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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF WASHINGTON

10 DONNELLY R. VILLEGAS, an  
enrolled member of the Spokane Tribe of  
Indians;  
11 Plaintiff,  
12  
13 v.

NO. CV-12-001-EFS

COMPLAINT FOR  
DECLARATORY JUDGMENT,  
INJUNCTIVE RELIEF, AND  
DAMAGES

14 UNITED STATES OF AMERICA;  
DEPARTMENT OF THE INTERIOR;  
BUREAU OF INDIAN AFFAIRS;  
15 BUREAU OF LAND MANAGEMENT;  
AND BUREAU OF SAFETY AND  
16 ENVIRONMENTAL ENFORCEMENT  
(FORMERLY THE MINERALS  
17 MANAGEMENT SERVICE);  
ENVIRONMENTAL PROTECTION  
18 AGENCY; DEPARTMENT OF  
JUSTICE; OFFICE OF THE  
19 INSPECTOR GENERAL; LISA P.  
JACKSON; REBECCA ANNE BATTS;  
STAN SPEAKS; ERIC H. HOLDER,

1 JR.; KENNETH L. SALAZAR;  
2 ROBERT ABBEY; MICHAEL R.  
3 BROMWICH; DAWN MINING  
4 COMPANY, LLC; NEWMONT USA  
5 LIMITED; WASHINGTON WATER  
6 POWER/AVISTA; ONB BANK AND  
7 TRUST; ESTATE OF WILLARD  
8 SHARPE,  
9 Defendants.

10 Plaintiff Donnelly R. Villegas, an enrolled member of the Spokane Tribe of  
11 Indians, alleges as follows:

### 12 I. INTRODUCTION

13 1. Plaintiff owns an undivided interest in what was once some of the  
14 most valuable real estate in America: Allotment No. 156 (the "Allotment"). It is  
15 no longer valuable. Plaintiff's land once contained several million tons of high-  
16 grade, if not the highest grade, uranium ore. Because of Defendants' actions, today  
17 it cannot even be logged, let alone mined. Indeed, today Plaintiff's land cannot be  
18 used for economic, cultural, or any other purposes.

19 2. The United States, ONB Bank and Trust, and Willard Sharp were  
each charged with trust fiduciary duties to tend to Plaintiff's financial and other  
interests in the Allotment. Each of these Defendants failed to properly carry out  
their fiduciary obligations to Plaintiff. In dereliction of the duties of exacting care,  
loyalty, honesty and good faith that they owed to Plaintiff, the United States, ONB

1 Bank and Trust, and Willard Sharp allowed Dawn Mining Company, LLC, and  
2 Newmont USA Limited (collectively, “Dawn/Newmont”) and Washington Water  
3 Power/Avista to be unjustly enriched – at Plaintiff’s expense.

4 3. Dawn/Newmont and Washington Water Power/Avista have reaped  
5 extraordinary profit from Plaintiff’s land and minerals, without proper  
6 remuneration to Plaintiff. Dawn/Newmont and Washington Water Power/Avista  
7 have pillaged, if not destroyed, Plaintiff’s property, with careless disregard for  
8 Plaintiff and his rights. Plaintiff seeks proper remuneration and other redress for  
9 the harm that has been, and continues to be, inflicted upon him and his land, by  
10 Dawn/Newmont, Washington Water Power/Avista, and the United States.

11 4. Against the United States, its agencies, and officials, this is an action  
12 for (a) injunctive and declaratory relief regarding the lease and development of the  
13 Allotment; (b) the United States Government’s unconstitutional taking of valuable  
14 minerals, other resources, and rights in that land; (c) a lack of communication and  
15 thus Plaintiff’s informed consent regarding the actions taken on that land and  
16 impairment of Plaintiff’s interests in the land; and (d) other claims for injunctive  
17 and declaratory relief, as stated herein.

