mismanagement of trust funds, nor does it identify any facts about the alleged encroachments that were concealed or unknowable.

Finally, WIC makes an argument that it did not present below—that the "repudiation" did not occur until April 15, 2015, when the Acting Superintendent

of the Western Nevada Agency sent a letter to the Tribe stating, incorrectly, that the 20-acre parcel was held in fee. WIC Br. at 15 (citing Appx393 at 55). WIC concedes that the error was corrected a year later by the Superintendent of the Western Nevada Agency. Appx88 ¶ 101. In the CFC, WIC did not reference the April 15, 2015 letter in connection with its "repudiation" argument, *see* Appx192-193, but only in connection with its "continuing claim" argument. Appx202. The argument is thus forfeited. *Gant*, 417 F.3d at 1332.

In any event, WIC's argument makes no sense. WIC does not explain how its claims relating to the 20-acre parcel turn on the error in the 2015 letter that it says was corrected in 2016. Nor does WIC explain how BIA's 2015 letter regarding the 20-acre parcel relates to its breach-of-trust claims that concern the 320-acre parcel. *See*, *e.g.*, Appx91 (water issues associated with 320-acre parcel), Appx92 (electrical substation, power lines, and associated building and roads on 320-acre parcel).

The Court should reject the argument that the limitations period did not commence until BIA sent the 2015 letter.

B. No accounting is required.

For similar reasons, this Court should reject WIC's argument that the statute of limitations does not begin to run until the government provides it with "an accounting of BIA funds to determine the extent of the Colony's losses." WIC Br.

at 16. The CFC explained why the United States did not have to provide an accounting to WIC for the limitations period to commence. Appx33-35. WIC does not contest the CFC's holding that the 2014 Consolidated Appropriations Act, Pub. L. No. 113-76, 128 Stat. 5, 305-06 (Jan. 17, 2014), did not toll accrual of the statute of limitations in this case, but argues that the CFC failed to follow common-law precedent, namely *Shoshone I*.[8] 364 F.3d 1339; WIC Br. at 16. *Shoshone I* is readily distinguishable.

First, *Shoshone I* concerned interpretation of an earlier iteration of the 2014 Appropriations Act, which concerns claims for "losses to or mismanagement of trust funds." 364 F.3d at 1344 (citing Pub. L. No. 108-7 (2003)). Since WIC does not assert that its claims are covered by an appropriations act provision, *Shoshone I* is not directly on point, and the *Shoshone I* Court's observations about claim accrual in other circumstances are dicta.

Second, *Shoshone I* involved meaningfully different types of claims than WIC brings here. The Shoshone Tribe claimed mismanagement of tribal trust funds and failure to collect amounts due under contracts. 364 F.3d at 1342. As this Court recognized in *San Carlos Apache Tribe*, there may be circumstances, like some claims involving management of funds, in which a beneficiary would not be

[8] The other cases WIC cites do not specifically address any question of statute of limitations.

on notice that a breach of fiduciary responsibilities has occurred until an accounting has been provided.[9] 639 F.3d at 1355 (discussing *Shoshone I*, 364 F.3d at 1348). But that principle is irrelevant in circumstances in which the alleged breach is apparent without an accounting. 639 F.3d at 1355 ("a 'final accounting' was unnecessary to put the Tribe on notice of the accrual of its claim" where alleged breach was apparent). That is the case here, where the alleged violations and breaches of fiduciary duty involved physical structures on or adjacent to tribal lands or individuals occupying Colony lands. WIC identifies no reason why it would have needed an accounting for the claims at issue. *Cf. Wolfchild v. United States*, 731 F.3d 1280, 1291 (Fed. Cir. 2013) (statutory tolling provision applies only to claims "for which an accounting matters in allowing a claimant to identify and prove the harm-causing act at issue"). This argument should be rejected.

C. The statute of limitations was not tolled until BIA recognized the Wasson group as the tribal leaders.

WIC asserts that the CFC "erred in not recognizing that the statute of limitations did not run until December 13, 2020." WIC Br. at 18. We understand WIC to argue that its claim did not accrue until December 13, 2014, the date that BIA recognized the results of the October 14, 2014 election electing individuals

[9] WIC also cites *Cobell v. Norton*, 260 F. Supp. 2d 98, 104-08 (D.D.C. 2003), but that case also involved claimed mismanagement of trust funds, coupled with a lack of evidence that the plaintiffs could have identified the alleged breach without an accounting.

associated with the Wasson group as the Tribal Council. The CFC correctly rejected this argument. Appx35-36.

This suit was not brought by individual Council members, it was brought by the Tribe. The claims accrued and the statute of limitations began to run when WIC objectively should have known that the events underlying the claims had occurred, not when the current leadership took office. *San Carlos Apache Tribe*, 639 F.3d at 1350. For governmental and institutional plaintiffs, the statute of limitations does not re-start when new leadership is elected or selected. *E.g.*, *Wyandot Nation of Kansas v. United States*, 124 Fed. Cl. 601, 606 (2016) (limitations period on tribal breach of trust claim began when tribe became aware, not when successor-in-interest became aware). If the rule were otherwise, statutes of limitations could be easily evaded.

WIC's argument relies only on *Samish Indian Nation v. United States*, 419 F.3d 1355 (Fed. Cir. 2005), but that case has no applicability here. The Samish Tribe lacked federal recognition as an Indian tribe for several decades. This Court held that the Tribe's claim for past benefits did not accrue until the Tribe obtained a final determination in a separate Administrative Procedure Act challenge addressing whether the government's conduct underlying its refusal to accord federal recognition was arbitrary and capricious. *Id.* at 1373. This is because federal recognition as an Indian tribe is a political determination that this Court

observed is "not justiciable," *id.* at 1370, except through APA review of executive branch decisions. *Id.* at 1373. In *Samish*, the outcome of the Tribe's APA challenge to the recognition decision was "central to the Samish's" CFC claim. *Id.*

But the circumstances here are entirely different. There is no dispute that the Winnemucca Indian Colony has been a federally recognized Indian tribe throughout the relevant period. All that is at issue here is an internal leadership dispute, which does not implicate the political question doctrine. *E.g.*, *Harjo v. Kleppe*, 420 F. Supp. 1110 (D.D.C. 1976). WIC has not pointed to any predicate court ruling that was required for its claim to accrue. Nor has it identified any authority (and we are aware of none) under which the statute of limitations is tolled until a particular tribal council is recognized by the federal government. *Samish* does not apply here.

Indeed, this Court rejected an argument similar to WIC's in *Hopland Band*, 855 F.2d at 1580. In that case, the Court held that even the termination of a tribe's charter or withdrawal of federal recognition did not prevent accrual of the claim. *Id.* at 1579-80. "[W]hatever infirmities the Band may have been under as a result of the revocation of its constitution and charter should not have prevented the bringing of an action on behalf of the Band against the government as the entity allegedly responsible for creating those infirmities." *Id.* at 1580-81. That same reasoning applies here, especially since WIC demonstrated its capability to initiate

litigation by bringing multiple suits against the federal government prior to 2014. WIC filed two lawsuits involving the same operative facts as this suit prior to 2014—the Nevada action in 2011, Appx48, and the CFC action in November 2013. SAppx462. Individual council members and the "Winnemucca Indian Colony Council" also brought suit against the United States in Nevada federal district court in 2001 regarding control of the tribal council and tribal smokeshop, and participated in many proceedings before the IBIA. *E.g.*, *Magiera v. Norton*, 108 Fed. App'x 542 (9th Cir. 2004); *Wasson*, 52 IBIA 353. WIC was not under any legal disability or infirmity that prevented it from filing a timely suit in this case. And, as the CFC noted, even if it were, 28 U.S.C. § 2501 provides three years from the removal of the disability to file suit. Appx35-36. This additional time expired in 2017, and thus WIC's claims are in any event untimely.

D. Plaintiff's claims are not continuing claims.

Finally, the continuing claims doctrine does not postpone the accrual of WIC's encroachment claims. *See* WIC Br. at 22. The continuing claims doctrine allows the adjudication of claims that would otherwise be untimely when the claims are "inherently susceptible to being broken down into a series of independent and distinct events or wrongs, each having its own associated damages," and when at least one of these events falls within the limitations period. *Brown Park Estates–Fairfield Dev. Co. v. United States*, 127 F.3d 1449, 1456

(Fed. Cir. 1997). The plaintiff must plead "a series of distinct events—each of which gives rise to a separate cause of action—as a single continuing event." *Ariadne Fin. Services Pty. Ltd. v. United States*, 133 F.3d 874, 879 (Fed. Cir. 1998). In that circumstance, the court may entertain the "later-arising claims even if the statute of limitations has lapsed for earlier events." *Id.* at 879 (citing *Brown Park Estates*, 127 F.3d at 1456). However, "the continuing claims doctrine does not apply to a claim based on a single distinct event which has ill effects that continue to accumulate over time." *Id.*

For example, in *Fallini v. United States*, 56 F.3d 1378, 1380 (Fed. Cir. 1995), plaintiffs alleged that the passage of the Wild Free-Roaming Horses and Burros Act in 1971 resulted in a taking of their property because the Act allegedly prevented them from protecting their water sources from the wild horses. *Id.* at 1380. Invoking the continuing claims doctrine, plaintiffs argued that "every drink by a wild horse [was] a new and independent federal taking compensable by the Fifth Amendment." *Id.* at 1382. This Court rejected that argument, holding that the claim accrued on the date of the enactment of the statute. *Id.* at 1383; *see also Boling v. United States*, 220 F.3d 1365, 1371 (Fed. Cir. 2000) (holding that the continuing claims doctrine did not apply to that case because each "quantum of erosion is not a new breach by the government").

As the CFC correctly concluded, WIC's claims stem from a single discrete event, such as the construction of a road, electrical substation, or other structures, or the installation of power lines, which took place more than six years before WIC brought suit. Appx37. At that point, "all the events [had] occurred that fix the defendant's alleged liability and entitle the plaintiff to institute an action." *Fallini*, 56 F.3d at1380. Any present-day effects of these structures or encroachments flow directly from their initial authorization or construction. *See Wells v. United States*, 420 F.3d 1343, 1345-46 (Fed. Cir. 2005) ("if there was only a single alleged wrong, even though the wrong caused later adverse effects, our case law has said the continuing claim doctrine is not applicable"). Thus, just as this Court rejected the notion that every drink by a wild horse established a continuing claim, *Fallini*, 56 F.3d at 1383, it should reject WIC's contention that a new claim accrues "[e]ach time the road is used, or water diverted." WIC Br. at 23.

WIC relies on a continuing trespass theory, as expressed by this Court in *Shoshone Indian Tribe of Wind River Reservation, Wyo. v. United States* (*Shoshone II*), 672 F.3d 1021 (Fed. Cir. 2012), but that case does not apply here. The plaintiff's claims in that case concerned yearly extraction of oil and gas under leases that the Tribe asserted were illegal and void. *Id.* at 1035. Each year there was a new entry onto the property to drill for oil and gas in reliance on the purportedly void leases. This Court found that plaintiff had adequately alleged

distinct and recent injuries associated with failure to remove the oil and gas companies and the yearly extraction of trust resources, and did not rely on injuries caused by the cumulative effects of an act more than six years prior. *Id.* at 1035 n.9. In contrast, here there is a single event, e.g., the construction of a road or other structure, which remains on the Colony's reservation and may cause continued effects, but not distinct new actionable injuries. *See Brown Park Estates*, 127 F.3d at 1456 (where more recent damages stemmed from a set of agency actions taken more than six years ago, continuing claims doctrine does not apply).[10] As this Court recognized in *Hart v. United States*, 910 F.2d 815, 818 (Fed. Cir. 1990), application of the continuing claims doctrine where distinct new harms had not occurred within the last six years would mean "that the statute of limitations would never run in a claim such as this one…." And it would thwart the public interests served by statutes of limitations, including protecting the government from defending suits based on ancient events and ending the possibility of litigation after a reasonable time. *Id.* at 818.

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[10] WIC notes that the *Shoshone* opinion distinguishes *Brown Park Estates*, but the distinction does not aid WIC. WIC Br. at 24. The *Shoshone* Court noted that unlike in *Brown Park Estates*, the Shoshone Tribe "premise their breach of fiduciary duty claim on the Government's failure to remove trespassers." 672 F.3d at 1035 n.9. But to the extent that WIC brings any claim based on BIA's failure to remove trespassers, WIC expressly ties those allegations to actions taken by BIA between 2000 and 2014. *See, e.g.*, Appx101 ¶ 199 (alleging "failure to act from 2000 through 2014"); Appx99 ¶ 190.

Finally, it is not enough for WIC to simply allege a continuing duty to remove an encroachment or trespasser; WIC must establish that the federal government actually has an enforceable legal duty to remove the structures or trespassers. *See Shoshone II*, 672 F.3d at 1041. WIC has made no such showing here, nor has it appealed the dismissal of its claims (other than Count Three) for failure to allege any money-mandating duty.

Implicitly recognizing this problem, WIC suggests that the CFC should have looked to the Indian Long-Term Leasing Act, 25 U.S.C. § 415, and its implementing regulations to find a continuing duty, and therefore a continuing claim. WIC Br. at 25-26. But this argument is forfeited. WIC never mentioned this statute in its complaint, and raised it for the first time in its Opposition to the Motion to Dismiss. Appx27. Notwithstanding WIC's untimely argument, the CFC held that the Indian Long-Term Leasing Act is a money-mandating statute providing a basis for jurisdiction over Count Five, at least as to the management of "the leasing of residential properties on the Colony's land."[11] Appx28. But WIC

[11] The United States disagrees with this aspect of the CFC's decision, which was not adequately briefed below given WIC's untimely invocation of this statute. The CFC relied on *Brown v. United States*, 86 F.3d 1554 (Fed. Cir. 1996), but that case explained that the imposition of "general fiduciary duties" by 25 U.S.C. § 415(a) and 25 C.F.R. Part 162 "does *not* mean that any and every claim by the Indian lessor necessarily states a proper claim for breach of the trust." *Id.* at 1563 (emphasis in original) (internal quotations and citation omitted). In particular, the *Brown* Court held that the leasing regulations do not "require the Secretary to investigate exhaustively every violation of a lease alleged by an allottee." *Id.* The

made no argument in the CFC that the Indian Long-Term Leasing Act had any role to play in the statute-of-limitations analysis, much less that it supports a continuing claim theory and thus excuses WIC from the normal limitations period for Count Five. Appx196-202 (WIC's continuing claim argument). WIC has thus forfeited this argument. *Gant*, 417 F.3d at 1332.

If the Court were to consider the argument, however, it should reject it. The CFC did not find that the Indian Long-Term Leasing Act establishes a specific trust duty to not "allow[] trespass by third parties." WIC Br. at 25; *cf. Two Shields v. United States*, 820 F.3d 1324, 1332–33 (Fed. Cir. 2016) (requiring the Tribe to identify specific statutory obligations related to its claims). Rather, it found that the Act "requires the Government to approve leases of Indian land." Appx28. But WIC's complaint does not allege that any leases were improperly approved in the prior six years. Nor does WIC cite any authority that holds that the Leasing Act imposes ongoing mandatory duties on BIA to prevent trespass or bring ejectment actions against trespassers. *Cf.* 25 C.F.R. § 162.371 (BIA has discretionary authority to take action to recover possession against lessees who remain in

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CFC did not analyze whether WIC's specific claims regarding leasing in Count Five state a proper claim for breach of the trust. Appx27-28. Further, the CFC's reasoning would preserve only some aspects of Count Five, as the Count includes alleged breaches unrelated to leasing for which no money-mandating duty was found by the CFC. Appx99-100. If the dismissal of Count Five is reversed, the United States reserves the right to assert that Count Five does not, in fact, state a valid claim.

possession after lease expires); *Shoshone-Bannock Tribes v. Reno*, 56 F.3d 1476 (D.C. Cir. 1995) (Attorney General does not have an enforceable duty to bring claims to enforce tribal rights). WIC failed to demonstrate a statutory or regulatory provision that places a specific fiduciary duty on the United States related to its claims.

None of WIC's claimed exceptions to the rules for accrual of claims applies here. The CFC correctly dismissed Counts One, part of Two, Three, Five, and Six as outside 28 U.S.C. § 2501's statute of limitations. If the Court affirms the dismissal of these claims based on the statute of limitations, it need not address WIC's challenges to the CFC's dismissal of Count Three on the additional ground addressed below.

III. The Court of Federal Claims also correctly dismissed Count Three for the additional reason that there is no money-mandating duty.

The CFC correctly determined that WIC had identified no money-mandating fiduciary duty that supports jurisdiction over Count Three, which alleges a breach of trust based on a third party's alleged diversion of water from a stream and wells outside of Colony lands. Appx17-21, Appx96-97. The lack of a money-mandating fiduciary duty is an independent reason to affirm the district court's judgment.

To establish jurisdiction pursuant to the Tucker Act, 28 U.S.C. § 1491, and Indian Tucker Act, 28 U.S.C. § 1505, WIC must identify a substantive source of

law that satisfies two requirements. *United States v. Navajo Nation* (*Navajo II*), 556 U.S. 289, 290-91 (2009). First, WIC "must identify a substantive source of law that establishes specific fiduciary or other duties, and allege that the Government has failed faithfully to perform those duties." *United States v. Navajo Nation* (*Navajo I*), 537 U.S. 488, 506 (2003). Second, the relevant source of substantive law must be one that "can fairly be interpreted as mandating compensation for damages sustained as a result of a breach of the duties" it imposes. *Id.* Although a statute need not explicitly mandate money damages, statutes that grant government officials "substantial discretion" are "not considered money-mandating." *Wolfchild*, 731 F.3d at 1292 (quoting *Price v. Panetta*, 674 F.3d 1335, 1339 (Fed. Cir. 2012)).

WIC asserts that there is a money-mandating duty to prevent third-party interference with the Colony's reserved water rights. WIC Br. at 27. It references two sources—the so-called "*Winters* doctrine" (arising out of *Winters v. United States*, 207 U.S. 564 (1908)) and 25 C.F.R. § 152.22—to support this claim. WIC Br. at 27. Neither source provides a money-mandating duty that satisfies the test set out in *Navajo I* and *Navajo II.*

In *Winters*, the Supreme Court held that the "reservation of land for an Indian tribe also implicitly reserves the right to use needed water from various sources … that arise on, border, cross, underlie, or are encompassed within the

reservation." *Arizona*, 599 U.S. at 561 (citing *Winters*, 207 U.S. at 576-77); *see also Crow Creek Sioux Tribe v. United States*, 900 F.3d 1350, 1356 (Fed. Cir. 2018). WIC's reliance on *Winters* to establish jurisdiction for its breach of trust claim fails for several reasons. First, the *Winters* opinion and *Winters* doctrine are judicially made federal common law, not a treaty, statute, or regulation that could support a breach-of-trust claim. *See Arizona*, 599 U.S. at 563 (plaintiff must establish "that the text of a treaty, statute, or regulation imposed certain duties on the United States"); *see also United States v. Jicarilla Apache Nation*, 564 U.S. 162, 177 (2011). As recently stated by the Supreme Court, "the trust obligations of the United States to the Indian tribes are established by Congress and the Executive, not created by the Judiciary." *Arizona*, 599 U.S. at 564 n.1. WIC points to no treaty, statute, executive order, or regulation that imposes this duty on the United States.