18 5. This action also states claims against Dawn/Newmont for damages  
19 stemming from Dawn/Newmont’s breaches of contract and tortious acts committed  
on the Allotment.



1 the claims occurred in this District and because the property in question is located  
2 in this District.

3 11. Plaintiff's action for declaratory relief is authorized by FED. R. CIV.  
4 PROC. 57 and by 28 U.S.C. §§ 2201-2202. Plaintiff's action for injunctive relief is  
5 authorized by FED. R. CIV. PROC. 65.

6 12. Plaintiff's action for monetary damages is authorized by federal  
7 common law and the laws of the State of Washington.

### 8 **III. PLAINTIFF**

9 13. Plaintiff Donnelly R. Villegas is an enrolled member of the Spokane  
10 Tribe of Indians and a resident of the State of Washington. Non-party Spokane  
11 Tribe of Indians is a federally recognized Indian Tribe. *See* Indian Entities  
12 Recognized and Eligible to Receive Services From the United States Bureau of  
13 Indian Affairs, 73 Fed. Reg. 18553, 18556 (Apr. 4, 2008).

### 14 **IV. DEFENDANTS**

15 14. Defendants Environmental Protection Agency; Office of the Inspector  
16 General; Bureau of Indian Affairs (BIA); Department of Justice; Department of the  
17 Interior; Bureau of Land Management; and Bureau of Safety and Environmental  
18 Enforcement (formally the formerly the Minerals Management Service), are  
19 agencies of Defendant the United States Government (hereinafter "Federal  
Defendants," collectively).

1 15. Defendant Lisa P. Jackson is the Administrator of the Environmental  
2 Protection Agency; Defendant Rebecca Anne Batts is the Inspector General;  
3 Defendant Stan Speaks is the Acting Superintendent of the Bureau of Indian  
4 Affairs for the Northwest Region; Defendant Eric H. Holder, Jr., is the Attorney  
5 General of the United States; Defendant Kenneth L. Salazar is the United States  
6 Secretary of the Interior; Defendant Robert Abbey is the Director of the Bureau of  
7 Land Management; and Defendant Michael R. Bromwich is the Director of the  
8 Bureau of Safety and Environmental Enforcement (formally the formerly the  
9 Minerals Management Service). These individuals are sued in their official  
10 capacities only.

11 16. Defendant Dawn Mining Company, LLC is a limited liability company  
12 organized and existing under the laws of the State of Delaware.

13 17. Defendant Newmont USA Limited is a publicly traded corporation  
14 organized and existing under the laws of the State of Delaware.

15 18. Defendant Washington Water Power/Avista is a publicly traded  
16 corporation organized and existing under the laws of the State of Washington.

17 19. Defendant ONB Bank and Trust is a private company organized and  
18 existing under the laws of the State of Oklahoma.

19 20. Willard J. Sharpe, now deceased, was the attorney charged with  
managing most of Plaintiff's trust accounts. Because Mr. Sharpe was a resident of

1 the State of Washington, his estate is a resident of Washington, where the decedent  
2 resided.

3 **V. FACTS**

4 21. Under longstanding constitutional, statutory and federal common law,  
5 and based upon the historic relationship between Defendant United States and  
6 Indian tribes, the United States assumed the obligations and duties of a trustee by  
7 establishing and maintaining comprehensive regulatory control of funds derived  
8 from tribal trust lands and resources. Defendant United States owes a trust duty to  
9 tribal members. In the exercise of that trust duty, Federal Defendants are held to  
10 the most exacting fiduciary standards.

11 22. In the early to mid 1800s the United States acquired title to some  
12 lands formerly occupied by Indians through treaties “in which the tribe ceded  
13 much of the land it occupied to the United States and reserved a smaller portion to  
14 itself (hence the term reservation).” WILLIAM C. CANBY, JR., AMERICAN INDIAN  
15 LAW 18-19 (4th Ed., 2004). Such was not the case with the Spokane Indians. No  
16 Treaty was signed by or between the United States and the Spokane Tribe  
17 concerning ownership or occupation of land formerly occupied by Spokane  
18 Indians.