Nor has WIC pointed to any case that holds that *Winters* alone is a sufficient source to establish any duty. In fact, although the Ninth Circuit relied on the *Winters* doctrine to find an enforceable fiduciary duty in the decision under review in *Arizona*, the Navajo Nation did not attempt to defend this aspect of the decision in the Supreme Court. *Navajo Nation v. U.S. Dep't of Interior*, 26 F.4th 794, 813 (9th Cir. 2022), *rev'd sub nom. Arizona v. Navajo Nation*, 599 U.S. 555 (2023); *see, e.g.*, Reply Brief for the Federal Parties, *Arizona v. Navajo Nation*, 2023 WL

2403173, at *12. The Navajo Nation instead pointed to a treaty to support its affirmative-duty argument. *Arizona*, 555 U.S. at 564-68. The Supreme Court held that even though the treaty "reserved necessary water to accomplish the purposes of the Navajo Reservation" it "did not require the United States to take affirmative steps to secure water for the Tribe" and reversed the Ninth Circuit's judgment. 599 U.S. at 569-70. Here, WIC does not even attempt to identify treaty or statutory language that supports its claim.

Second, the *Winters* doctrine is a doctrine of reserved rights, not affirmative duties. *E.g.*, *Cappaert v. United States*, 426 U.S. 128, 138-39 (1976) (describing the "Reserved-Water-Rights Doctrine"). *Winters* holds that the establishment of an Indian or other federal reservation implicitly reserves water rights necessary to support the purposes of that reservation, meaning that the water rights arise by operation of law no later than when the reservation is established. *Cappaert*, 426 U.S. at 138. But like the setting aside of the land for an Indian reservation, the existence of implied reserved water rights gives rise only to a "limited" or "bare" trust. *See Arizona*, 599 U.S. at 565-66. A limited trust does not support a breach of trust claim. *Jicarilla*, 564 U.S. at 177.

Winters does not hold that the reservation of water as part of a reservation includes any "promise" by the United States to supply such water. And although the federal government has the authority to assert claims in court for water rights

that the United States holds in trust, or otherwise to protect or defend those water rights, the exercise of this authority is discretionary. *See Shoshone-Bannock Tribes*, 56 F.3d at 1481 (decision to file a claim in court, including a water rights claim on behalf of an Indian tribe, is within the discretion of the Department of Justice); *see also Hawkins v. Haaland*, 991 F.3d 216, 227 (D.C. Cir. 2021) (federal government not required "to concur in the Tribes' calls for enforcement of their reserved instream water rights" or assume control over water rights). Tribes retain the power to control their own water rights, and may bring their own suits (or intervene in existing cases) to assert their rights. *See Arizona*, 599 U.S. at 568-69.

But the federal government's "authority to act does not support inference of the asserted *duty* to act (enforceable by a suit for money damages)." *Wolfchild*, 731 F.3d at 1289; *see also id.* at 1292 (statutes granting officials "substantial discretion" are "not considered money-mandating") (citation omitted). WIC's statement that "the power to act on behalf of Indian Tribes is synonymous with an acceptance of duty" (WIC Br. at 29) is incorrect; that premise was recently rejected again by the Supreme Court in *Arizona* and has been rejected by this Court as well. *Arizona*, 599 U.S. at 568 (federal liability on a breach of trust claim "'cannot be premised on control alone'" (citing *Navajo II*, 556 U.S. at 301)); *Wolfchild*, 731 F.3d at 1289; *Hopi Tribe*, 782 F.3d at 670-71. As a result, *Hopi Tribe v. United States* does not aid WIC. *See* WIC Br. at 27-28 (citing 782 F.3d 662 (Fed. Cir.

2015)). The cited portions of that case recognize federal *authority* related to Indian water rights under the *Winters* doctrine, but not any money-mandating duty.[12] 782 F.3d at 669. As recognized by the *Hopi* Court, "the Supreme Court has made clear that the Federal Government's liability cannot be premised on control alone." *Id.* at 670 (citing *Navajo II*, 556 U.S. at 301 (cleaned up)).

Finally, contrary to WIC's assertions, *Arizona* is directly relevant. WIC claims that this case is "about the duty to not allow interference, not about the duty to take affirmative steps to secure water rights," and quotes a passage from *Arizona* that noted that the Navajo Nation did not claim that "the United States has interfered with [the tribe's] water access." WIC Br. at 29 (citing *Arizona*, 599 U.S. at 563). But there is no allegation here that the United States itself has interfered with WIC's water access. Nor is there any difference between WIC's request that "the United States take steps to stop interference by a third party" (WIC Br. at 30) and the Navajo Nation's request in *Arizona* that the United States take steps to secure water. 599 U.S. at 558-59; *see also* Appx91-92 (alleging United States

[12] WIC also overreads the statement in *Hopi* that "[a]t most, by holding reserved water rights in trust, Congress accepted a fiduciary duty to exercise those rights and exclude others from diverting or contaminating water that feeds the reservation." WIC Br. at 27; *Hopi Tribe*, 782 F.3d at 669. As the CFC correctly concluded, this statement is dicta because it was unnecessary to the resolution of the case. Appx19. In any event, its premise has since been rejected by the Supreme Court, which held in *Arizona* that absent clear statutory or treaty language indicating otherwise (not present here), the United States has no duty to secure water associated with a reservation. 599 U.S. at 565.

should have taken affirmative steps to prevent a neighboring landowner from taking actions on its own property that could affect the water reaching Colony lands); Appx97 ("Defendants allowed Offenhauser Development Company to divert a stream…."). Both seek to require the federal government to take affirmative actions with respect to availability of water for tribes, a premise that the Supreme Court rejected. 559 U.S. at 565-66; *cf. Crow Creek Sioux Tribe*, 900 F.3d at 1357 (rejecting on standing grounds the Tribe's breach-of-trust claim for failure to protect or quantify water rights). The reasoning in *Arizona* applies here.

WIC references 25 C.F.R. § 152.22, but does not explain how that regulation establishes a money-mandating duty. WIC Br. at 27, 31. It does not. That regulation provides for Secretarial approval for the conveyance of restricted lands. 25 C.F.R. § 152.22. But the regulation has no bearing on WIC's third claim, which concerns the alleged failure to prevent the diversion of water on lands *outside the reservation*. Nor does the regulation impose any specific money-mandating duty on the federal government.

The CFC's dismissal of Count Three for failure to identify a money-mandating source of law should be affirmed.

IV. The Court of Federal Claims correctly dismissed WIC's eighth claim.

The CFC correctly dismissed Count Eight for documents and an accounting for the additional reason that WIC stated no valid claim that supported jurisdiction

for such a demand. Appx44-45. The CFC lacks jurisdiction to order an accounting except as an aid in determining the quantum of damages resulting from a successful claim over which the CFC possesses jurisdiction. *E.g.*, *Confidential Informant 59-05071 v. United States*, 134 Fed. Cl. 698 (2017), *aff'd*, 745 Fed. Appx. 166 (Fed. Cir. 2018). WIC failed to establish the CFC's jurisdiction over any claim, much less that it would be successful on the merits of any claim. The CFC's dismissal of this claim should be upheld.

CONCLUSION

For the foregoing reasons, the Court should affirm the CFC's dismissal of WIC's complaint.

Respectfully submitted,

/s/ *Amber Blaha*

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90-2-20-16189

CERTIFICATE OF COMPLIANCE

***Winnemucca Indian Colony v. United States*, No. 24-1108**

1. This document complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f) this document contains 11,851 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

/s/ *Amber Blaha*
AMBER BLAHA
Counsel for Appellees

April 9, 2024

No. 24-1108

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

WINNEMUCCA INDIAN COLONY,
Plaintiff/Appellant,

v.

UNITED STATES,
Defendant/Appellee.

Appeal from the United States Court of Federal Claims
No. 1:20-cv-01618 (Hon. Kathryn C. Davis)

SUPPLEMENTAL APPENDIX
OF THE UNITED STATES

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US District Court Docket

US Court of Federal Claims

(COFC)

This case was retrieved on 04/03/2024

Header

Case Number: 1:20cv1618
Date Filed: 11/18/2020
Assigned To: Judge Kathryn C. Davis
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Proceedings

1:20cv1618, Winnemucca Indian Colony V. Usa

#	Date	Proceeding Text	Source
1	11/18/2020	COMPLAINT against USA (DOI) (Filing fee $400, Receipt number AUSFCC-6606937) (Copy Served Electronically on Department of Justice), filed by WINNEMUCCA INDIAN COLONY. Answer due by 1/17/2021. (Attachments: # 1 Civil Cover Sheet)(tb) (Entered: 11/18/2020)	
2	11/18/2020	NOTICE of Assignment to Judge Charles F. Lettow. (tb) (Entered: 11/18/2020)	
3	11/18/2020	NOTICE of Designation of Electronic Case. (tb) (Entered: 11/18/2020)	
4	12/21/2020	ORDER REASSIGNING CASE to Judge Kathryn C. Davis. Signed by Chief Judge Eleni M. Roumel. (dls) Service on parties made. (Entered: 12/21/2020)	
5	12/21/2020	NOTICE of Reassignment. Case reassigned to Judge Kathryn C. Davis for all further proceedings. Senior Judge Charles F. Lettow no longer assigned to the case. (dls) (Entered: 12/21/2020)	
6	01/04/2021	NOTICE of Appearance by Peter Kryn Dykema for USA . (Dykema, Peter) (Entered: 01/04/2021)	
7	01/05/2021	Unopposed MOTION for Extension of Time until 3/19/2021 to File Answer re 1 Complaint, , filed by USA.Response due by 1/19/2021.(Dykema, Peter) (Entered: 01/05/2021)	
	01/14/2021	ORDER granting 7 Motion for Extension of Time to Answer,Answer due by 3/19/2021. Signed by Judge Kathryn C. Davis. (pbf) Service on parties made. (Entered: 01/14/2021)	
8	03/19/2021	MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) , filed by USA.Response due by 4/16/2021. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26, # 27 Exhibit 27)(Dykema, Peter) Modified on 2/4/2022 (sh). (Entered: 03/19/2021)	
9	03/24/2021	NOTICE, filed by USA re 8 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) of filing Errata. (Attachments: # 1 Exhibit Corrected Exh. 19 to Motion to Dismiss, # 2 Exhibit Corrected Exh. 20 to Motion to Dismiss)(Dykema, Peter) (Entered: 03/24/2021)	
10	04/02/2021	First MOTION for Extension of Time to File Response as to 8 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) , filed by WINNEMUCCA INDIAN COLONY.Response due by 4/16/2021.(Cisneros, Norberto) (Entered: 04/02/2021)	
11	04/08/2021	ORDER granting 10 Motion for Extension of Time to File Response re 8 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) Response due by 6/1/2021. Reply due by 6/28/2021. Signed by Judge Kathryn C. Davis. (pbf) Service on parties made. (Entered: 04/08/2021)	
12	05/03/2021	NOTICE of Appearance by Amanda Stoner for USA . (Stoner, Amanda) (Entered: 05/03/2021)	
13	05/28/2021	Joint MOTION to Amend Schedule and Hold in Abeyance United States' Motion to Dismiss Plaintiffs' Complaint, filed by USA.Response due by 6/11/2021. (Attachments: # 1 Text of Proposed Order)(Stoner, Amanda) (Entered: 05/28/2021)	
14	05/28/2021	ORDER granting 13 Motion to Amend Schedule Motion for Leave to Amend the Complaint due by 7/16/2021. Response due by 8/6/2021. Signed by Judge Kathryn C. Davis. (pbf) Service on parties made. (Entered: 05/28/2021)	

1:20cv1618, Winnemucca Indian Colony V. Usa

#	Date	Proceeding Text	Source
15	07/16/2021	First MOTION to Amend Pleadings - Rule 15 , filed by WINNEMUCCA INDIAN COLONY.Response due by 7/30/2021. (Attachments: # 1 Exhibit Exhibit 1 Proposed Amended Complaint)(Cisneros, Norberto) (Entered: 07/16/2021)	
16	08/06/2021	First MOTION for Extension of Time to File Response as to 15 First MOTION to Amend Pleadings - Rule 15 , filed by USA.Response due by 8/20/2021. (Attachments: # 1 Exhibit, # 2 Text of Proposed Order)(Stoner, Amanda) (Entered: 08/06/2021)	
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17	09/01/2021	RESPONSE to 15 First MOTION to Amend Pleadings - Rule 15 , filed by USA.Reply due by 9/8/2021. (Attachments: # 1 Exhibit Exhibit 1: Satellite Photo (2013) South Highland Drive, # 2 Exhibit 2: April 27, 2021 BIA Interim Recognition Decision, # 3 Exhibit 3: Satellite Photo (2013): Offenhauser Development Water Canyon Estates, # 4 Exhibit 4: 1989 Offenhauser Recorded Map for Development on Water Canyon Road)(Stoner, Amanda) (Entered: 09/01/2021)	
18	09/08/2021	Unopposed MOTION for Extension of Time to File Reply as to 17 Response to Motion, To File File First Amended Complaint, filed by WINNEMUCCA INDIAN COLONY.Response due by 9/22/2021. (Attachments: # 1 Exhibit Exhibit 1 - Email Correspondence Agreeing to Extension of Time to Reply)(Cisneros, Norberto) (Entered: 09/08/2021)	
	09/09/2021	ORDER granting 18 Motion for Extension of Time to File Reply Reply due by 9/22/2021. Signed by Judge Kathryn C. Davis. (pbf) Service on parties made. (Entered: 09/09/2021)	
19	09/22/2021	REPLY to Response to Motion re 18 Unopposed MOTION for Extension of Time to File Reply as to 17 Response to Motion, To File File First Amended Complaint , filed by WINNEMUCCA INDIAN COLONY. (Attachments: # 1 Exhibit Exhibit 1, # 2 Exhibit Exhibit 2)(Cisneros, Norberto) (Entered: 09/22/2021)	
20	01/24/2022	NOTICE of Additional Authority , filed by USA. (Attachments: # 1 Exhibit)(Stoner, Amanda) (Entered: 01/24/2022)	
21	01/26/2022	ORDER granting 15 Motion to Amend Pleadings - Rule 15. First Amended Complaint due by 1/31/2022. Signed by Judge Kathryn C. Davis. (zlj) Service on parties made. (Entered: 01/26/2022)	
22	02/01/2022	First AMENDED COMPLAINT against USA, filed by WINNEMUCCA INDIAN COLONY. First Amended Complaint, filed by WINNEMUCCA INDIAN COLONY.Answer due by 2/15/2022. (Cisneros, Norberto) (Entered: 02/01/2022)	
23	03/18/2022	MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) , filed by USA.Response due by 4/15/2022. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25)(Stoner, Amanda) (Entered: 03/18/2022)	
24	04/05/2022	Joint MOTION for Extension of Time to File Response as to 23 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) , filed by WINNEMUCCA INDIAN COLONY.Response due by 4/19/2022.(Cisneros, Norberto) (Entered: 04/05/2022)	
	04/07/2022	ORDER granting 24 Joint MOTION for Extension of Time to File Response as to 23 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6). Response due by 5/20/2022. Reply due by	

#	Date	Proceeding Text	Source
		6/17/2022. Signed by Judge Kathryn C. Davis. (zlj) Service on parties made. (Entered: 04/07/2022)	
25	05/20/2022	RESPONSE to 23 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) , filed by WINNEMUCCA INDIAN COLONY.Reply due by 6/17/2022. (Attachments: # 1 Exhibit Exhibit 1 - January 11, 2022 letter from Jessie Durham, Acting Regional Director, BIA, to Chairwoman Judy Rojo, # 2 Exhibit Exhibit 2 - April 19, 2022 letter from Chairwoman Judy Rojo to Maria Wiseman, Associate Deputy Director, BIA, and Jason O'Neal, Director, BIA, # 3 Exhibit Exhibit 3 - April 5, 2022 email from Bob McNichols to Jessie Durham, with attachments, # 4 Exhibit Exhibit 4 - April 26, 2022 letter from Jessie Durham to Chairwoman Judy Rojo, # 5 Exhibit Exhibit 5 - 1971 Constitution and Bylaws of the Winnemucca Indian Colony Nevada, # 6 Exhibit Exhibit 6 - September 20, 2020 letter from DOI to Fred Drye, Tribal Government Advisor, including 1916 Indian Census Roll and 2018 Winnemucca Indian Colony Resolution, # 7 Exhibit Exhibit 7 - January 21, 1987 news release from BIA, # 8 Exhibit Exhibit 8 - United States' Notice of Appeal and Representation Statement - March 25, 2019, # 9 Exhibit Exhibit 9 - United States' Unopposed Motion to Voluntarily Dismiss Appeal - August 15, 2019, # 10 Exhibit Exhibit 10 - Order Granting Appellants' Motion to Dismiss Appeal - August 23, 2019, # 11 Exhibit Exhibit 11 - July 10, 2020 letter from Chairwoman Judy Rojo to Robert Eben, Superintendent, BIA Western Regional Office, # 12 Exhibit Exhibit 12 - May 17, 2022 Declaration of Chairwoman Judy Rojo, # 13 Exhibit Exhibit 13 - April 16, 2019 email from Robert Eben, Superintendent, BIA Western Regional Office, to Chairwoman Judy Rojo, # 14 Exhibit Exhibit 14 - April 15, 2015 letter from Marilyn Bitisillie, Acting Superintendent, BIA, to Chairwoman Judy Rojo, # 15 Exhibit Exhibit 15 - Executive Order - June 18, 1917, # 16 Exhibit Exhibit 16 - Map of Winnemucca Indian Colony identifying locations of hazardous waste)(Cisneros, Norberto) Modified on 5/23/2022 to correct Reply due date (sh). (Entered: 05/20/2022)	
26	06/10/2022	Unopposed MOTION for Extension of Time to File Reply as to 23 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) , filed by USA.Response due by 6/24/2022.(Stoner, Amanda) (Entered: 06/10/2022)	
	06/13/2022	ORDER granting 26 Motion for Extension of Time to File Reply as to 23 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6). Reply due by 7/20/2022. Signed by Judge Kathryn C. Davis. (zlj) Service on parties made. (Entered: 06/13/2022)	
27	07/15/2022	Unopposed MOTION for Extension of Time to File Reply as to 23 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) , filed by USA.Response due by 7/29/2022.(Stoner, Amanda) (Entered: 07/15/2022)	
	07/18/2022	ORDER granting 27 Motion for Extension of Time to File Reply re 27 Unopposed MOTION for Extension of Time to File Reply as to 23 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6). Reply due by 7/27/2022. Signed by Judge Kathryn C. Davis. (zlj) Service on parties made. (Entered: 07/18/2022)	
28	07/27/2022	REPLY to Response to Motion re 23 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) , filed by USA. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Stoner, Amanda) (Entered: 07/27/2022)	
29	08/17/2022	First MOTION for Leave to File Motion for Leave to File Surreply to United States Reply in Support of Motion to Dismiss Plaintiffs' Amended Complaint [ECF 28], filed by WINNEMUCCA INDIAN COLONY.Response due by 8/31/2022. (Attachments: # 1	