19 23. The Spokane Indian Reservation was created on January 18, 1881, by  
an Executive Order of President Rutherford B. Hayes, whereby the land was

1 designated to be “set aside and reserved for the use and occupancy of the Spokane  
2 Indians.” “Indian reservations created by statute, agreement, or executive order  
3 generally have the same legal ramifications as those created by treaty.”  
4 *Timpanogos Tribe v. Conway*, 286 F.3d 1195, 1202, n.3 (10th Cir. 2002) (citing  
5 *United States v. Dion*, 476 U.S. 734, 745, n. 8 (1986)).

6 24. During the period of American Indian law and policy commonly  
7 referred to as the period of “assimilation,” the years between 1887 and 1934, the  
8 United States Congress passed a series of acts affecting the lands of the Spokane  
9 Indian Reservation. At this time, it was the policy of the federal government to  
10 break up Indian tribes and tribal lands. In the Congressional Act of May 27, 1902,  
11 the United States opened the mineral lands of the Spokane Reservation, providing  
12 that they “shall be subject to entry under the laws of the United States in relation to  
13 the entry of mineral lands.” In a subsequent act dated June 19, 1902, Congress  
14 directed the Secretary of the Interior to “make allotments in severalty to the Indians  
15 of the Spokane Indian Reservation in the State of Washington, and upon the  
16 completion of such allotments the President shall by proclamation give public  
17 notice thereof, whereupon the lands in said reservation not allotted to Indians or  
18 used or reserved by the Government, or occupied for school purposes, shall be  
19 opened to exploration, location, occupation, and purchase under the mining laws.”

1           25.    On May 29, 1908, Congress passed a statute entitled an “Act [t]o  
2 authorize the Secretary of the Interior to sell and dispose of the surplus unallotted  
3 agricultural lands of the Spokane Indian Reservation, Washington, and for other  
4 purposes.” The Act directed the Secretary of the Interior to make allotments to all  
5 Indians having tribal rights and belonging to the Spokane Indian Reservation who  
6 had not theretofore received allotments, and directed the Secretary of Interior to  
7 classify the surplus lands as agricultural and timber lands.

8           26.    These allotments were patented to individual Indians, with legal title  
9 thereto held by Defendant United States as trustee for the allottee.

10          27.    Pursuant to the Congressional instruction provided in the foregoing  
11 Acts of June 19, 1902, and May 29, 1908, Allotment No. 156, located on the  
12 Spokane Reservation, was issued to Edward Boyd on January 24, 1910. The  
13 issuing instrument states, in part:

14           [T]he UNITED STATES OF AMERICA, in consideration of the  
15 premises, has allotted, and by these presents does allot, unto the said  
16 Edward Boyd the land above described, and hereby declares that it  
17 does and will hold the land thus allotted (subject to all statutory  
18 provisions and restrictions) for the period of twenty-five years, in trust  
19 for the sole use and benefit of the said Indian, and at the expiration of  
said period the United States will convey the same by patent to said  
Indian, in fee, discharged of said trust and free from all charge and  
incumbrance whatsoever, if said Indian does not die before the  
expiration of the trust period; but in the event said Indian does die  
before the expiration of said trust period, the Secretary of the Interior  
shall ascertain the legal heirs of said Indian and either issue to them in

1 their names a patent in fee for said land, or cause said land to be sold  
2 for the benefit of said heirs as provided by law.

3 28. The Boyd Allotment consisted of 120 acres, originally located at  
4 “[t]he northwest quarter of the southeast quarter and the east half of the southwest  
5 quarter of Section twelve in Township twenty-eight north of Range thirty-seven  
6 east of the Willamette Meridian, Washington.”

7 29. On February 21, 1939, Edward Boyd died intestate and his interest in  
8 the allotment was divided between his spouse and six children.

9 30. In a direct breach of the statement issuing the Allotment, the fee title  
10 to the patent “free from all charge and incumbrance whatsoever” was never issued  
11 to Edward Boyd.

12 31. Between March 31, 1946, and March 20, 1956, many of Edward  
13 Boyd’s heirs died intestate and their interests in the allotment gradually became  
14 concentrated in Lucy and Richard Boyd.

15 32. The land on which Defendant Dawn/Newmont’s “Midnite Mine” was  
16 subsequently located was that part of the original Spokane Reservation that was  
17 not allotted, plus the Boyd allotted land.

18 33. On July 15, 1954, Defendant Dawn Mining Company leased from the  
19 United States approximately 571 acres of Spokane Indian Reservation lands for  
mining uranium. Floyd H. Phillips, Superintendent of Defendant United States

1 Department of Interior's Colville Indian Agency, entered into the mining lease "for  
2 and on behalf of the Spokane Tribe of Indians." The lease was later approved by  
3 the Acting Director of Defendant United States Bureau of Indian Affairs.

4 34. Defendant United States facilitated the execution of the mining leases  
5 at a rushed and hurried time when the United States' urgent need for nuclear  
6 materials during the "Cold War" corresponded with the discovery of uranium  
7 mineralization on the Spokane Reservation.

8 35. On June 22, 1956, despite Edward Boyd's interest in the allotment  
9 being held by Lucy and Richard Boyd through inheritance, the Superintendent of  
10 the Colville Indian Agency, acting as "attorney-in-fact for the legal heirs of  
11 Edward Boyd, deceased" leased the 120-acre allotment to Dawn/Newmont for a  
12 period of 15 years, because, according to the Superintendent, "the individual  
13 Indian ownership was not entirely clear due to pending probate." On June 25,  
14 1956, the Acting Area Director of Defendant BIA approved the mining lease of the  
15 Boyd property.

16 36. This lease was not approved by its legal allottees, the heirs of Edward  
17 Boyd, Lucy and Richard Boyd, nor were they consulted or otherwise made known  
18 of the disposition of their properties via the lease.

19 37. The leases, *inter alia*, provided Defendant United States Secretary of  
the Interior with the authority to suspend operations; to collect a bond; to inspect

1 the property; to approve the lessee's attempt to terminate the lease upon a  
2 satisfactory showing that full provision had been made for the conservation and  
3 protection of the property; and to terminate the lease for violations of the lease's  
4 terms and conditions.

5 38. The lease required Defendant Dawn/Newmont to pay annual rents  
6 and royalties directly to the Superintendent, who would then issue rents and  
7 royalties to the allottees, and to submit monthly reports to the Superintendent  
8 detailing all mining operations. In addition, the Superintendent was to direct audits  
9 of the lessee's accounts and books.

10 39. Specifically, the lease required that "the ore grade assays for each lot  
11 shall be adjusted to the nearest 0.01 percent of U<sub>3</sub>O<sub>8</sub> content and applied . . . to  
12 ascertain the dollar value per dry ton of crude uranium."

13 40. Upon information and belief, at some point in 1961 the posts marking  
14 the Allotment were moved from their original placement, thereby defrauding  
15 Plaintiff of the fruits of those more valuable lands since that fraud and taking were  
16 committed.

17 41. On September 18, 1964, Edward Boyd's remaining heirs to the  
18 Allotment, "Ortencia Anne Ford; the Superintendent of the Colville Indian Agency  
19 on behalf of Donnelly Robert Villegos [sic], a minor; and the Old National Bank of

1 Spokane, as Guardian of the Estate of Richard Boyd” entered into a mining lease  
2 with Dawn/Newmont for another ten-year stretch with the same terms.