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#	Date	Proceeding Text	Source
		Exhibit)(Cisneros, Norberto) (Entered: 08/17/2022)	
30	08/31/2022	RESPONSE to 29 First MOTION for Leave to File Motion for Leave to File Surreply to United States Reply in Support of Motion to Dismiss Plaintiffs' Amended Complaint [ECF 28] , filed by USA.Reply due by 9/7/2022. (Stoner, Amanda) (Entered: 08/31/2022)	
31	09/07/2022	REPLY to Response to Motion re 29 First MOTION for Leave to File Motion for Leave to File Surreply to United States Reply in Support of Motion to Dismiss Plaintiffs' Amended Complaint [ECF 28] , filed by WINNEMUCCA INDIAN COLONY. (Cisneros, Norberto) (Entered: 09/07/2022)	
32	11/22/2022	ORDER Setting Oral Argument/Hearing on 23 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) : Oral Argument set for 1/19/2023 10:00 AM in National Courts Building (Courtroom 6) before Judge Kathryn C. Davis. Signed by Judge Kathryn C. Davis. (msm) Service on parties made. (Entered: 11/22/2022)	
	02/17/2023	Minute Entry - Was the proceeding sealed to the public? no. If Yes, only parties to the case may order a copy of the transcript. Proceeding held in Washington, DC 1/19/2023 before Judge Kathryn C. Davis: Oral Argument. [Total number of days of proceeding: 1] Approximate duration of proceeding: 2 hours and 30 minutes. Official record of proceeding taken via electronic digital recording (EDR). To order a certified transcript or an audio recording of the proceeding, click HERE.(msm) (Entered: 02/17/2023)	
33	02/22/2023	Notice of Filing Certified Transcript for proceedings held on January 19, 2023 in Washington, D.C. (ew) (Entered: 02/22/2023)	
34	02/22/2023	CERTIFIED TRANSCRIPT of proceedings held on January 19, 2023 before Judge Kathryn C. Davis. Total No. of Pages: 1-110. Procedures Re: Electronic Transcripts and Redactions. To order a copy of the transcript, click HERE. Notice of Intent to Redact due 3/1/2023. Redacted Transcript Deadline set for 3/22/2023. Release of Transcript Restriction set for 5/22/2023. (ew) (Entered: 02/22/2023)	
35	07/06/2023	NOTICE of Additional Authority , filed by USA. (Attachments: # 1 Exhibit A)(Stoner, Amanda) (Entered: 07/06/2023)	
36	07/12/2023	MOTION to Strike 35 Notice of Additional Authority Or, in the Alternative, Response Thereto, filed by WINNEMUCCA INDIAN COLONY.Response due by 7/26/2023.(Cisneros, Norberto) (Entered: 07/12/2023)	
37	07/19/2023	RESPONSE to 36 MOTION to Strike 35 Notice of Additional Authority Or, in the Alternative, Response Thereto , filed by USA.Reply due by 7/26/2023. (Dykema, Peter) (Entered: 07/19/2023)	
38	07/26/2023	REPLY to Response to Motion re 36 MOTION to Strike 35 Notice of Additional Authority Or, in the Alternative, Response Thereto , filed by WINNEMUCCA INDIAN COLONY. (Cisneros, Norberto) (Entered: 07/26/2023)	
39	08/25/2023	REPORTED OPINION granting 23 Motion to Dismiss; denying 29 Motion for Leave to File Surreply; granting in part and denying in part 36 Motion to Strike. The Clerk is directed to enter judgment. Signed by Judge Kathryn C. Davis. (msm) Service on parties made. (Entered: 08/25/2023)	
40	08/28/2023	JUDGMENT entered, pursuant to Rule 58, dismissing plaintiff's amended complaint for lack of subject-matter jurisdiction. (Service on parties made.) (dls) (Entered: 08/28/2023)	
41	10/02/2023	NOTICE OF APPEAL as to 40 Judgment, filed by WINNEMUCCA INDIAN COLONY. Filing fee $ 505, receipt number AUSFCC-	

1:20cv1618, Winnemucca Indian Colony V. Usa

#	Date	Proceeding Text	Source
		9046813. Copy to CAFC. (Cisneros, Norberto) (Entered: 10/02/2023)	
	10/27/2023	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals for the Federal Circuit re 41 Notice of Appeal (hw1) (Entered: 10/27/2023)	
	11/02/2023	CAFC Case Number 2024-1108 for 41 Notice of Appeal filed by WINNEMUCCA INDIAN COLONY. (hw1) (Entered: 11/02/2023)	
42	12/20/2023	NOTICE of Appearance by Peter Kryn Dykema for USA . (Dykema, Peter) (Entered: 12/20/2023)	

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EXHIBIT 1

District of Nevada: Order and Injunction (September 25, 2012)

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

WINNEMUCCA INDIAN COLONY et al., Plaintiffs, vs. UNITED STATES OF AMERICA ex rel. DEPARTMENT OF THE INTERIOR et al., Defendants.	3:11-cv-00622-RCJ-VPC **ORDER AND INJUNCTION**

This case arises out of the refusal of the U.S. Department of the Interior ("DOI") to recognize a tribal government of the Winnemucca Indian Colony (the "Colony") and the interference of the Bureau of Indian Affairs ("BIA") with the activities of a purported Council member on colonial land. The Court issued a temporary restraining order ("TRO") ordering the BIA to grant interim recognition to some person or persons but not ordering or restraining any BIA activity on the land. The Court then granted a preliminary injunction in part, "enjoin[ing] the BIA from interfering with activities on colonial land by Wasson and his agents" and noting that "[u]ntil some tribal court says otherwise or Bills appears and is heard to object (making the Council's vote 1–1), Wasson represents the will of the Council under the [Indian court's] ruling." The Court also permitted Plaintiffs to amend the Complaint, denied Defendants' motion to dismiss, and permitted Linda Ayer to intervene.

After the Court ordered the Bureau of Indian Affairs ("BIA") to recognize one or more persons as the governmental representative(s) of the Winnemucca Indian Colony (the "Colony") for the purposes of the Colony's relationship with the United States, the BIA recognized William Bills and Thomas Wasson. When Bills intervened and noted his opposition to Wasson, the Court ruled that the recognition of both Wasson and Bills amounted to the recognition of no government at all and ordered the BIA to choose again. *See Goodface v. Grassrope*, 708 F.2d 335, 338–39 (8th Cir. 1983) (ruling that the recognition of two opposing factions amounts to a recognition of no government and is therefore an abuse of discretion under the APA). The BIA chose to recognize Bills. Wasson then asked the Court for a preliminary injunction enjoining the recognition of Bills.

The Court set the matter for oral argument. The Court read from the August 16, 2002 order of the stipulated appellate panel for the 2000–2002 Wasson–Bills litigation (the "Minnesota Panel" or the "Panel"), which the Court has previously noted appears to be the last authoritative Indian court ruling concerning Council membership.[1] The Minnesota Panel ruled that after Glenn Wasson's murder, the Council consisted of Acting Chairman William Bills and members-at-large Thomas Wasson, Elverine Castro, and Lucy Lowery. (*See* Minn. Panel Order 4, Aug. 16, 2002, ECF No. 115-4). The Panel ruled that Thomas Wasson, Elverine Castro, and Lucy Lowery constituted a majority of the Council under the Colony Constitution and had properly appointed Sharon Wasson as a replacement for Glenn Wasson and had later properly elevated Sharon Wasson to Chairman. (*See id.* 9–10, 16). The Panel also ruled that the Council's attempt to remove Bills from the Council was procedurally defective and therefore without effect. (*Id.* 10, 16). After Lucy Lowery's death, the Council had properly declared a vacancy and replaced her with Tom Magiera. (*See id.* 11, 16). The Council's attempt to disenroll or banish Bills to replace him with Andrea Davidson was ineffective. (*Id.*). Therefore, the Council consisted of Chairman Sharon Wasson, Vice Chairman William Bills, and members-at-large

[1] In the absence of any valid, intervening Indian court ruling, the Minnesota Panel's ruling is res judicata. (*See* Summ. J. Order 8–9, Mar. 6, 2008, ECF No. 215 in Case No. 3:00-cv-00450 (Sandoval, J.)). The Court of Appeals affirmed. (*See* Mem. Op., Oct. 14, 2010, ECF No. 244 in Case No. 3:00-cv-00450).

Thomas Wasson, Elverine Castro, and Tom Magiera (until his death). (*See id.* 16). Bills and Wasson are the only surviving members of the Council. The October 28, 2000 election was ruled invalid. (*See id.* 11, 16). Bills' later attempt to appoint a council on his own was ruled ineffective. (*See id.* 12, 16).

The Panel also ruled that the last authoritative Colony membership roll was the "List of 77" adopted by the Council in 1998, plus any enrollments accepted by the Council until the date of the Panel's order, August 16, 2002. (*See id.* 12–13, 18). The Panel noted that Shoshone were disproportionately represented on the Council and ordered the Council to take measures to address concerns of Paiutes that their enrollment applications would not be fairly treated due to bias. (*See id.* 13). The Panel also ruled that the attempted removal of Judge Swanson was ineffective. (*See id.* 18–19).

The basis the BIA gave for its decision to recognize Bills instead of Wasson was that Bills was the Vice Chairman of the Council and Wasson was only a member-at-large, and under the Colony Constitution and Bylaws, the Vice Chairman was to perform the duties of the Chairman in his absence. (*See* Bowker Letter, July 13, 2012, ECF No. 110, at 3). Having read the proposed order and considered the objections thereto, the Court rules that the decision by the BIA to recognize Bills on July 17, 2012 was an abuse of discretion and not in accordance with law, *see* 5 U.S.C. § 706(2)(A), because the BIA based its decision purely on its interpretation of tribal law, which is territory into which neither the BIA nor this Court is to tread. To do so would be for the United States to interfere impermissibly in sovereign Indian self-governance, no matter how clear the result appears to be to an outsider.[2] In the proper exercise of its discretion in a case such as the present one, where the controlling Indian judicial rulings still leave the BIA with a choice between two or more rival factions, the BIA ought not assume or attempt to

[2]For example, there could be some controlling piece of tribal common law concerning succession of leadership. The determination that the vice chairman or acting chairman should necessarily have a higher position than a member-at-large with respect to government-to-government relations itself requires an assumption about tribal law that is outside the scope of the BIA's discretion. The result may seem obvious in a traditional Western democracy, but tribal law may be very different. The succession of leadership in the Colony may turn on longevity, age, or some other factors unfamiliar to Western government, despite the Western-style titles of "chairman" and "vice chairman."

determine which of the rival factions has a better claim to leadership under tribal law (as opposed to tribal judicial rulings), but rather should look to the circumstances of its relationship with the parties. That is, which party can the BIA better work with to manage the Colony's federal aid and participation in federal programs on behalf of the tribe?[3] Because the BIA made its decision on improper grounds, i.e., its interpretation of tribal law, and made no attempt to justify its decision on any proper grounds, the Court need not rely on any direct analysis of which party is better able to work with the BIA to find that the BIA abused its discretion in selecting Bills.

Next, Ayer has asked the Court to order Thomas Wasson to show cause why he should not be held in contempt of the Court's Preliminary Injunction Order of January 10, 2012 (the "Order"). The Order stated that the BIA was not to eject Wasson or his cohorts from the Colony as if they were trespassers, nor prevent them from rehabilitating the Hanson Street Smoke Shop, but the Order also specifically stated that Wasson could not attempt to eject Ayer and her cohorts from the South Street Smoke Shop in a way that risked violence. Ayer alleges that Wasson and his cohorts have now broken into the Colony Administration Building and changed the locks. She alleges that the BIA allowed her into an office in the building to retrieve personal effects, but that after she locked herself in her office, the BIA arrested her. She also alleges that Wasson and his cohorts broke into the South Street Smoke Shop while it was closed (but while an employee was working there) and has begun operating the shop and selling the inventory that belongs to a third-party. The affidavit provided by Ayer's employee indicates that some unidentified persons broke the lock on the door of the South Street Smoke Shop after beating on it and claiming they had a "court order" giving Wasson possession of the shop, causing the employee to lock herself in an office in fear of her life. She alleges that the BIA has enforced Wasson's possession of the buildings and has not permitted the Ayer group to return.

The Court grants the motion. The Court ruled orally on September 4, 2012 that the BIA's selection of Bills had been an abuse of discretion, and that it must recognize Wasson. The BIA's

[3]Under the circumstances, it appears that Wasson is the better choice, though the Court does not base its ruling on this. For example, Wasson is attempting actively to govern the Colony and has pursued Colony leadership diligently. By contrast, Bills appears to reside many hundreds of miles from the Colony in another state, and the BIA was not even able to locate him until nearly a year after the present lawsuit was initiated.

support of Wasson as against Ayer in these confrontations is probably consistent with the Court's September 4, 2012 oral ruling. However, it does appear that Wasson and his cohorts are in contempt of the Court's previous order preventing exactly this kind of confrontation until the conclusion of the action. If the Ayer group wishes directly to challenge Wasson's possession of real or personal property that allegedly belongs to Ayer or a third party, however, those are common law claims that may presumably be brought in the tribal or state courts. This Court's jurisdiction extends only to the recognition dispute between Wasson, Bills, Ayer, and the Government. The Court does not have jurisdiction directly to determine unlawful detainer or conversion claims as between Wasson and Ayer.

CONCLUSION

IT IS HEREBY ORDERED that the Motion for Preliminary Injunction (ECF No. 115) is GRANTED. The BIA shall recognize Thomas Wasson as the representative of the Council until the conclusion of this action.

IT IS FURTHER ORDERED that the Motion for Temporary Restraining Order (ECF No. 114) is DENIED as moot.

IT IS FURTHER ORDERED that the Motion for Leave to File Reply (ECF No. 131) is GRANTED, and the Motion to Strike (ECF No. 132) is DENIED.

IT IS FURTHER ORDERED that the Motion for Order to Show Cause (ECF No. 144) is GRANTED. The parties shall contact the Court to schedule a mutually acceptable date for a hearing.

IT IS FURTHER ORDERED that the Motion for Possession of Property (ECF No. 147) is DENIED.

IT IS FURTHER ORDERED that Thomas Wasson: (1) appoint a membership committee that is **equal** parts Shoshone and Paiute; (2) receive membership applications from all persons desiring membership in the Winnemucca Indian Colony; (3) begin with the List of 77, plus members accepted through August 16, 2002; (4) delay the scheduled election of October 20, 2012 for six months in order for the applications to be reviewed, a membership list to be posted and published, and for any potential member who is refused membership to be given the right to

appeal to a neutral and unbiased tribal judge and to the Inter Tribal Court of Appeals of Nevada; and (5) to hold an election after all membership appeals are exhausted.

IT IS SO ORDERED.

Dated this 24th day of September, 2012.

ROBERT C. JONES
United States District Judge

EXHIBIT 4

District of Nevada: Order (March 4, 2014)

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

WINNEMUCCA INDIAN COLONY et al., Plaintiffs, vs. UNITED STATES OF AMERICA ex rel. DEPARTMENT OF THE INTERIOR et al., Defendants.	3:11-cv-00622-RCJ-VPC **ORDER**

At a February 10, 2014 status conference, the parties indicated that they had not yet agreed upon a tribal judge to adjudicate enrollment and election issues as the Court had demanded at a May 29, 2013 hearing. (*See* Hr'g Tr. 29:10–12, May 29, 2013, ECF No. 183 ("I want a tribal judge, associate judge, that both sides agree on, and I want that accomplished this week.")). The Court therefore warned the parties that it would select a judge itself if the parties could not quickly agree upon a neutral tribal judge. The Court gave the parties fourteen days to agree upon a judge or propose judges, with seven days thereafter to cross-object. The United States, Wasson, and Ayer have each timely proposed one or more judges. Wasson and Ayer have timely filed objections.

The United States has proposed Judge Timothy Shane Darrington of the Shoshone Paiute Tribe on the Duck Valley Indian Reservation in Weiser, Idaho. Ayer does not object to Judge Darrington, noting that he is a licensed attorney and the Chief Judge for the Duck Valley Tribal Court. Ayer also notes that the clerk of that court has confirmed that Judge Darrington would be

willing to serve. Wasson does not object to Judge Darrington but asks for more time to research his background for potential bias. The Court denies that request.

Wasson has proposed John White, a civil rights attorney in Reno, Nevada. Wasson's counsel reports that Wasson has also directed her to propose Mark Mausert, who Wasson alleges is the present serving tribal judge. However, Mausert's own election is almost certainly disputed, and counsel indicates that she would have to withdraw due to a conflict of interests if Mausert were selected. Ayer objects to Mr. White because he has no experience in federal Indian law or tribal law and has no experience as a judge. Ayer notes that this Court has already indicated Mr. White would be unacceptable for those reasons. The Court sustains the objection to Mr. White. Ayer also objects to Mr. Mausert because of his professional association with Wasson's counsel. The Court sustains the objection to Mr. Mausert, as well.

Ayer has proposed several judges. Judge William Kockenmeister is a judge for "most of the Tribes in Nevada." However, Wasson's counsel has previously sued him in a related dispute, so she would likely have to withdraw if he were selected. The same is true of Mitchell Wright, a tribal judge based in Ely. An unidentified judge for the Reno–Sparks Indian Colony ("RSIC") cannot serve due to his contract. Ayer has inquired of both the RSIC pro tem judge and the Pyramid Lake [Paiute] judge, former Reno Municipal Court Judge James Van Winkle, but Ayer has yet received no response from either of them. Ayer also suggests the "CFR Court," i.e., the Winnemucca Court of Indian Offenses ("WCIO") established on the Colony by the BIA pursuant to 25 C.F.R. § 11.100(a)(7). That court would presumably have no original jurisdiction over the present dispute as filed, because the Defendants are federal entities, not Indians, and the claim against the federal entities by Wasson was not supplemental to some other claim by or against an Indian. *See id.* § 11.116(a)(1)–(2). The Indian Defendants in this case only became so by intervention. But the magistrate of the WCIO, Lisa B. Otipoby-Herbert, may still be a viable neutral arbiter. In addition to serving as the WCIO magistrate, she serves as a tribal judge for

several tribes in Nevada, Oklahoma, and elsewhere throughout the Great Plains. She is a member of the Comanche Nation who received her J.D. from the University of Kansas and obtained further education in tribal judicial systems at the National Judicial College in Reno, Nevada. Finally, Ayer suggests Steven Haberfeld, a previous pro tem judge for the Colony from 2001–2002. He conducted the "original" hearings on enrollment pursuant to a stipulation between the Wasson and Ayer factions. He is the judge who entered the order that was appealed to the Minnesota Panel. The Wasson faction later objected to his continued service upon remand from the Minnesota Panel, because, according to the Ayer faction, the Minnesota Panel's ruling was adverse to the Wasson faction. Haberfeld is willing to serve. Haberfeld is not a lawyer, but he has a Ph.D. in Public Law and Government from Colombia University, and he has worked with various tribes in an alternative dispute resolution capacity since 1976.

Wasson does not object to Judge Van Winkle but notes that many or all of the attorneys in the case may have appeared before him in the past. Wasson objects to Judge Otipoby-Herbert because she was appointed by the BIA and has the Ayer faction's related filings before her. Therefore, although Judge Otipoby-Herbert appears to be well qualified and has the added advantage of being a Comanche (neither a Shoshone or Paiute), the Court has no choice but to sustain the objection against her service. Wasson objects to Mr. Haberfeld because he is not an attorney and because of his previous involvement in the matter. The Court sustains that objection.

The Court selects Chief Judge Timothy Shane Darrington of the Duck Valley Tribal Court. He appears to be the only proposed judge to which all parties can agree, with Wasson's limited reservation of desiring more time to research his background. He is also a serving tribal judge in another tribe.

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CONCLUSION

IT IS HEREBY ORDERED that Chief Judge Timothy Shane Darrington of the Duck Valley Tribal Court shall, upon his acquiescence and at times and places acceptable to him, serve as the tribal judge for the adjudication of any enrollment and election disputes arising out of the enrollment and elections carried out pursuant to this Court's previous orders. Judge Darrington's jurisdiction shall not extend to any other matters. Any appeals may be taken to the Inter Tribal Court of Appeals of Nevada to the extent that tribunal will accept jurisdiction. Once the rulings are final, the parties may ask this Court to recognize any such rulings and enter judgment, accordingly.

IT IS SO ORDERED.

Dated this 4th day of March, 2014.

ROBERT C. JONES
United States District Judge

EXHIBIT 5

District of Nevada: Order (November 19, 2014)

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

WINNEMUCCA INDIAN COLONY, THOMAS R. WASSON, CHAIRMAN Plaintiffs, v. UNITED STATES OF AMERICA ex rel. THE DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, WESTERN NEVADA AGENCY, SUPERINTENDENT, and, THE EMPLOYEES, CONTRACTOR AND AGENTS OF THE WESTERN NEVADA AGENCY OF THE BUREAU OF INDIAN AFFAIRS, Defendants.	Case No.: 3:11-cv-00622-RCJ-VPC ORDER

This cause came on for hearing at a Status Conference on November 19, 2014, after the election of October 25, 2014. The Winnemucca Indian Colony appeared with its counsel, Treva Hearne, the Bureau of Indian Affairs appeared with its counsel, the United States Attorney by Deputy U.S. Attorney, Holly Vance, and the Ayer group by its counsel, Brian Morris.

The Winnemucca Indian Colony introduced the newly elected Council as Judy Rojo, Misty Morning Dawn Rojo Alvarez, Katherine Hasbrouck, Eric Magiera and Thomas Magiera II. The United States Attorney asked for clarification on behalf of her client and asked if the Court's intention was for the Bureau of Indian Affairs to recognize this newly elected Council as the Council for the Winnemucca Indian Colony or wait until the Tribal

Court challenge was completed. The Court clarified that this Council was to be recognized by the Bureau of Indian Affairs as the permanent Council of the Winnemucca Indian Colony immediately. The Court further clarified that the Tribal Court was in place and the appeal from that decision on any election or membership challenges would be to the Inter-Tribal Court of Appeals of Nevada.

IT IS HEREBY ORDERED as follows:

The Department of the Interior, Bureau of Indian Affairs, shall recognize as permanent Council of the Winnemucca Indian Colony, Judy Rojo, Misty Morning Dawn Rojo Alverez, Katherine Hasbrouck, Eric Magiera and Thomas Magiera II as elected in the October 25, 2014, election of the Winnemucca Indian Colony.

IT IS SO ORDERED.

Dated this 19th day of November, 2014.

ROBERT C. JONES,
United States District Judge

EXHIBIT 7

District of Nevada: United States' Response to Plaintiffs' Status Report (June 11, 2018)

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

WINNEMUCCA INDIAN COLONY, et al., Plaintiffs, v. UNITED STATES OF AMERICA ex rel. THE DEPARTMENT OF THE INTERIOR, et al., Defendants.	Case No. 3:11-CV-00622-RCJ-VPC **RESPONSE TO PLAINTIFFS' STATUS REPORT (ECF NO. 288)**

COME NOW Defendants United States of America, Department of the Interior, Bureau of Indian Affairs, et al. ("Defendants"), and submit this response to Plaintiffs' Status Report. (ECF No. 288).

BACKGROUND

Plaintiffs initiated this action to establish a tribal government for the Winnemucca Indian Colony ("Colony"). (ECF No. 105). On September 25, 2012, the Court granted Plaintiffs' motion for preliminary injunction and ordered the United States Bureau of Indian Affairs ("BIA") to recognize Thomas Wasson as the interim Colony leader pending tribal elections and appeals. (ECF Nos. 151, 204, 213). The following persons were then elected to serve as the Colony government: Judy Rojo, Misty Dawn Rojo Alverez, Katherin Hasbrouck, Eric Magiera, and

Thomas Magiera II. (ECF No. 231). The election results were subsequently challenged in an action before Tribal Judge Timothy Shane Darrington. (ECF Nos. 242, 277-1). Judge Darrington concluded, however, that he lacked jurisdiction to consider the challenge and dismissed the case. (ECF No. 277-1). On appeal, the Inter-Tribal Court of Appeals of Nevada affirmed Judge Darrington's dismissal order. (ECF No. 277-2).

Plaintiffs have filed a status report in which they request the Court to "acknowledge" "authoritative [tribal] rulings and require that the letter and intent of these rulings be adopted by the [BIA]." (ECF No. 288 p. 4). Plaintiffs' status report also makes a number of allegations and requests concerning the BIA that are unrelated to the causes of action asserted in this action. (ECF No. 288, at pp. 7, 9-10). Each of Plaintiffs' arguments will be addressed below.

ARGUMENT

A. Plaintiffs' request that the Court "acknowledge" tribal rulings, and order the BIA to adopt "the letter and intent" of such rulings, should be denied as vague and ambiguous and, in any event, as unwarranted and unnecessary.[1]

Plaintiffs' status report requests the Court to "acknowledge" "authoritative [tribal] rulings and require that the letter and intent of these rulings be adopted by the [BIA]." (ECF No. 288 p. 4). Plaintiffs' request is vague and ambiguous and, for that reason, the request should be denied. *See* Fed. R. Civ. P. 7(b)(1)(B) (requiring motion to state "with particularity the grounds for seeking the order"); *Keel v. Hedgpeth*, 2009 WL 4052707 (E.D. Ca. Nov. 19, 2009) (denying motion, in part, because the Court "is unable to determine what relief Plaintiff is seeking in his motion"). Moreover, the rulings issued by the tribal courts speak for themselves and are enforceable without any action from this Court or the BIA. Accordingly, Plaintiffs' request for

[1] As a preliminary matter, Defendants repeat, and incorporate by reference, their previous arguments challenging subject matter jurisdiction in this action. (*See* Defendants' motions to dismiss at ECF Nos. 15-16, 36 and 80).

the Court to "acknowledge" tribal rulings and order the BIA to "adopt" the "letter and intent" of such rulings should be denied.

B. The Court lacks subject matter jurisdiction to decide the remaining issues raised in Plaintiffs' status report.

Plaintiffs' status report asserts a number of allegations against the BIA that are unrelated to the causes of action alleged in this action:

- "The BIA is in breach of its trust obligation to the Colony in its failure to resolve this dual jurisdictional matter [between the civil CFR court and the tribal courts] and its failure to fund the Colony so that it can defend itself legally and establish its Court system." (ECF No. 288, at p. 7).
- The BIA "has failed and refused to remove the persons who squat on the Colony[.]" (ECF No.288, at p. 7).
- The BIA "has refused to allow EPA to enter the boundaries of the Colony's 20 acres to assess the hazardous and solid waste contamination that exists." (ECF No. 288, at p. 7).
- The BIA "inhibits every effort" to "clean[] up the [Colony] property." (ECF No. 288, at p. 8).
- The BIA "has failed and refused" to "make a public statement and press release that William Bills is not an Indian and does not represent the [Colony] government." (ECF No. 288, at p. 10).

The issues identified by Plaintiffs are not part of this action, however, and thus the Court should decline to consider them. In fact, the Court has previously ruled that its jurisdiction encompasses only one issue, tribal leadership: "The Court has jurisdiction only over the issue of the United States' recognition of colonial leadership under the Administrative Procedures Act." (ECF No. 256). Accordingly, the Court should decline Plaintiffs' invitation to consider issues that are unrelated to the causes of action asserted in this case.

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C. The Court should disregard both unsupported allegations in Plaintiffs' status report and Plaintiffs' request that the Court take judicial notice of all exhibits.

Even if the Court were to consider Plaintiffs' assertions about issues unrelated to tribal leadership, Plaintiffs' allegations about those issues would fail. Most of Plaintiffs' allegations are not supported with record citations or evidence and thus those allegations should be disregarded. Plaintiffs also ask the Court to take judicial notice of six exhibits totaling 53 pages that Plaintiffs attach to their status report. (ECF No. 288, at p. 5 n.1). Plaintiffs provide only a terse and conclusory argument about why those exhibits should be subject to judicial notice. Under the circumstances, the Court should decline to invoke the judicial notice doctrine. *See United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990) ("It is not enough to merely mention a possible argument in the most skeletal way, leaving the court to do counsel's work."); *Costa County Deputy Sheriffs Association v. Mitchoff*, 2015 WL 1322577 *2 (N.D. Cal. March 24, 2015) (requiring party who seeks judicial notice to explain relevance of documents); *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994) ("We will not manufacture arguments for an appellant[.]"). Even if the Court were to take judicial notice of Plaintiffs' exhibits, the contents of those documents would still be inadmissible. *See Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) ("when a court takes judicial notice of another court's opinion, it may do so 'not for the truth of the facts recited therein, but for the existence of the opinion, which is not subject to reasonable dispute over its authenticity'"). Accordingly, Plaintiffs' unsupported allegations should be disregarded and Plaintiffs' request that the Court take judicial notice of the information contained in Plaintiffs' exhibits should be denied.

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D. Contrary to Plaintiffs' assertions, the BIA has been working with the Colony to address issues of concern to the Tribe.

Plaintiffs' status report makes many allegations against the BIA and suggests that the agency has acted in bad faith in its dealings with the Colony. Contrary to Plaintiffs' assertions, however, the BIA has been working with the Colony to address issues that are of concern to the Tribe. (Vance Decl. ¶¶ 2-4). For example, the BIA recently visited the Colony with an EPA representative and is now in the process of removing a dilapidated trailer and garbage from the property. (Vance Decl. ¶ 3). In addition, the BIA has implemented plans to build a new police station for the Colony. (Vance Decl. ¶ 4). As for Plaintiffs' concern over alleged illegal occupants on Colony land, the BIA is not authorized to forcibly remove people from the property upon Plaintiffs' mere request that the agency do so. There are civil remedies available to the Colony for removing unwanted persons that would not involve a violation of those persons' due process rights. Lastly, the Colony's issues with William Bills are between the Tribe and Bills; the BIA is under no obligation to involve itself with their disagreements and squabbles.

CONCLUSION

For the reasons argued above, the requests made by Plaintiffs in their status report should be denied.

DATED: June 11, 2018.

Respectfully submitted,

DAYLE ELIESON
United States Attorney

s/ *Holly A. Vance*
HOLLY A. VANCE
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing RESPONSE TO PLAINTIFFS' STATUS REPORT (ECF NO. 288) was electronically filed and that service will be accomplished to the following individual(s) via the Court's CM/ECF system:

Treva J. Hearne
trevahearne@gmail.com

Brian R. Morris
brmorris@lawforthepeople.com

DATED: June 11, 2018.

s/ *Holly A. Vance*
HOLLY A. VANCE

DANIEL G. BOGDEN
United States Attorney

HOLLY A. VANCE
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100 West Liberty Street, Suite 600
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Attorneys for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

WINNEMUCCA INDIAN COLONY, et al., Plaintiffs, v. UNITED STATES OF AMERICA ex rel. THE DEPARTMENT OF THE INTERIOR, et al., Defendants.	Case No. 3:11-CV-00622-RCJ-VPC **DECLARATION OF HOLLY A. VANCE**

I, Holly A. Vance, hereby declare as follows pursuant to 28 U.S.C. § 1746:

1. I serve as an Assistant United States Attorney with the Department of Justice, United States Attorney's Office in Reno, Nevada. I have served in that capacity since October 2008. I have been assigned to handle the case referenced above.

2. I recently met with the United States Bureau of Indian Affairs ("BIA") to discuss issues that are of concern to Plaintiffs' counsel, Treva Hearne. Following my meeting with the BIA, I met with Ms. Hearne to relay information I learned from my meeting with the BIA.

3. The BIA recently visited the Winnemucca Indian Colony ("Colony") with an EPA representative to determine if any cleanup of hazardous materials is warranted, as allegedy by Ms. Hearne. As a result of that site visit, the BIA is in the process of removing a dilapidated trailer and garbage from the Colony.

4. The BIA also recently implemented plans to build a new police station for the Colony.

I declare under penalty of perjury that the foregoing is true and correct based on my personal knowledge.

Executed this 11th day of June in Reno, Nevada

Holly A. Vance

HOLLY A. VANCE
Assistant United States Attorney

EXHIBIT 8

District of Nevada: Notice of Appeal and Representation Statement
(October 31, 2018)

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Las Vegas, Nevada 89148
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Attorney for Linda Ayer, Allen Ambler, Jim Ayer, Laura Ambler and Cheryl Apperson-Hill

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

WINNEMUCCA INDIAN COLONY, et al., Plaintiff, vs. UNITED STATES OF AMERICA, ex rel. THE DEPARTMENT OF THE INTERIOR, Defendants,	Case No. 3:11-cv-00622-RJC-CBC **NOTICE OF APPEAL and REPRESENTATION STATEMENT**

NOTICE OF APPEAL and REPRESENTATION STATEMENT

Notice is hereby given that intervenors/defendants Linda Ayer, Allen Ambler, Jim Ayer, Laura Ambler and Cheryl Apperson-Hill hereby appeal to the United States Court of Appeals for the Ninth Circuit from Orders ECF No. 9 (Order filed 8-31-2011), ECF No. 19 (Order filed 9-16-2011), ECF No. 52 (Order filed 1-10-2012), ECF No. 57 (Order filed 1-31-2012), ECF No. 105 (Order and injunction filed 7-09-2012), ECF No. 151 (Order and injunction filed 7-09-2012), ECF No. 158 (Minute Order filed 11-27-2012), ECF No. 161 (Minute Order filed 1-10-2013), ECF No. 164 (Order filed 1-10-2013), ECF No. 204 (Order filed 2-10-2013), ECF No. 213 (Order filed 3-04-2013), ECF No. 231 (Order filed 11-19-2014), ECF No. 242 (Order filed 12-30-2014), ECF No. 256 (Order filed 5-12-2015), ECF No. 303 (Order filed October 1, 2018 --which was the final order

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that dismissed the action) in a Civil Case.

DATED this 31st day of October, 2018.

Brian R. Morris, Esq.
5455 South Fort Apache Road #108-151
Las Vegas, Nevada 89148
Attorney for Linda Ayer, Allen Ambler, Jim Ayer, Laura Ambler and Cheryl Apperson-Hill

REPRESENTATION STATEMENT

The parties to this action are:

1) the Defendants United States of America ex rel. The Department of the Interior, Bureau of Indian Affairs, Western Nevada Agency, Superintendent, the Employees, Contractor and Agents of the Bureau of Indian Affairs who are represented by Holly A. Vance, 400 South Virginia Street, Suite 900, Reno, Nevada 89501, 775-784-5438.
2) the Intervenors/Defendants/Appellants Linda Ayer, Allen Ambler, Jim Ayer, Laura Ambler and Cheryl Apperson-Hill who are represented by Brian R. Morris, 5455 South Fort Apache Road #108-151, Las Vegas, Nevada 89148, 702-389-3974;
3) Intervenor/Defendant William Bills who is representing himself *in pro per*, P.O. Box 1797, Woodbridge, California 95258;
4) Intervenor/Defendant Roger James Gifford who is representing himself *in pro per*,15226 Hornbrook Rd., Hornbrook, California 96044;
5) the Plaintiffs "Winnemucca Indian Colony", Thomas R. Wasson, and Judy Rojo who are represented by Treva J. Hearne, 595 Humboldt Street, Reno, Nevada 89509, 775-329-5800; and
6) Plaintiff Thomas R. Wasson who may be representing himself *in pro per*, contact information unknown but available from attorney Treva J. Hearne.

DATED this 31st day of October, 2018

Brian R. Morris, Esq.
5455 South Fort Apache Road #108-151
Las Vegas, Nevada 89148
Attorney for Linda Ayer, Allen Ambler, Jim Ayer, Laura Ambler and Cheryl Apperson-Hill

CERTIFICATE OF SERVICE

I certify that on the 31st day of October, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the email address of the following on record with the United States District Court:

Treva Hearne, Esq.

Holly Vance, Esq.

I further certify that on the 31st day of October, 2018, I caused the forgoing document to be mailed and delivered via U.S. Mail to:

Roger James Gifford
15226 Hornbrook Rd.
Hornbrook, CA 96044

William Bills
P.O. Box 1797
Woodbridge, CA 95258

Brian R. Morris, Esq.

EXHIBIT 11

District of Nevada: Ninth Circuit Order Staying Mandate (Aug. 3, 2020)

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 3 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

WINNEMUCCA INDIAN COLONY; THOMAS R. WASSON; JUDY ROJO,

Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA, ex rel. The Department of the Interior; BUREAU OF INDIAN AFFAIRS; SUPERINTENDENT OF THE WESTERN NEVADA AGENCY OF THE BUREAU OF INDIAN AFFAIRS, and the Employees, Contractor and Agents of the Western Nevada Agency of the Bureau of Indian Affairs,

Defendants,

WILLIAM R. BILLS,

Intervenor-Defendant,

and

LINDA AYER; ALLEN AMBLER; JIM AYER; LAURA AMBLER; CHERYL APPERSON-HILL,

Intervenor-Defendants-Appellants.

No. 18-17121

D.C. No.
3:11-cv-00622-RCJ-CBC
District of Nevada,
Reno

ORDER

Before: SCHROEDER and BRESS, Circuit Judges, and McSHANE,* District Judge.

Appellees' motion to stay the mandate pending the filing of a petition for writ of certiorari (Docket Entry No. 63) is GRANTED.

* The Honorable Michael J. McShane, United States District Judge for the District of Oregon, sitting by designation.

EXHIBIT 12

District of Nevada: Ninth Circuit Mandate (Dec. 23, 2020)

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 23 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

WINNEMUCCA INDIAN COLONY; et al.,

Plaintiffs - Appellees,

v.

UNITED STATES OF AMERICA, ex rel. The Department of the Interior; et al.,

Defendants,

WILLIAM R. BILLS,

Intervenor-Defendant,

and

LINDA AYER; et al.,

Intervenor-Defendants - Appellants.