3 42. In an Order Approving Compromise, *In the Matter of the Estates of*  
4 *Richard Boyd*, dated May 4, 1973, a one-half interest in the 120 acres covered by  
5 the lease with Defendant Dawn Mining Company was awarded to the Spokane  
6 Tribe, with the remaining 60-acre interest retained by Plaintiff’s sister, Ortencia  
7 Ford, and Plaintiff. Also as part of a probate settlement, Plaintiff was awarded an  
8 interest in stockpiles of high-grade uranium located in Ford, WA.

9 43. The funds derived from the interests awarded to Plaintiff in the  
10 probate settlement were to be paid into an account managed by non-Federal  
11 Defendants William J. Sharpe and ONB Bank and Trust only until October 1,  
12 1974. Federal Defendant BIA continued to pay Defendants William J. Sharpe and  
13 ONB Bank and Trust until March of 1978, however. Plaintiff never received those  
14 funds.

15 44. Defendant Dawn/Newmont paid its rents and royalties directly to  
16 Defendant Bureau of Indian Affairs, and Defendant Mineral Management Service  
17 was charged with conducting audits of those rents and royalties. The Mineral  
18 Management Service was also charged with monitoring the status of the Midnite  
19 Mine’s reclamation fund, which was maintained by Dawn/Newmont.

1 45. Defendant Bureau of Indian Affairs was charged with supervising the  
2 Midnite Mine's surety bond.

3 46. Defendant Bureau of Indian Affairs is "charged with fulfilling the  
4 trust obligations of the United States' to Indians." *Poafpybitty v. Skelly Oil Co.*,  
5 390 U.S. 365, 374 (1968).

6 47. Defendant Bureau of Land Management was obligated to cooperate  
7 with other agencies – specifically, Defendants Environmental Protection Agency  
8 and Bureau of Indian Affairs – to ensure compliance with all federal laws and  
9 Indian trust obligations.

10 48. The failure of Federal Defendants to award full payment for uranium  
11 processing has been ongoing, and continues to this day.

12 49. The failure of Federal Defendants to hold Allotment lessees  
13 accountable to Plaintiff has been ongoing, and continues to this day.

14 50. The failure of Federal Defendants to provide accounts and records  
15 pertaining to these leases/royalty payments has been ongoing, and continues to this  
16 day.

17 51. Charges against Plaintiff's trust account have been drawn without  
18 explanation. Supposed explanations of those charges have been redacted on  
19 royalty ledgers issued by Federal Defendants. Federal Defendants have yet to  
show cause or offer an explanation for these redactions or charges.

1 52. At times, Defendant Dawn/Newmont operated on the Allotment  
2 without permission and/or under an expired lease. This occurred under the  
3 supervision and knowledge of Federal Defendants, in violation of federal law.

4 53. Once leasing agreements were signed, Defendant Dawn/Newmont  
5 breached, and continues to breach, those agreements. This occurred under the  
6 supervision and knowledge of Federal Defendants, in violation of federal law.

7 54. Defendant Dawn/Newmont has mixed low-grade ore with Plaintiff's  
8 high-grade ore without first paying Plaintiff for his ore, according to the  
9 agreement. This occurred under the supervision and knowledge of Federal  
10 Defendants, in violation of federal law.

11 55. Defendant Dawn/Newmont has placed Plaintiff's funds into an  
12 escrow account and charged Plaintiff for reclamation and restoration of the mine,  
13 backdated to October 1, 1974. This occurred under the supervision and knowledge  
14 of Federal Defendants, in violation of federal law.

15 56. Defendant Dawn/Newmont has been manipulating, and continues to  
16 manipulate, the "grade" of its ore, royalties, interest, and taxes in order to defraud  
17 Plaintiff. Defendant Dawn/Newmont has also been under-measuring, and  
18 continues to under-measure, Plaintiff's ore in order to defraud Plaintiff. This  
19 occurred and continues to occur under the supervision and knowledge of Federal  
Defendants, in violation of federal law.