No. 18-17121

D.C. No. 3:11-cv-00622-RCJ-CBC
U.S. District Court for Nevada, Reno

MANDATE

The judgment of this Court, entered June 15, 2020, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

The parties shall bear their own costs in this appeal.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Rhonda Roberts
Deputy Clerk
Ninth Circuit Rule 27-7

EXHIBIT 9

Court of Federal Claims: Complaint (November 4, 2013)

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WINNEMUCCA INDIAN COLONY,
WILLIS EVANS, CHAIRMAN,

Plaintiffs,

v.

UNITED STATES OF AMERICA ex rel.
THE DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,

Defendants,

Case No.: 13-874 L

COMPLAINT

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COMES NOW, the Winnemucca Indian Colony, and Willis Evans, in his capacity as Chairman on behalf of the members of the Winnemucca Indian Colony and on behalf of the Colony itself, by and through its undersigned counsel, TREVA J. HEARNE, and complains as follows:

STATEMENT OF THE CASE

This action is initiated to recover to obtain compensation and other relief for damages arising from Defendant's breach of its trust and fiduciary duties to the Winnemucca Indian Colony Plaintiff under federal law. The Bureau of Indian Affairs, arbitrarily, capriciously and unreasonably refused to recognize the tribal government of this federally recognized Tribe for more than twelve years, instead

allowing a group of non-Indians and non-members to occupy the Colony's lands and strip all income from the Colony; allowed easements over Colony land without obtaining corresponding income for the Colony; caused the loss of water rights; caused the loss of P.L. 93-638 grant funding; deprived Colony members of the actual use of their land; and failed to protect the natural resources. Further, the Colony's loss of reputation and good will due to false and fraudulent representations by the occupation group, which falsely represented itself to be the Winnemucca Indian Colony, with resulting loss of respect and integrity in the community, all known to the Bureau of Indian Affairs, caused additional losses to the Colony as set forth below.

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JURISDICTION

1. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1505 because this is an action by the dependent sovereign entity the Winnemucca Indian Colony, a federally recognized Tribe residing within the territorial limits of the United States for claims arising under federal law, including the Constitution, treaties and agreements between the United States and the Colony.

2. The venue of this action is proper pursuant to 28 U.S.C. §§ 1505 and 1491(a)(1) because it is an action against the Department of the Interior, an agency of the United States of America and the Bureau of Indian Affairs.

PARTIES

3. Plaintiff Winnemucca Indian Colony (the "Colony") is a federally recognized Indian Tribe located in the State of Nevada that is the beneficiary of one or more trust funds held by the United States.

4. Willis Evans is the presently serving and duly elected Chairman of the Winnemucca Indian Colony.

5. The United States of America is vested with numerous trust and fiduciary responsibilities owed to the Colony and employs various federal departments and agencies to fulfill those obligations. Congress has statutorily designated the Department of the Interior ("DOI") as being primarily responsible for the management of Indian affairs.

6. To ensure the trust responsibility of the United States to Tribes and their members is protected, specific language was included in the P.L. 100-472, the original Self-Governance Demonstration Act, and in P.L. 103-413, the Tribal Self-Governance Act of 1994. Individual Contracts for Tribal Self-Governance are funded via P.L. 93-638.

7. The Secretary of the Interior has delegated authority over Indian affairs to several agencies within the Department of the Interior, most notably the Bureau of Indian Affairs ("BIA"), the Office of Self-Governance (OSG), the Office of Trust Funds Management ("OTFM") and the Office of Special Trustee for American Indians ("OST").

8. The Special Trustee at the OST is appointed by the Secretary of the Interior and charged with certain duties and responsibilities pursuant to the American Indian Trust Fund Management Reform Act of 1994, 108 Stat. 4239, 25 U.S.C. § 4001 *et seq.*, legislation by which Congress expressly recognized the critical importance of proper management of trust funds to Native Americans.

9. The Western Regional Office of the Bureau of Indian Affairs is located in Phoenix, Arizona ("Western Regional Office"), and has authority to manage the trust responsibility to the Winnemucca Indian Colony on behalf of the United States of America. The employees, contractors and agents of the Western Regional Office include the Director of the Regional Office who is named herein as Bryan Bowker.

10. The Superintendent of the Western Nevada Agency of the Bureau of Indian Affairs is located in Carson City, Nevada ("Western Nevada Agency"), and has authority

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to manage the trust responsibility to the Winnemucca Indian Colony on behalf of the United States. The employees, contractors and agents of the Superintendent include the police officers of the Bureau of Indian Affairs that have as their patrol the Winnemucca Indian Colony.

STATEMENT OF FACTS

11. In 1916 a census was taken by the United States of America stating who was present on the Winnemucca Indian Colony.

12. In 1917 Woodrow Wilson set aside 320 acres for the benefit of the homeless Shoshone in the area that became Winnemucca, Nevada, which at all times since has been referred to as the lands of the Winnemucca Indian Colony.

13. In 1918, because the BIA records reflected that the homeless Shoshone were living on 20 acres near the railroad where they worked, an additional but separate 20 acres was conveyed to the homeless Shoshone in Winnemucca, Nevada, which at all times has been referred to as the lands of the Winnemucca Indian Colony.

14. The Winnemucca Indian Colony has 320 acres for agricultural use. Since that land is located in a desert area, it is useless for agricultural purposes without water rights. The United States of America has a trust responsibility to protect the value of the land and its use for the benefit of the Indians, including obtaining water rights for the 320 acres for agricultural purposes for the beneficial use of the lands.

15. Historically and within the recent past, as evidenced by a stream bed cut into the lands of the Colony, water in an amount in excess of 60 cubic feet per second (CFS) ran across the lands of the Colony, however that water has been dammed up for use by an upstream subdivision within the past ten years.

16. The 320 acres that belong to the Winnemucca Indian Colony were set aside by Woodrow Wilson as a square of land. The property is no longer a square of land as

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surveyed because of encroachment upon the property by a electrical substation and overhead power lines which have also encroached upon the property. In addition, a blacktopped two-lane road appeared within the last twelve years and now crosses the 320 acres of the lands of the Colony. No easement was approved by the Council of the Winnemucca Indian Colony nor made known to the Council of the Winnemucca Indian Colony. The road was not placed there by the Winnemucca Indian Colony nor is it maintained by the Winnemucca Indian Colony. The Winnemucca Indian Colony does not receive any benefit from the easement given for the road across its lands.

17. In 1972 pursuant to the Indian Reorganization Act, the Colony adopted a Constitution that stated that the requirements for enrollment in the Colony were to be 1/4 Paiute or Shoshone by blood quantum and to be a descendent of a person listed on the 1916 census and to not have taken money or land as a result of membership in another Tribe. These qualifications for membership were recommended by the BIA and voted on by persons who resided at the Colony but who did not necessarily meet the membership requirements.

18. The Indian Self-Determination and Education Assistance Act of 1975 was slow to be implemented. Prior to 1996, Self-Governance was only directly applied to the BIA but thereafter, all non-BIA Department of the Interior programs participate in Self-Governance and the establishment of programmatic targets to transfer programs to federally recognized Indian Tribes.

19. A tribe must submit an initial contract proposal under Public Law 93-638 to obtain a contract from the BIA to perform its own Tribal functions including police functions, schools, etc. The BIA is obligated under statute and regulation to provide technical assistance to the contracting Tribe.

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20. All Indians who are members of a federally recognized tribe are entitled to annuity monies and, after the age of eighteen years, are entitled to a receipt for their annuity pursuant to 28 U.S.C. § 116.

21. In 1986, the Western Nevada Agency was making a list of the persons who would qualify for distribution under the Northern Paiute Judgment Fund which required membership in a federally recognized Tribe in order to be a person who qualified for such distribution.

22. The Western Nevada Agency reviewed the list of persons who alleged qualification for such distribution and noted that they were members of the McDermitt Paiute Tribe and the Lovelock Paiute Tribe and were using those memberships as the underlying right to collect funds under the Northern Paiute Judgment Fund. Some of these persons were also claiming to serve as the Council of the Winnemucca Indian Colony.

23. The Winnemucca Indian Colony Constitution excluded persons who took distribution as a result of membership in another Tribe from being members of the Colony. Non-members of the Colony could not serve as Council members.

24. On February 5, 1987, a memo written by the Superintendent of the Western Nevada Agency affirmatively stated: "At the present time, there are no eligible members residing on the Winnemucca Colony." The Superintendent added: "We further advised the Area Office that it is not the Bureau's wish to have the land withdrawn from trust protection or declared as surplus property, as the lands were set aside for the use of homeless Shoshone Indians. . ."

25. The same memo stated the BIA had presumed that the persons living on the Colony qualified for membership but as a result of the Northern Paiute Judgment Fund

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distribution, the Council members serving in Winnemucca were not members and could not qualify as members of the Colony.

26. The Western Nevada Agency allowed the persons who resided on the Winnemucca Indian Colony to choose which Tribe they intended to be a member of and when all the members chose to join a Tribe in order to qualify for the Northern Paiute Judgment Fund, the BIA took control of the assets of the Colony and withdrew recognition of the government of the Colony in 1986.

27. The BIA stated that the persons serving as Colony Council were not qualified to be members of the Colony according to the adopted Constitution and by-laws, and, therefore, the government had to be reorganized with qualified members.

28. The Western Nevada Agency took control and acted as a trustee of the Colony's smoke shop and other assets until a proper government could be organized. All the funds were collected and turned over to the new government when it was established.

29. The BIA took over a year to search for persons who qualified to be members of the Winnemucca Indian Colony and, in the meantime, did ancestry research on all members that applied to verify their qualification as members.

30. Seventeen persons qualified as members and became the official membership list, including Glenn Wasson, Sharon Wasson, Thomas Wasson, Thomas Magiera, Elverine Castro, Andrea Davidson, Alma Gregory, Trudi Hodson, Renee Johnson, Paulette Kelley, Lucy Lowrey, Carlene Likins, Merlene Magiera, Richard Tom, Ida Whiterock and Alyce Williams.

31. After solicitation of members and an election, by 1990 a government had been appointed to the satisfaction of the BIA and the assets returned to the Colony.

32. The newly certified members and recognized Council of the Winnemucca Indian Colony repeatedly requested information and documentation from the BIA about the

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history and origins of the Winnemucca Indian Colony and the records of membership. The BIA failed and refused to furnish any of this documentation from 1990 until 2013.

33. The BIA in 1990 recognized the government of the Colony as Glenn Wasson, Chairman, Lucy Lowry, Sharon Wasson, Elverine Castro and Richard Tom.

34. In 1999 Richard Tom resigned as a member of the Council and William Bills who had recently presented himself as the son of Ermon Bills, a putative member of the Winnemucca Indian Colony, was appointed to the Council.

35. On August 5, 1999, William Bills, on his own, without authority from the Council, applied for a grant from the EPA for up to $75,000. Glenn Wasson adamantly disapproved of this. Bills had no approval by a majority of the Council for his act as required by the Constitution and By-laws. The Council also voted down a request made by William Bills for an allotment of ten (10) acres of Colony land on which to build a casino.

36. The BIA recognized the Colony's government until the year 2000 as Glenn Wasson, Chairman, Elverine Castro, Lucy Lowery and Thomas Wasson and alternatively from 1990 to 2000, as Thomas Magiera or Sharon Wasson or William Bills or Richard Tom filled the other position.

37. In the regularly scheduled February 2000 meeting of the Winnemucca Indian Colony, the Chairman, Glenn Wasson, reported to the Council that William Bills might not qualify as an Indian since he may have been adopted and further that he was diverting mail belonging to the Colony. The Chairman stated that action would have to be taken on this matter at the March meeting.

38. On February 22, 2000, Glenn Wasson was murdered by multiple stab wounds in his back on the doorsteps of the Colony's Administration Building. The federal

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government has failed to arrest anyone for this murder and failed to make any credible investigation.

39. On March 1, 2000, William Bills had soil removed from the Colony lands without Council approval. Bills further excluded the other members of the Council from the Colony by issuing an order to the council members.

40. When both Sharon Wasson and William Bills claimed the chairmanship, the BIA was informed in writing that William Bills was not an Indian and had no blood quantum to qualify for membership.

41. When this dispute arose, the Western Nevada Agency of the BIA declared the Tribe's government dysfunctional and did not recognize any government as of July 2000.

42. In December 2000, the Regional Office overruled the Western Nevada Agency and made an affirmative finding that the Western Nevada Agency could not find the government to be dysfunctional, but the BIA did not recognize a government for this federally recognized Tribe even though the Regional Director declared that the Western Nevada Agency did not appropriately determine that the Tribal Government was dysfunctional.

43. Despite repeated requests, the BIA has failed to recognize a government of the Winnemucca Indian Colony since July 2000 and the Colony is a federally recognized Tribe.

44. In October 2000 when the government of the Winnemucca Indian Colony had an election on the Colony lands, the BIA arrested Thomas Wasson and Sharon Wasson and the members of the election committee.

45. The election was held and Sharon Wasson, Thomas Wasson, Elverine Castro, Thomas Magiera and Merlene Magiera were elected as Council members.

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46. On March 31, 2005, the United States District Court entered an Order finding that the Wassons and the election committee had been wrongfully arrested in violation of their Constitutional rights as against the arrests made by the BIA.

47. In July 2000, the Bank of America which held the account of funds of the Winnemucca Indian Colony in the approximate sum of $500,000.00, first froze the accounts in order to determine who was the proper party to access the account and then, filed the account in interpleader due to the allegations by both William Bills and Sharon Wasson claiming to be Chairman of the Winnemucca Indian Colony. This case was entitled Bank of America v. William Bills and Sharon Wasson, Case No. CV-N-00-450-HDM (VPC), filed in the United States District Court, District of Nevada.

48. On May 19, 2000, the Tribal Court, Judge Kyle Swanson, at the request of William Bills, issued an order excluding all council members from the Colony but William Bills, such Order was in violation of the Constitution and Bylaws of the Colony.

49. That Order was appealed to the Inter Tribal Court of Appeals of Nevada, a body that was funded by the Bureau of Indian Affairs.

50. On March 21, 2001, the parties were ordered to have another trial over the matters before a Tribal Court agreed to by William Bills and Sharon Wasson because of the failure of the Tribal Judge Kyle Swanson to hold a hearing, take evidence or create any record whatsoever.

51. A Tribal Court hearing was scheduled and Steven Haberfeld of Sacramento, California, recommended by Larry Echohawk, then affiliated with the Native American Rights Fund, was agreed to by the parties as the Tribal Judge to officiate and render an opinion.

52. During 2000 and 2001, a Tribal Court proceeding was held for more than five weeks of testimony and hundreds of exhibits entered into evidence. In May of 2002, the

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Tribal Court determined that no members existed and that the Tribal Court would decide the membership and conduct the election and be paid for by the Winnemucca Indian Colony.

53. All parties agreed that an appeal of this decision was necessary; however, the BIA had failed to fund the Inter Tribal Court of Appeals in Nevada and, thus, no appellate process was available to Indians in Northern Nevada.

54. Pursuant to a Ninth Circuit mediation that was convened to settle some matters on appeal in this litigation, counsel for William Bills et al and counsel for Thomas Wasson et al agreed that a panel of judges would be chosen to hear the appeal of the Winnemucca Indian Colony Tribal Court decision.

55. The United States District Court, District of Nevada, provided a court room and the Appellate Panel which was the Specially Appointed Appellate Panel of the Winnemucca Indian Colony also known as the "Minnesota Panel" because the Judges were from the Sioux Tribes in Minnesota.

56. On August 16, 2002, the "Minnesota Panel" issued an opinion recognizing Sharon Wasson as the Chairman of the Winnemucca Indian Colony and the other members of the Council were Elverine Castro, Thomas Wasson, William Bills and Thomas Magiera, who was required to be replaced because of his decease prior to the hearing.

57. The Winnemucca Indian Colony requested that the BIA recognize the government as recognized by the Minnesota Panel but the BIA refused.

58. On May 17, 2007, all Tribal remedies were exhausted regarding the matters of government recognition and Tribal membership by virtue of a decision of the Inter-tribal Court of Appeals of Nevada dismissing all further appeals in recognition of the Minnesota Panel decision as final.

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59. The Winnemucca Indian Colony again requested that the BIA recognize the government as affirmed by the Inter Tribal Court, but the BIA refused.

60. On March 6, 2008, United States District Court Judge Brian Sandoval issued an opinion that all Tribal remedies had been exhausted and the decision of the "Minnesota Panel" was final.

61. The Winnemucca Indian Colony again requested that the BIA recognize the government as recognized in comity by the United States District Court, District of Nevada, but the BIA refused.

62. On June 29, 2009, William Bills as "Tribal Chairman" for the Colony executed a certified resolution for the "Winnemucca Indian Colony" certifying and authorizing the Glacier International Depository Bank as its "Central Bank and Depository."

63. In fact, there were two "GID" Banks, one in Florida which defrauded foreign investors and was eventually criminally investigated, resulting in the conviction of a known associate of William Bills.

64. On October 14, 2010, the Ninth Circuit Court of Appeals affirmed the decision of the U.S. District Court. *Certiorari* was denied by the United States Supreme Court on April 18, 2011.

65. The Winnemucca Indian Colony again requested that the BIA recognize the government as recognized by the Ninth Circuit and the United States Supreme Court, but the BIA refused.

66. The Interior Board of Indian Appeals determined that the BIA was required to recognize the government of a federally recognized Tribe when a reason existed and ordered the BIA to recognize a government of the Winnemucca Indian Colony on December 17, 2010.

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67. The Winnemucca Indian Colony again requested that the BIA recognize the government of the Colony as ordered by the IBIA, but the BIA refused.

68. On or about the middle of May 2011, the Winnemucca Indian Colony entered their lands and began work to rehabilitate the smoke shop located on the 320 acre parcel of the Winnemucca Indian Colony that was abandoned when Glenn Wasson was murdered.

69. The contractors that were retained to work on the rehabilitation of the smoke shop were approached by police officers from the BIA on or about July 31, 2011.

70. The BIA agent Hermes stated that he had been directed by his employer that no one had any authority to be on site and that the workers were to depart by the next morning or, by implication, they would be arrested.

71. No person was required to leave the other 20 acres belonging to the Winnemucca Indian Colony even though none of those persons had authority to be on the lands of the Winnemucca Indian Colony.

72. The members of the Winnemucca Indian Colony were, thereby, effectively excluded from their own lands by the BIA.

73. The lands of the Winnemucca Indian Colony continued to be occupied by non-members of this federally recognized Tribe, all allowed and supported by the BIA.

74. On August 10, 2011, an urgent request letter was sent to the Superintendent of the Western Nevada Agency of the Bureau of Indian Affairs asking that the Winnemucca Indian Colony be allowed to return to their lands, but the Superintendent failed and refused to respond to this urgent request.

75. On August 31, 2011, the Winnemucca Indian Colony moved the United States District Court, District of Nevada, for a temporary restraining order and preliminary

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injunction enjoining the BIA from interference with the Winnemucca Indian Colony re-entering its lands.

76. On September 1, 2011, the injunction against the BIA was granted ordering the BIA to recognize a government of this federally recognized tribe.

77. For each and every day that the Winnemucca Indian Colony was excluded from their lands there was a loss in economic development and income to the Colony and its members and the Colony and its members suffered irreparable harm and monetary damages.

78. On January 31, 2012, the United States District Court, District of Nevada, entered an Order stating that the BIA's "continued refusal. . .to grant the Colony adequate interim recognition without restrictions. . .amounts to a de facto termination of the sovereign recognition granted by Congress, which is likely to lead to the irreparable political dissolution of the Colony's sovereign existence.. ."

79. On July 9, 2012, after hearing, the United States District Court, District of Nevada gave the BIA seven days to recognize either Thomas Wasson or William Bills - but not both - and that the BIA should review the record in the case to make a reasonable decision.

80. Within seven days, the BIA recognized William Bills as the government of this federally recognized tribe. William Bills is 100% Filipino by blood quantum.

81. On September 25, 2012, the United States District Court, District of Nevada, entered an Order stating that:

> ...the Court rules that the decision by the BIA to recognize Bills on July 17, 2012 was an abuse of discretion and not in accordance with law, see 5 U.S.C. § 706(2)(A), because the BIA based its decision purely on its interpretation of tribal law, which is territory into which neither the BIA nor this Court is to tread.

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82. Thomas Wasson, Judy Rojo, Misty Morning Dawn Rojo Alverez, Katherine Hasbrouk, and Eric Magiera were recognized as the government of the Winnemucca Indian Colony.

83. The Colony was under order from the United States District Court, District of Nevada, to have elections and complete membership elections. However, the Colony had no funds to complete these tasks because the BIA has failed and refused to protect the Colony from interference by the occupation group that was supported by the BIA for over 12 years in denying the lands of the Winnemucca Indian Colony to its true membership.

84. The Colony members funded, from their own personal funds, an election monitored by the Inter Tribal Council of Nevada on June 29, 2013. The report of the election was submitted to the United States District Court, District of Nevada and to the Western Nevada Agency asking for recognition of the Colony Council as Judy Rojo, Misty Morning Dawn Rojo, Katherine Hasbrouck, Willis Evans and Thomas Magiera, II.

85. The Colony has no funds because the BIA has kept the Colony in a constant state of chaos since 1986 because of its failure since 1916 to adequately determine the membership of the Winnemucca Indian Colony and protect the lands for its members.

86. Further the Colony has no funds because the BIA has allowed a group of non-members and non-Indians to occupy the lands of the Winnemucca Indian Colony and operate the smoke shop on those lands and keep the funds for their own personal use.

87. Further the Colony has no funds because the BIA has failed and refused to protect the members of the Colony from the threats of violence made by the occupation group and William Bills and the members fear to enter their lands and risk personal injury or death.

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First Claim for Relief

(Breach of Trust)

88. Plaintiffs incorporate all paragraphs of this complaint by reference as if fully set out herein.

89. Defendant's inherent and statutory fiduciary duties include, among others, the duty to properly manage the trust property, both real and personal, of Plaintiffs.

90. The Non-Intercourse Act prohibits the conveyance of any interest in Indian lands (real property) without proper federal consent.

91. There has been no federal consent to convey any interest whatsoever in the Winnemucca Indian Colony lands since 1999, including any possessory interest.

92. Defendant, by it arbitrary, capricious and unreasonable failure for twelve years to properly recognize a Council of the Winnemucca Indian Colony violated Defendant's trust responsibilities under federal law.

93. As a result of Defendant's actions, the Colony and its members have suffered and continue to suffer substantial damage and harm.

94. Defendant's breaches of trust include, but are not limited to:

a. failure to properly administer, supervise and recognize the Colony tribal government within a reasonable time, despite numerous court orders spanning twelve years;

b. failure to preserve the Colony assets and protect them from loss, theft, damage, or release to an unauthorized third person; and

c. failure to administer the Colony assets for the benefit of the Colony, including

(i) permitting construction of a road over Colony land;

(ii) permitting installation of overhead utility wires over Colony land;

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(iii) failing to secure agricultural development water rights for the 320 acres of Colony land;

(iv) failing to prevent the damming up of an actual stream in excess of 60 CFS running across the Colony lands;

(v) failing to preserve the natural resources of the Colony.

(vi) allowing non-members and non-Indians to possess the Indian lands.

95. Plaintiffs have suffered actual harm in an amount to be proven at trial.

Second Claim for Relief

(Breach of Fiduciary Duty)

96. Plaintiffs incorporate all paragraphs of this complaint by reference as if fully set out herein.

97. Defendant, by it arbitrary, capricious and unreasonable failure for thirteen years to properly recognize a Council of the Winnemucca Indian Colony violated Defendant's trust responsibilities under federal law.

98. As a result of Defendant's actions, the Colony and its members have suffered and continue to suffer considerable damage and harm.

99. Defendant also violated its fiduciary responsibilities to the Colony under federal law.

100. Defendant's violations of fiduciary duty include, but are not limited to:

a. failing to ensure that the Colony and its members obtained the financial support and distributions to which they were entitled during the twelve years that Defendant arbitrarily, capriciously and unreasonably failed to properly recognize a Council of the Colony;

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b. failing to ensure that the Colony and its members were able to submit requests for Self-Determination under P.L. 93-638 during the twelve years that Defendant arbitrarily, capriciously and unreasonably failed to properly recognize a Council of the Colony;

b. failing to ensure that the Colony and its members were able to submit other requests for available funding and monies during the twelve years that Defendant arbitrarily, capriciously and unreasonably failed to properly recognize a Council of the Colony;

d. permitting non-members of the Colony to use the "Winnemucca Indian Colony" name to endorse a banking entity, take personal endorsements, funding and other financial benefits while the bank engaged in fraud and deceit all to the detriment of the real Winnemucca Indian Colony;

e. permitting federally managed Colony assets, including but not limited to the possessory interest on the Indian lands, water rights, easements and other real property rights, to be stolen, unlawfully sold, and otherwise taken without just compensation to the Colony and its members, thus failing to collect royalties owed for those assets.

101. Plaintiffs have suffered actual harm in an amount to be proven at trial.

Third Claim for Relief
(Demand for Accounting)

102. Plaintiffs incorporate all paragraphs of this complaint by reference as if fully set out herein.

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103. Defendant breached its fiduciary duties and duty of trust by arbitrarily, capriciously and unreasonably failing to properly recognize the Colony tribal government within a reasonable time, despite numerous court orders spanning twelve years.

104. Plaintiffs hereby demand, on behalf of the Colony and its individual members, an accounting of all Tribal annuities, grant monies, distributions wrongfully withheld and any other payments, including interest thereon, for the period during which Defendant failed to properly pay Plaintiffs.

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Fourth Claim for Relief
(Declaratory Judgment - Right to Royalties for Use of Land)

105. Plaintiffs incorporate all paragraphs of this complaint by reference as if fully set out herein.

106. The Colony is entitled to fair compensation for use of the Colony's water, land and other property rights pursuant to federal law. Fair compensation requires, among other things, payment of reasonable royalties for easements and use of water rights.

107. Pursuant to 28 U.S.C. §2201, Plaintiffs seek a declaration that the Colony is entitled to fair and reasonable compensation for past, present and future use of the Colony's water, land and other property rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against all Defendants, as follows:

1. A judgment of money due to the Colony and its members of $108 million according to proof at trial in this matter;
2. A declaratory judgment that the Colony is entitled to fair and reasonable

compensation for past, present and future use of the Colony's water, land and other property rights;

3. An accounting for all distributions, annuities and other monies, including interest thereon, which are due to the Plaintiffs;
4. A judgment in favor of the Plaintiffs for their costs of trial and their attorneys' fees in this matter; and,
5. Such other and proper orders as the Court deems appropriate.

DATED this 1st day of November, 2013.

Treva J. Hearne, Esq.
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treva@renolawnv.com
Attorney for Plaintiff

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ORIGINAL

FORM 2
COVER SHEET

RECEIVED
NOV 4 2013
OFFICE OF THE CLERK
U.S. COURT OF FEDERAL CLAIMS

In The United States Court of Federal Claims

Cover Sheet

Plaintiff(s) or Petitioner(s)

Winnemucca Indian Colony
Willis Evans, Chairman

If this is a multi-plaintiff case, pursuant to RCFC 20(a), please attach an alphabetized, numbered list of all plaintiffs.

Name of the attorney of record (See RCFC 83.1(c)): Treva J. Heame

Firm Name: Reno Law Group LLC

Post Office Box:

Street Address: 595 Humboldt St

13-874 L

City-State-Zip: Reno, NV 89509

Telephone & Facsimile Numbers: 775.329.5800 fax 775.329.5819

E-mail Address: treva@RenoLawNV.com

Is the attorney of record admitted to the Court of Federal Claims Bar? ☒ Yes ☐ No
Does the attorney of record have a Court of Federal Claims ECF account? ☒ Yes ☐ No
If not admitted to the court or enrolled in the court's ECF system, please call (202) 357-6402 for admission papers and/or enrollment instructions.

Nature of Suit Code: 504

Select only one (three digit) nature-of-suit code from the attached sheet.
If number 213 is used, please identify partnership or partnership group. If numbers 118, 134, 226, 312, 356, or 528 are used, please explain.

Agency Identification Code: DOI

See attached sheet for three-digit codes.

Amount Claimed: $ 108,000,000.00
Use estimate if specific amount is not pleaded.

Disclosure Statement:
Is a RCFC 7.1 Disclosure Statement required? ☐ Yes ☒ No
If yes, please note that two copies are necessary.

Bid Protest:
Indicate approximate dollar amount of procurement at issue: $ NOT APPLICABLE
Is plaintiff a small business? ☐ Yes ☒ No

Vaccine Case:
Date of Vaccination: NOT APPLICABLE

Related Cases:
Is this case directly related to any pending or previous case? ☐ Yes ☒ No
If yes, you are required to file a separate notice of directly related case(s). See RCFC 40.2.

180

EXHIBIT 15

Satellite Photo (2013): South Highland Drive (Street)

EXHIBIT 16

Satellite Photo (2013): Subdivision for Ingress and Egress and Water Canyon Estates

EXHIBIT 17

Satellite Photo (2013): Overhead Power Lines Near Hanson Road (Street)

EXHIBIT 18

Satellite Photo (2013): Overhead Power Lines Near Eastern Boundary of Winnemucca Indian Colony

EXHIBIT 19

Satellite Photo (2013): Electrical Substation

EXHIBIT 20

1989 Offenhauser Recorded Map for Development on Water Canyon Road

"AMENDED" WATER CANYON ESTATES UNIT 2

SURVEYOR'S CERTIFICATE

I, HARLAN K. KING, A REGISTERED LAND SURVEYOR IN THE STATE OF NEVADA CERTIFY THAT:

1. THIS IS A TRUE AND ACCURATE REPRESENTATION OF THE LANDS SURVEYED UNDER MY SUPERVISION AT THE INSTANCE OF FRANK OFFENHAUSER.

2. THE LANDS SURVEYED LIE WITHIN A PORTION OF THE S.1/2 OF SECTION 29, T.36N., R.38E., M.D.M., CITY OF WINNEMUCCA, HUMBOLDT COUNTY, NEVADA, AND THAT THE SURVEY WAS COMPLETED ON APRIL 5, 1989.

3. THIS PLAT COMPLIES WITH THE APPLICABLE STATE STATUTES AND ANY LOCAL ORDINANCES.

4. THE MONUMENTS WILL BE OF THE CHARACTER SHOWN AND OCCUPY THE POSITIONS POSTED WITH THE GOVERNING BODY TO ASSURE THEIR INSTALLATION.

[signature] HARLAN K. KING R.L.S. 5665

REGISTERED LAND SURVEYOR STATE OF NEVADA HARLAN K. KING 6-7-89 No. 5665

HEALTH DEPARTMENT CERTIFICATE

THIS FINAL MAP IS APPROVED BY THE HEALTH DIVISION OF THE DEPARTMENT OF HUMAN RESOURCES CONCERNING SEWAGE DISPOSAL, WATER QUALITY AND WATER SUPPLY FACILITIES IN ACCORDANCE WITH NEVADA REVISED STATUTES. THIS APPROVAL PREDICATES COMMUNITY WATER SUPPLY AND COMMUNITY SEWAGE DISPOSAL.

[signature] Jeffrey Fontaine — HEALTH DIVISION — 2 JUNE 89 DATE

DIVISION OF WATER RESOURCES CERTIFICATE

THIS MAP IS APPROVED BY THE STATE OF NEVADA DIVISION OF WATER RESOURCES OF THE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES CONCERNING WATER QUANTITY, SUBJECT TO REVIEW OF APPROVAL ON FILE AT THIS OFFICE.

[signature] — DIVISION OF WATER RESOURCES — 31MAY89 DATE

UTILITY COMPANIES CERTIFICATE

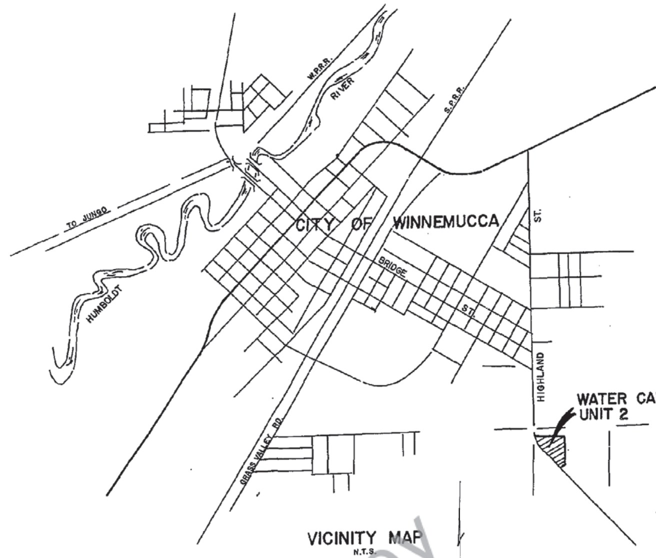
THE EASEMENTS SHOWN ON THIS PLAT HAVE BEEN CHECKED, ACCEPTED, AND APPROVED BY THE UNDERSIGNED UTILITY COMPANIES.

[signature] SIERRA PACIFIC POWER COMPANY — 5/16/89

[signature] NEVADA BELL — 5/16/89

[signature] SOUTHWEST GAS CORP. — 5/16/89

[signature] JONES SPACELINK — 5/16/89



VICINITY MAP
N.T.S.

CITY ENGINEER'S CERTIFICATE

I HEREBY CERTIFY THAT I AM THE DULY APPOINTED CITY ENGINEER OF THE CITY OF WINNEMUCCA, HUMBOLDT COUNTY NEVADA, AND THAT I HAVE EXAMINED THE FINAL PLAT TO WHICH THIS CERTIFICATE IS ATTACHED, THAT THE PLAT IS TECHNICALLY CORRECT, AND THAT A PROPER PERFORMANCE BOND HAS BEEN DEPOSITED GUARANTEEING THE SETTING OF THE SURVEY MONUMENTS BY DECEMBER 31, 1989.

[signature] D. Stephen West — CITY ENGINEER — 5-18-89 DATE

PLANNING COMMISSION CERTIFICATE

A TENTATIVE MAP OF THIS SUBDIVISION WAS RECOMMENDED FOR APPROVAL BY THE REGIONAL PLANNING COMMISSION ON DECEMBER 9, 1988. THIS PLAT IS IN SUBSTANTIAL COMPLIANCE WITH THE TENTATIVE MAP AND ALL CONDITIONS OF APPROVAL.

[signature] Edward D. Wyse — PLANNING DIRECTOR — 5/17/89 DATE

CITY COUNCIL CERTIFICATE

APPROVED AND ACCEPTED BY THE CITY COUNCIL OF THE CITY OF WINNEMUCCA, HUMBOLDT COUNTY, NEVADA, THIS 6th DAY OF June, 1989. A TENTATIVE MAP OF THIS SUBDIVISION WAS APPROVED BY THE CITY COUNCIL ON JANUARY 3, 1989, AND THE OFFER OF DEDICATION OF THE STREETS SHOWN HEREON IS ACCEPTED AT THIS TIME.

[signature] Paul J. Vesco — MAYOR — 6-9-89 DATE

[signature] Mary P. Echeverria — CITY CLERK — 6-12-89 DATE

OWNER'S CERTIFICATE

THIS IS TO CERTIFY THAT THE UNDERSIGNED, OFFENHAUSER DEVELOPMENT, IS THE RECORD OWNER OF THE TRACT OF LAND REPRESENTED ON THIS PLAT AND HAS CONSENTED TO THE PREPARATION AND RECORDATION OF THIS PLAT AND THAT THE SAME IS EXECUTED IN COMPLIANCE WITH AND SUBJECT TO THE PROVISIONS OF N.R.S. CHAPTER 278 AND THE CITY OF WINNEMUCCA SUBDIVISION ORDINANCE, AND THAT THE STREETS, AVENUES, AND ALL APPURTENANCES THERETO AS SHOWN ARE HEREBY DEDICATED AND AND SET APART TO BE USED AS PUBLIC THOROUGHFARES FOREVER; AND HEREBY GRANTS TO ALL PUBLIC UTILITIES AND THE CITY OF WINNEMUCCA A PERMANENT EASEMENT SHOWN ON THIS PLAT FOR THE CONSTRUCTION AND MAINTENANCE OF DRAINAGE AND UTILITY SYSTEMS TOGETHER WITH THE RIGHT OF ACCESS THERETO FOREVER.

[signature] FRANK OFFENHAUSER — PRESIDENT, OFFENHAUSER DEVELOPMENT COMPANY

STATE OF NEVADA
COUNTY OF HUMBOLDT

ON THIS 15th DAY OF MAY, 1989, PERSONALLY APPEARED BEFORE ME A NOTARY PUBLIC IN THE COUNTY OF HUMBOLDT, STATE OF NEVADA, FRANK OFFENHAUSER, WHO ACKNOWLEDGED THAT HE EXECUTED THE FOREGOING INSTRUMENT AND THAT THE SAME WAS EXECUTED FREELY AND VOLUNTARILY AND FOR THE PURPOSES AND USES THEREIN MENTIONED.

IN WITNESS WHEREOF, I HEREBY SET MY HAND AND AFFIX MY OFFICIAL SEAL.

[signature] Billie M. Shirts — NOTARY PUBLIC

[notary stamp]

TITLE COMPANY CERTIFICATE

THE UNDERSIGNED HEREBY CERTIFIES THAT THIS PLAT HAS BEEN EXAMINED AND THE SUBDIVIDER OFFERING THIS PLAT IS THE LAST TITLE HOLDER OF RECORD FOR LOTS 14, 15, 17, 24 THRU 52, AND LOTS 60 THRU 68 OF THE LANDS DELINEATED HEREON, AND THE LANDS ARE FREE FROM ANY LIENS OR ENCUMBRANCES OTHER THAN THOSE LISTED AS OF ________ 1989.