1           57. Defendant Dawn/Newmont has charged over \$5 per pound of  
2 uranium profits for reclamation and restoration, while the lease agreement  
3 specifically states that these charges will not be taken out of Plaintiff's payments.  
4 This occurred under the supervision and knowledge of Federal Defendants, in  
5 violation of federal law.

6           58. Defendant Dawn/Newmont has charged Plaintiff for services, such as  
7 heating its facilities, under the guise of "chemical costs" that were paid by  
8 Plaintiff. This occurred under the supervision and knowledge of Federal  
9 Defendants, in violation of federal law.

10           59. Defendant Dawn/Newmont is currently utilizing a right-of-way  
11 through Plaintiff's Allotment, but has not compensated Plaintiff for its use. This  
12 has occurred and continues to occur under the supervision and knowledge of  
13 Federal Defendants, in violation of federal law.

14           60. Federal Defendants are currently utilizing a right-of-way through  
15 Plaintiff's Allotment, but have not compensated Plaintiff for its use.

16           61. At some point not yet known, Defendant Washington Water  
17 Power/Avista constructed power lines over the Allotment. This occurred under the  
18 supervision and knowledge of Federal Defendants, in violation of federal law.

19           62. Plaintiff was not aware of Defendant Washington Water  
Power/Avista's use of the Allotment, did not approve of the use, and was not

1 consulted by Washington Water Power/Avista, Federal Defendants, or any other  
2 agency/company regarding the use of Allotment No. 156.

3 63. Upon information and belief, Federal Defendants have processed at  
4 least two stockpiles of Plaintiff's uranium, interests in which were awarded to  
5 Plaintiff in the May 4, 1973 probate settlement, which sold for \$550,000 and  
6 \$1,300,000, but for which Plaintiff received a little over \$1,000 in royalties.

7 64. Upon information and belief, Federal Defendants have sold at least  
8 one stockpile of Plaintiff's uranium to Defendant Dawn/Newmont for a sum of  
9 approximately \$1.3 million. Although Plaintiff was entitled to the full amount of  
10 this payment, interests in which were awarded to Plaintiff in the May 4, 1973  
11 probate settlement, Plaintiff was paid a mere \$6,095.52.

12 65. Federal Defendants have failed to account for the remaining  
13 stockpiles of uranium that Plaintiff has rights in.

14 66. Upon information and belief, those stockpiles have either been lost,  
15 destroyed, or will soon be destroyed, as a direct result of Federal Defendants' acts  
16 and/or omissions.

17 67. Upon information and belief, there currently exist at least seven (7)  
18 stockpiles at the mine site – which were either separated from Plaintiff's Allotment  
19 or in which Plaintiff has an interest in – which have been there and leaching prior  
to 1981, but for which Plaintiff has never received any royalties.

1 68. Defendant United States has held fee title to the Allotment for the use  
2 and benefit of Plaintiff and Plaintiff's decedents from January 24, 1910, until the  
3 present.

4 69. Dawn/Newmont's Midnite Mine closed in 1981, and is currently the  
5 subject of a \$152-million environmental cleanup project.

6 70. The damage to Plaintiff's Allotment, caused by Federal and non-  
7 Federal Defendants is substantial. According to a recent article in the *Seattle*  
8 *Times*,

9 The two mines and the mill were filled with tons of radioactive debris.  
10 At the bottom of one of two giant pits at the Midnite Mine, a small  
11 lake contains a brew of toxic metals and radiation so poisonous the  
12 eerily blue water is virtually sterile. Roads along the 18-mile route  
13 from the Midnite Mine to the mill were littered with spots that set  
14 Geiger counters whirring. So did driveways at homes, built from  
15 crushed ore hauled from the mine. Uranium and other toxic metals  
16 leached into groundwater, and into the sand and water of several small  
17 streams feeding Blue Creek, which runs through the reservation, and  
18 eventually into the Spokane River. Fish in Blue Creek had high levels  
of heavy metals. The roots of plants growing around the mine had  
radioactive uranium levels as much as 11 times higher than plants  
from elsewhere in the area. The tribe should basically warn people  
away from fishing, hunting and berry-picking around Blue Creek  
because of prolonged contamination, says the U.S. Environmental  
Protection Agency. One scientific model used by the EPA concluded  
that someone living on food gathered in the Blue Creek drainage and  
using the water for sweat lodges had a 1-in-5 chance of getting cancer  
from the added radiation.