[signature] — 5/15/89 DATE

BOOK 275 PAGE 452 ½ FRAME 1

RECORDER'S CERTIFICATE

FILE NO. 307082

FILED FOR RECORD AT THE REQUEST OF HARLAN KING ON THIS 21st DAY OF June, 1989 AT 34 MINUTES PAST 1 O'CLOCK P.M. IN THE OFFICIAL RECORDS OF HUMBOLDT COUNTY, NV.

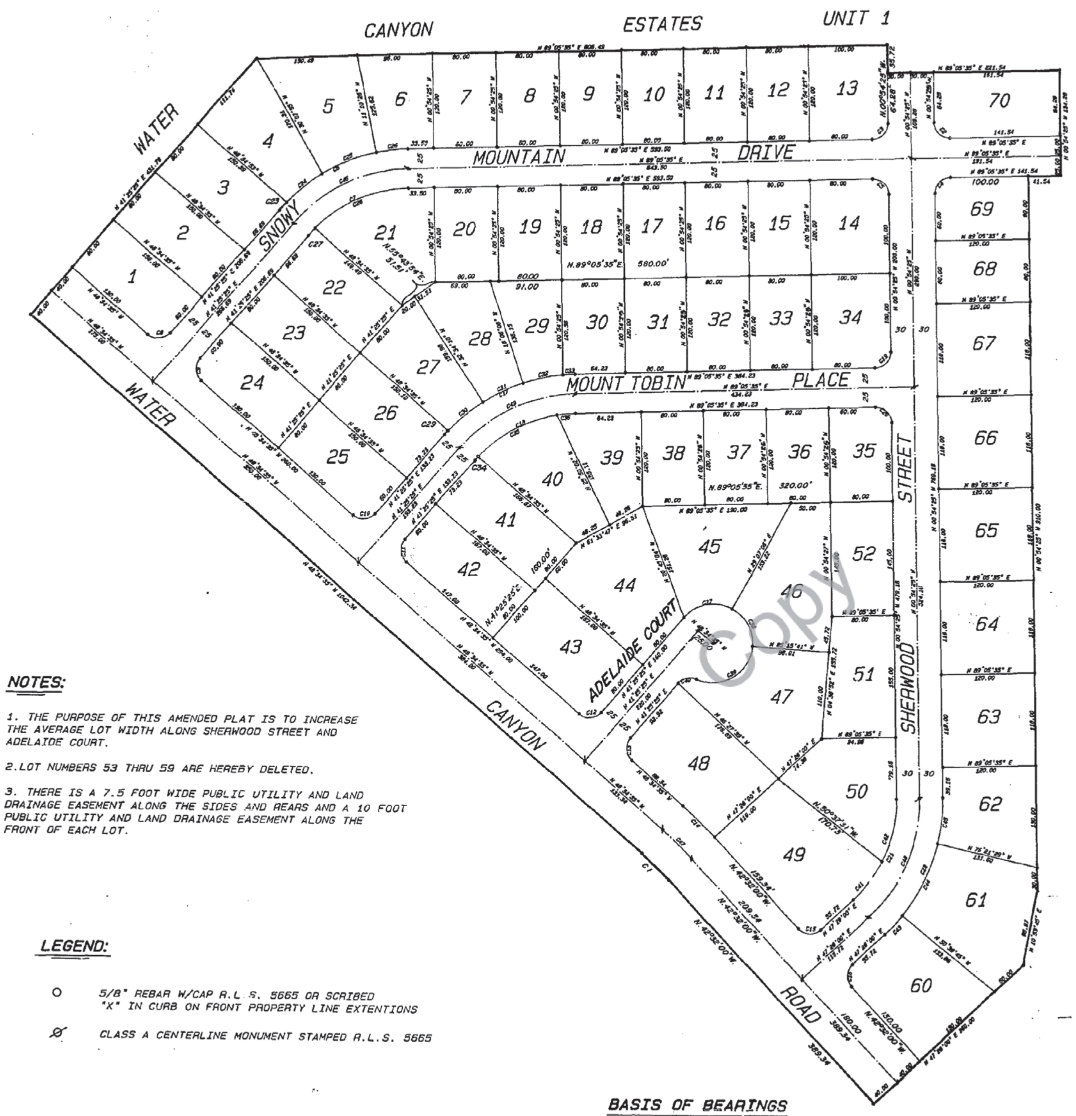
[signature] Evelyn Harmon — HUMBOLDT COUNTY RECORDER

[signature] , deputy — DEPUTY

AMENDED OFFICIAL PLAT
OF
WATER CANYON ESTATES UNIT 2
FOR
OFFENHAUSER DEVELOPMENT COMPANY
LOCATED WITHIN THE NW 1/4 OF SECTION 33
T.36N., R.38E., M.D.M.
CITY OF WINNEMUCCA
HUMBOLDT COUNTY, NEVADA

HARLAN KING & ASSOCIATES
511 W. FOURTH STREET, WINNEMUCCA NEVADA 89445
(702) 623-2731

SHEET 1 of 2



NOTES:

1. THE PURPOSE OF THIS AMENDED PLAT IS TO INCREASE THE AVERAGE LOT WIDTH ALONG SHERWOOD STREET AND ADELAIDE COURT.

2. LOT NUMBERS 53 THRU 59 ARE HEREBY DELETED.

3. THERE IS A 7.5 FOOT WIDE PUBLIC UTILITY AND LAND DRAINAGE EASEMENT ALONG THE SIDES AND REARS AND A 10 FOOT PUBLIC UTILITY AND LAND DRAINAGE EASEMENT ALONG THE FRONT OF EACH LOT.

LEGEND:

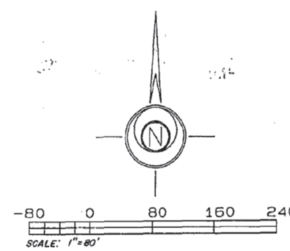
○ 5/8" REBAR W/CAP R.L.S. 5665 OR SCRIBED "X" IN CURB ON FRONT PROPERTY LINE EXTENTIONS

⌀ CLASS A CENTERLINE MONUMENT STAMPED R.L.S. 5665

BASIS OF BEARINGS

BEARINGS WERE BASED ON THE SOUTH BOUNDARY OF WATER CANYON ESTATES UNIT NO. 1. (MAP FILE NO. 195507)

Curve No.	Radius	Delta	Length	Tangent	Chord	
1	460.00	006°02'35"	48.52	24.28	N 45°33'18"W	48.49
2	20.00	090°00'00"	31.42	20.00	S 45°54'25"E	28.28
3	20.00	090°00'00"	31.42	20.00	N 44°05'35"E	28.28
4	20.00	090°00'00"	31.42	20.00	S 44°05'35"W	28.28
5	20.00	090°00'00"	31.42	20.00	N 45°54'25"W	28.28
6	225.00	047°40'10"	187.20	99.40	S 65°15'30"W	181.84
7	175.00	047°40'10"	145.60	77.31	S 65°15'30"W	141.43
8	20.00	090°00'00"	31.42	20.00	N 86°25'25"E	28.28
9	20.00	090°00'00"	31.42	20.00	S 3°34'35"E	28.28
10	20.00	090°00'00"	31.42	20.00	N 86°25'25"E	28.28
11	20.00	090°00'00"	31.42	20.00	S 3°34'35"E	28.28
12	20.00	090°00'00"	31.42	20.00	N 86°25'25"E	28.28
13	20.00	090°00'00"	31.42	20.00	S 3°34'35"E	28.28
14	540.00	006°02'35"	56.95	28.50	N 45°33'18"W	56.93
15	20.00	090°00'00"	31.42	20.00	S 87°32'00"E	28.28
16	20.00	090°00'00"	31.42	20.00	S 2°28'00"W	28.28
17	225.00	047°40'09"	187.20	99.40	S 65°15'30"W	181.84
18	175.00	047°40'09"	145.60	77.31	S 65°15'30"W	141.43
19	20.00	090°00'00"	31.42	20.00	N 44°05'35"E	28.28
20	20.00	090°00'00"	31.42	20.00	N 45°54'25"W	28.28
21	170.00	048°22'25"	143.53	76.35	N 23°16'48"E	139.30
22	230.00	048°22'25"	194.18	103.30	N 23°16'48"E	188.47
23	225.00	003°23'37"	13.33	6.67	S 43°07'14"W	13.32
24	225.00	015°03'17"	59.12	29.73	S 52°20'41"W	58.95
25	225.00	018°57'06"	74.42	37.55	S 69°20'52"W	74.08
26	225.00	010°16'10"	40.33	20.22	S 83°57'30"W	40.27
27	175.00	004°21'38"	13.32	6.66	S 43°36'14"W	13.32
28	175.00	043°18'32"	132.28	69.48	S 67°26'19"W	129.15
29	225.00	001°43'29"	6.77	3.39	S 42°17'02"W	6.77
30	225.00	014°16'48"	56.08	28.18	S 50°17'18"W	55.93
31	225.00	014°28'07"	56.82	28.56	S 64°39'46"W	56.67
32	225.00	013°10'38"	51.75	25.99	S 78°29'08"W	51.63
33	225.00	004°01'07"	15.78	7.89	S 87°05'01"W	15.78
34	175.00	002°13'03"	6.77	3.39	S 42°31'50"W	6.77
35	175.00	037°35'21"	114.81	59.56	S 62°26'09"W	112.76
36	175.00	007°51'45"	24.01	12.03	S 85°09'42"W	24.00
37	50.00	077°41'41"	67.80	40.27	S 80°16'16"W	62.72
38	50.00	065°37'13"	57.26	32.24	N 28°04'18"W	54.19
39	50.00	110°05'01"	96.07	71.52	N 59°46'49"E	81.96
40	20.00	073°23'54"	25.62	14.91	S 78°07'22"W	23.90
41	170.00	020°03'37"	59.52	30.07	N.37°25'12"E	59.22
42	170.00	028°18'48"	84.01	42.88	S. 13°14'59"W	83.16
43	230.00	008°07'45"	32.63	16.34	N 43°24'07"E	32.61
44	230.00	025°41'43"	103.15	52.46	N 26°29'23"E	102.29
45	230.00	014°32'56"	58.40	29.36	N 6°22'03"E	58.25
46	200.00	047°40'10"	166.40	88.36	S 65°15'30"W	161.64
47	500.00	006°02'35"	52.74	26.39	N 45°33'18"W	52.71
48	200.00	048°22'25"	168.86	89.83	N 23°16'48"E	163.89
49	200.00	047°40'09"	166.40	88.35	S 65°15'30"W	161.64



BOOK 275 PAGE 452 ½ FRAME 2

AMENDED OFFICIAL PLAT
OF
WATER CANYON ESTATES UNIT 2
FOR
OFFENHAUSER DEVELOPMENT COMPANY
LOCATED WITHIN THE NW 1/4 OF SECTION 33
T.36N., R.38E., M.D.M.
CITY OF WINNEMUCCA
HUMBOLDT COUNTY, NEVADA

HARLAN KING & ASSOCIATES
511 W. FOURTH STREET, WINNEMUCCA NEVADA 89445
(702) 623-2731

SHEET 2 of 2

EXHIBIT 21

1989 Sierra Pacific Quitclaim Deed for Eastern Boundary Overhead Power Lines

BOOK 273 PAGE 299 FRAME 1

QUITCLAIM - RIGHT OF WAY

KNOW ALL MEN BY THESE PRESENTS:

THAT SIERRA PACIFIC POWER COMPANY, a Nevada corporation, in consideration of one dollar ($1.00), the receipt of which is hereby acknowledged, does hereby release, remise and forever quitclaim unto City of Winnemucca and all other record owners of the land encumbered by the rights herein quitclaimed in severalty and upon the same tenure as their respective interests appear of record, all of Sierra Pacific Power Company's right, title and interest in and to the following described utility easement granted by the Southern Pacific Company to California-Pacific Utilities Company on August 24, 1964, in Book 5, at Page 419 as Document No. 118343; Sierra Pacific Power Company is successor to such easement by virtue of a Quitclaim Deed from California-Pacific Utilities Company to Sierra Pacific Power Company dated March 31, 1982, in Book 160 at Page 99 as Document No. 220628 to wit:

BEGINNING at the Northwest corner of Section 33, Township 36 North, Range 36 East, M.D.B.&M., marked Humboldt 6 South Line by a U.S. Coast & Geodetic Survey brass disc;

Thence South 35°19' East, a distance of 1874.2 feet to a point marked by a 2" by 2" wood hub and which point is also the TRUE POINT OF BEGINNING;

Thence South 48°42' West, a distance of 200.0 feet to a point marked by a 2" by 2" wood hub;

Thence South 41°18' East, a distance of 200.0 feet to a point marked by a 2" by 2" wood hub;

Thence North 48°42' East, a distance of 200.0 feet to a point marked by a 2" by 2" wood hub;

Thence North 41°18" West, a distance of 200.0 feet to the TRUE POINT OF BEGINNING;

Parcel contains 40,000 square feet (.918 acre) and is situated within the SW 1/4 NW 1/4 of Section 33, Township 36 north, Range 38 East, M.D.B.&M.

Parcel includes 20,000 square feet (.459 acre) of existing easement on 8 inch riveted steel water pipeline.

TOGETHER WITH ALL AND SINGULAR the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining thereto.

IN WITNESS WHEREOF Sierra Pacific Power Company has executed these presents this 2nd day of May, 1989.

SIERRA PACIFIC POWER COMPANY

By: John Madariaga

JOHN MADARIAGA
VICE PRESIDENT LEGAL AFFAIRS

BOOK 273 PAGE 299 FRAME 2

STATE OF NEVADA)
)ss.
COUNTY OF WASHOE)

On May 2, 1989, personally appeared before me, a Notary Public, JOHN MADARIAGA, personally known to me to be the VICE PRESIDENT, GENERAL COUNSEL, of SIERRA PACIFIC POWER COMPANY, a Nevada corporation, who acknowledged to me that he executed the within instrument on behalf of said corporation.

NOTARY PUBLIC

STEPHEN P. YOUNKIN
Notary Public - State of Nevada
Appointment Recorded in Washoe County
MY APPOINTMENT EXPIRES APR 16 1992

STEPHEN P YOUNKIN
Notary Public - State of Nevada
Appointment Recorded in Washoe County
MY APPOINTMENT EXPIRES APR 16 1992

OFFICIAL RECORDS
WASHOE CO. NEV.
REQUESTED BY
Wm. Macdonald
89 MAY 8 All: 14
BOOK 273 PAGE 299
CLERK-RECORDER
FEE: 6 FILE NO. 305264

RPTT 0
W Macdonald
8 May 1989

EXHIBIT 22

1997 Right of Way Application for Hanson Road Overhead Power Lines

97- 14117-25

C30-18230

SHOSHONE INDIAN TRIBAL COUNSEL
RIGHT-OF-WAY APPLICATION

COMES THE APPLICANT, SIERRA PACIFIC POWER COMPANY, a Nevada Corporation, this 5 day of August, 19 97, who hereby petition(s) the Bureau of Indian Affairs and respectfully file(s) under the terms and provisions of the Act of February 5, 1984 (62 Stat. L. 17-18), and Departmental Regulations 25 Code of Federal Regulations 169, and application for a right-of-way for the following purposes and reasons:

Constructing, operating and maintaining an overhead powerline over Western Shoshone Indian Lands under executive orders No. 2439 & 2803 by Woodrow Wilson, President of the United States of America as described on the attached **Exhibit "A".**

Said tight-of-way to be 1416 feet in length, 15 feet in width, and .49 Acres in size, and more particularly described in the centerline description as shown of the attached Exhibit ""A" and shown on the attached map(s) of definite location.

SAID APPLICANT DOES HEREBY UNDERSTAND AND EXPRESSLY AGREES TO THESE STIPULATIONS:

(A) To construct and maintain the right-of-way in a workmanlike manner.

(B) To pay promptly all damages and compensation, in addition to the deposit made pursuant to 25 CFR 169.4, determined by the Secretary co be due the landowner(s) and authorized users and occupants of the land on account of the survey, granting, construction and maintenance of the right-of-way.

(C) To indemnify the landowners and authorized users and occupants against any liability for loss of life, personal injury, and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant. his employees, contractors and their employees, or &contractors and their employees.

(D) To restore the lands as nearly as may be possible to their original condition upon the completion of construction to the extent compatible with the purpose for which the right-of-way was granted.

(E) To clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way; and to dispose of all vegetative and other material cut. uprooted, or otherwise accumulated during the construction and maintenance of the project.

(F) To take soil and resource conservation and protection measures, including weed control, on the land covered by the right-of-way.

(G) To do everything reasonably within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.

(H) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(I) That upon revocation or termination of the right-of-way, the applicant shall, so far as is reasonably possible. restore the land to its original condition.

C30 L.L.

BIA Shoshone-Wind River

NE 1/4 - A 32 T36N R 38E

Hanson St & Highland Dr

(J) To at all times, keep the Secretary informed of its address, and in case of corporations, of the address of its principal place of business and of the names and addresses of its principal officers.

(K) That the applicant will not interfere with the use of the lands by or under the authority of the landowners far any purpose not inconsistent with the primary purpose for which the right-of-way is granted.

(L) The applicant agrees to preserve for future reference, any public land survey corner which is affected by construction or improvements.

(M) All public land survey comers definitely located and used in describing and tying En the easement survey shall be recorded in accordance with Nevada Revised Statutes, Chapter 329 "Perpetuation of Public Land Survey Comers", or applicable Slate Statutes.

Said application further stipulates and expressly agrees as follows to conform to and abide by all applicable requirements with respect to the right-of-way herein apptied for. Applicant agrees to conform to and abide by the rules, regulations, and requirements contained in the Code of Federal Regulations, Title 25, 169, and by reference includes such regulations and requirements as part of the application to the same effect as if the same were herein set out in full.

SIERRA PACIFIC POWER COMPANY

By: Stephen H. Butler

Stephen H. Butler SR/WA
Right of Way/Real Property
Authorized Agent

SHOSHONE INDIAN TRIBE

B y : _____

Western Shoshone Indian Counsel
Authorized Officer

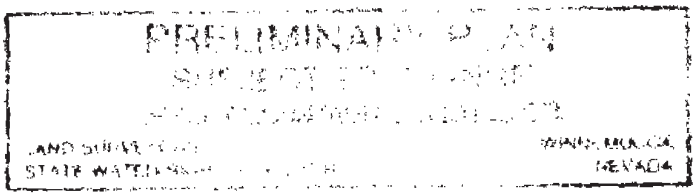
BY Glenn Wilson

Western Shoshone Tribal Chairman

Legal Description

Being an easement across a portion of the Northeast Quarter (N .E. 1/4) of Section 32, Township 36 North, Range 38 East, Mount Diablo Base Line and Meridian, City of Winnemucca, Humboldt County, Nevada, and being more particularly described as follows:

COMMENCING at the northeast corner of said Section 32 as shown on Plat of Skyland Estates Subdivision recorded March 2, 1978 as File Number 181731 in the office of the Recorder of Humboldt County, Nevada;
THENCE South 89°51'04" West along the north line of said Section 32 and the south line of said Skyland Estates Subdivision a distance of 1044.32 feet to a point on the northeast line of an easement for Right-of-Way (80.00 feet-wide) granted to the City of Winnemucca for Hanson Street for the TRUE POINT OF BEGINNING;
THENCE South 50°00'00" East along said Right-of-Way line a distance of 309.10 feet;
THENCE South 51° 38'20" East, leaving said Right-of-Way, a distance of 236.58 feet to a point on said Right-of-Way line, a curve to the left, having a radius of 630.00 feet, the radial of which bears South 31'35'39" West;
THENCE along said Right-of-Way line and said curve, to the left, through a central angle of 01°03'15", an arc distance of 11.59 feet;
THENCE South 71°49'09" East, leaving said Right-of-Way Line, a distance of 269.69 feet to a point on said Right-of-Way line, a curve to the left, having a radius of 630.00 feet, the radial of which bears South 05°49'18" West;
THENCE continuing along said Right-of-Way line and said curve to the left, through a central angle of 06°08'12", an arc distance of 67.48 feet to the point of tangency;
THENCE North 89°41'06" East, passing the west line of an easement for Right-of-Way (60.00 feet-wide) granted to the City of Winnemucca for Highland Drive at 260.93 feet, in all 290.93 feet to a point on the east line of Section 32, from which the northeast corner of same bears North 00° 18'54" West a distance of 440.00 feet;
THENCE South 00° 18'54" East along said east line of Section 32 a distance of 15.00 feet;
THENCE South 89'41'06" West, parallel to the north line of said Hanson Street Right-of-Way, separated from same by a distance of 15.00 feet, measured at right angles, a distance of 290.93 feet to the beginning of a curve, to the right, having a radius of 645.00 feet;
THENCE continuing along said parallel line and said curve, to the right, through a central angle of 40°18'54", an arc length of 453.84 feet to the point of tangency;
THENCE North 50°00'00" West, continuing along said parallel line, a distance of 471.27 feet to a point on the north line of said Section 32;
THENCE North 89'51'04" East along said north line of Section 32 a distance of 23.26 feet to the TRUE POINT OF BEGINNING; covering in all 21,252 square feet of land, more or less.



Received: 9/19/97;
Sep-19-97 14:01 SP[redacted] WMCA 70[redacted]523 3680 P.02

RESOLUTION NO. WN - 7 - 97

Whereas, the Tribal Council is the duly elected governing body of the Winnemucca Indian Colony, a federally recognized Tribe organized under the Indian Reorganization Act of 1934, and those Tribal lands as described in the Constitution and By-laws of the Winnemucca **Indian** Colony are under the jurisdiction of said Council, and

Whereas, the Applicant, the Sierra Pacific Power Company, a Nevada Corporation has petitioned said Tribal Council to construct, operate and maintain an overhead power line over **those** Western Shoshone Indian Lands **as** shown on maps of definite location, and

Whereas, the Applicant does fully understand and expressedly agrees to all of the applicable stipulations and conditions set forth in TITLE 25 CFR, PART 169, Right&f-Ways Over Indian Lands, and

Whereas, on September 13, 1997 said Tribal Council met and discussed those stipulations **set** forth in TITLE 25 CFR, Part 169 - Right-of-Way Over Indian Lands and voted to grant the Applicant Permission to construct, operate and maintain an overhead power tine over those aforementioned described Western Shoshane Indian Lands for the consideration of five thousand **dollars ($5,000.00)**, and

Whereas, the subject Right-of-Way be granted for a period of 15 years from the date of the approved "Grant of Easement of Right-of-Way" deed, and

Whereas, the Applicant will furnish and or supply an electrical distribution system as **per** TITLE 25 CFR, Part 169.22 as it applies to electric line extension to and within the new development on Hansen Street or other approved projects adjacent to the the powerline as it applies to this project.

THEREFORE, BE IT RESOLVED, THAT the Tribal Council of the Winnemucca Indian Colony hereby grants the Applicant, the Sierra Pacific Power Company, the fifteen (15) foot wide and one thousand four hundred sixteen (1,416) foot fong Right-of-Way over those described Western Shoshone Indian Lands for the stated time period as long as all terms and conditions **are** met in a timely and satisfactory manner.

CERTIFICATION

I, the undersigned, do hereby certify the foregoing Resolution was adapted by the Tribal Council of the Winnemucca Indian Colony at a meeting on the 13th day of SEPT. 97 by an affirmative vote of 4 For, and 0 [illegible]uant to the authority contained in the Constitution **and** By-Laws of the Winnemucca Indian Colony.

Glenn Wasson

Glenn **Wasson**. Chairman

Sierra Pacific
POWER COMPANY
www.sierrapacific.com

500 W. McArthur Street, P.O. Box 866 • Winnemucca, Nevada 89446-0866 • 702.623.3667 • Fax 702.623.3680

S-28-97

Mr. Stephen Butler
Sr. Right-of-Way Agent
S.P.P.Co.

Re: Powerline Easement W.O. 97-14117-25

Dear Steve:

Thank you for your assistance in our R.O.W. request from the Western Shoshone Tribe. I have reviewed the counter offer as per your phone call, of a one time payment of $5,000.00, with a 15 year lease. I feel that this is an acceptable offer. Please proceed with the necessary documents to finalize the proposal.

Thank you for your assistance in this matter,

Gary Wilhelm

Gary Wilhelm
Team Leader, Winnemucca

Winnemucca + Battle Mtn

Post-it™ brand fax transmittal memo 7671 # of pages ▸

To Steve Butler	From
Co.	Co.
Dept.	Phone #
Fax #	Fax #

Executive Order

It is hereby ordered that the following described lands in Nevada be, and they are hereby, reserved from entry, sale or other disposal and set aside for the use of two certain bands of homeless Shoshone Indians now residing near the towns of Winnemucca and Battle Mountain, Nevada:

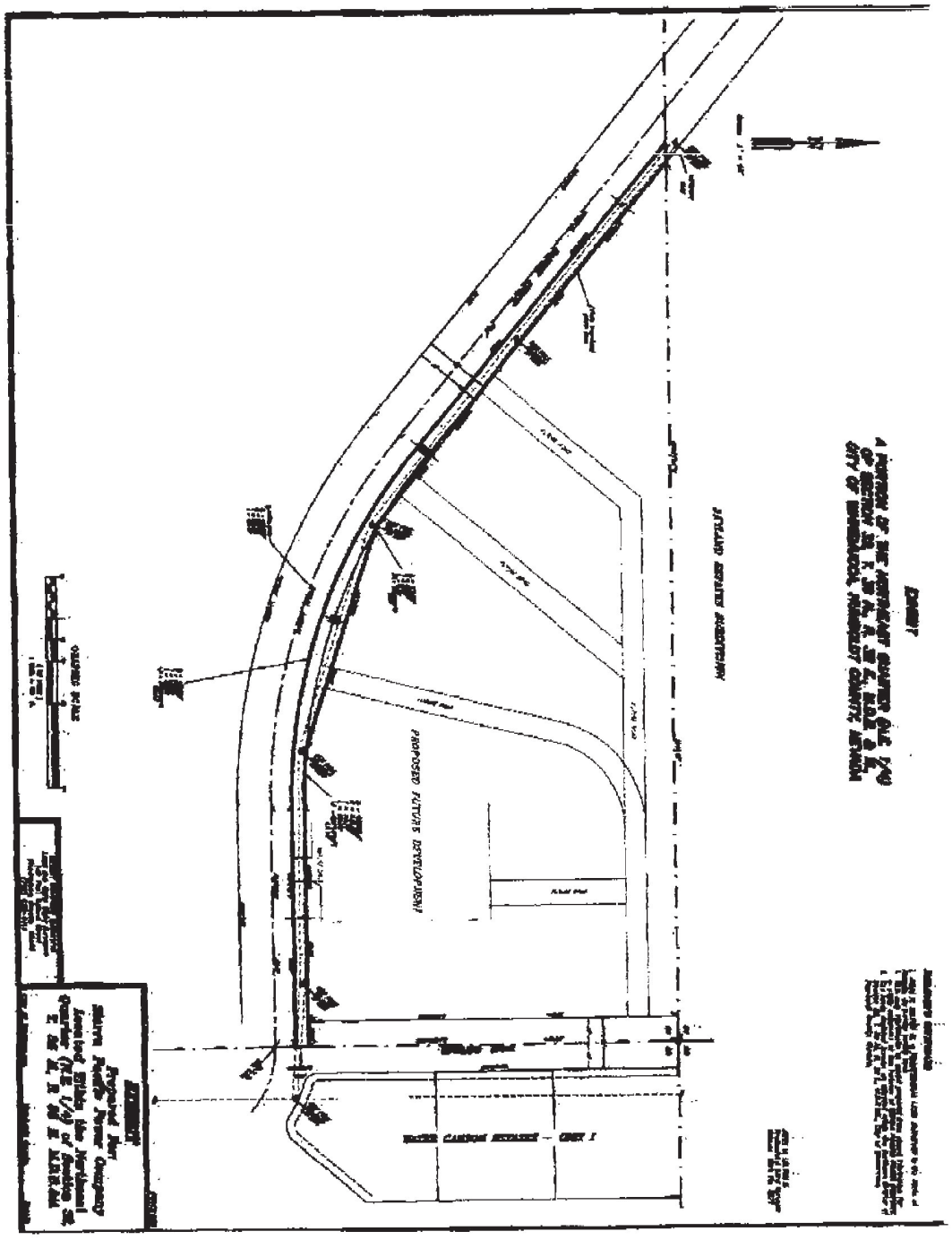
For the Winnemucca Band, the NE¼ of Section 32, Township 36 N., Range 38 East, M. D. M.;

For the Battle Mountain Band, the NW¼ and the NW¼ of the NE¼ of Section 18, Township 32 N., Range 45 E.; the W½ and the NE¼ of Section 12, Township 32 N., Range 44 E., M. D. M., Nevada; provided that this withdrawal shall not affect any existing legal right of any person to any of the lands herein described.

WOODROW WILSON

THE WHITE HOUSE,
15 June, 1917.

[No. 2639.]



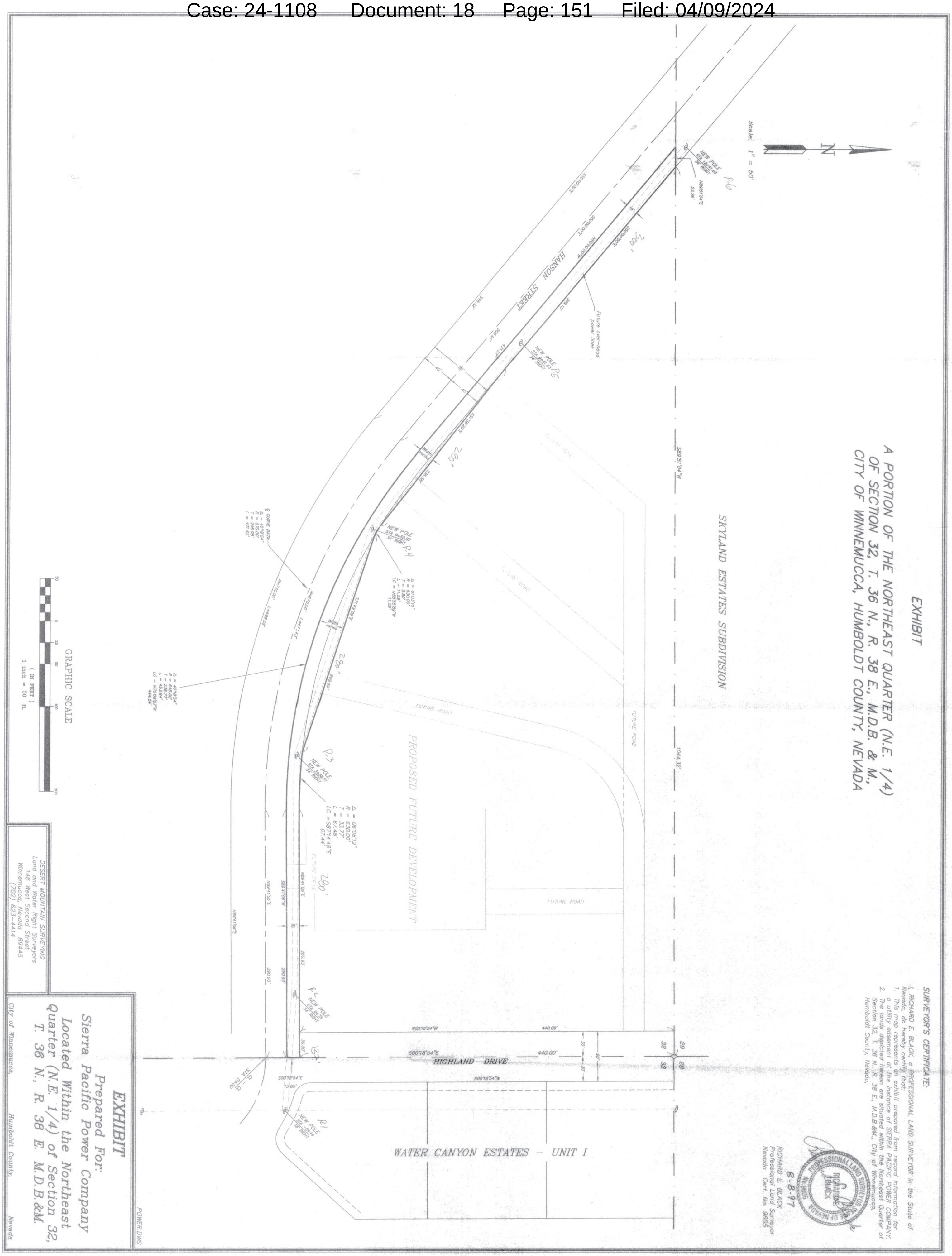


EXHIBIT 23

1974 Land Survey Showing S.P.P. Substation

Record of Survey
DRAWING NUMBER
2.140

RECORD OF SURVEY
FOR THE
OFFENHAUSER DEVELOPMENT COMPANY
A Portion of the West 1/2
of Section 33-T.36N.,R.38E. M.D.B.&M.
Date: June 1974
Scale: 1 inch = 300 feet
Sheet 1 of 1

SURVEYOR'S CERTIFICATE

I, Alan Means, do hereby certify that this map is a true and accurate plat of the land shown hereon, taken from field notes of a survey made by me, or under my supervision, and that this survey was completed on this 18th day of June, 1974.

STATE OF NEVADA
No. 3573
Alan Means P.L.S. 3573

File No. 161335
Filed for record at the request of Alan Means on this 26th day of June 1974 at 2 minutes past 2 o'clock P.M. in the records of Humboldt County, Nevada.

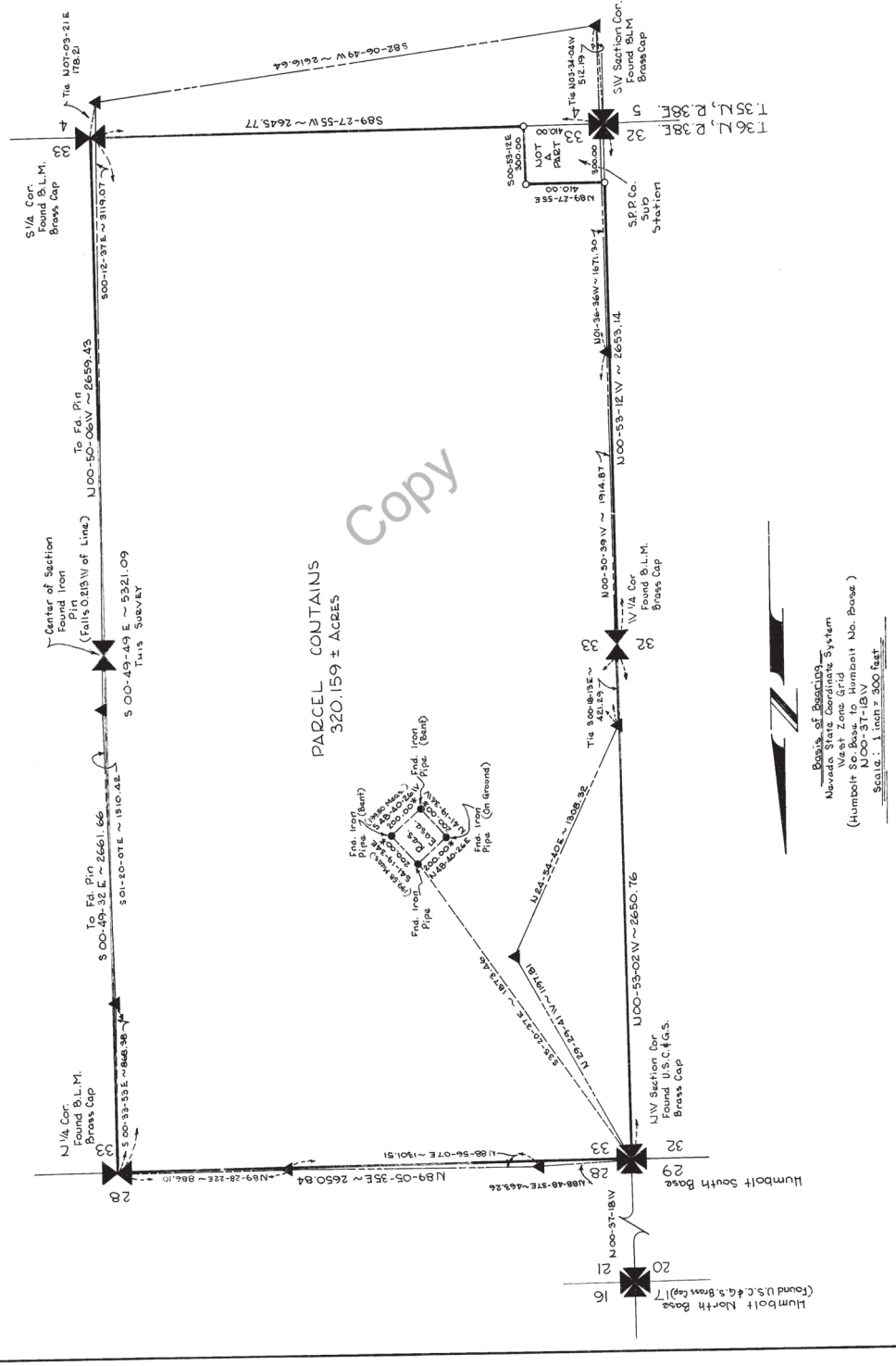
By _____ County Recorder

_____ Deputy

Fee: _____

LEGEND

- ▲ — Set iron pin in concrete tagged R.L.S. 3573
- O — No point found or set
- ● — Found Point
- ✱ — Dead Record
- ——— Traverse Line
- ---------- Tie Line
- —— — —— Reservoir Easement
- ——— Not A Part
- ——— Property Line



Prepared By: Alan Means Land Surveying
Reno, Nevada

EXHIBIT 24

Satellite Photo (2013): Aerial Photo of 20 Acre Parcel

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