19 Warren Cornwall, *Radioactive Remains: The Forgotten Story of the Northwest's*  
*Only Uranium Mines*, SEATTLE TIMES, Feb. 24, 2008, available at

1 [http://seattletimes.nwsourc.com/html/pacificnw/2004191779\\_pacificpuranium24.](http://seattletimes.nwsourc.com/html/pacificnw/2004191779_pacificpuranium24.html)  
2 [html.](http://seattletimes.nwsourc.com/html/pacificnw/2004191779_pacificpuranium24.html)

3 71. In 2011, the BIA determined that portions of the Allotment could not  
4 be logged due to extensive damage to the Allotment, including the trees being  
5 “radioactive.”

6 **VI. FIRST CLAIM FOR RELIEF**  
7 (Unconstitutional Taking of Plaintiff’s Property Under the Fifth Amendment)

8 72. Plaintiff hereby incorporates all prior allegations by reference.

9 73. Although the legal title to the allotted land was retained by Defendant  
10 United States, under the immediate supervision of the Secretary of Interior,  
11 Plaintiff’s possessory rights are a recognized compensable ownership interest  
12 under the Fifth Amendment’s Takings Clause.

13 74. In a direct breach of the statement issuing the Allotment, the fee title  
14 to the patent “free from all charge and incumbrance whatsoever” was never issued  
15 to Edward Boyd.

16 75. On May 4, 1973, Plaintiff was awarded rights in stockpiled uranium.

17 76. Plaintiff has not been allowed access to this uranium, and the United  
18 States has yet to account for its whereabouts.

1 77. At some unknown date, Federal Defendants allowed Defendant  
2 Washington Water Power/Avista to construct power lines over Plaintiff's  
3 Allotment.

4 78. At some time in 1961, the posts marking the Allotment were moved  
5 from their original placement. The lands of the originally located Allotment are  
6 believed to be more valuable than lands to which the Allotment markings were  
7 moved.

8 79. An unconstitutional taking of property and rights therein exists where  
9 the government restricts the use or value of property or physically withholds or  
10 invades one's property.

11 80. Here, Federal Defendants have restricted the use and value of  
12 Plaintiff's Allotment, and physically invaded that property.

13 81. Federal Defendants have also restricted the use and value of  
14 Plaintiff's rights in stockpiled uranium and the Allotment, generally.

15 82. Federal Defendants have also restricted the use and value of Plaintiff's  
16 rights in standing timber on the Allotment.

17 83. Due to Federal Defendant's acts and/or omissions in allowing or  
18 taking part in the moving of the Allotment, Federal Defendants have devalued and  
19 physically invaded Plaintiff's property.

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1 **VII. SECOND CLAIM FOR RELIEF**  
2 (Breach of Contract and Breach of Fiduciary Duty)

3 84. Plaintiff hereby incorporates all prior allegations by reference.

4 85. Non-Federal Defendants and either Plaintiff, Plaintiff's deceased  
5 relatives, or Federal Defendants, as trustee on behalf of Plaintiff, entered into  
6 numerous leases, contracts, and agreements. These include, for instance, leases of  
7 Allotment properties between Plaintiff, Plaintiff's deceased relatives, or Federal  
8 Defendants as trustee on behalf of Plaintiff, and Defendant Dawn/Newmont.

9 86. Non-Federal Defendants ONB Bank and Trust and William J. Sharpe  
10 at times also served as trustee on behalf of Plaintiff and entered into numerous  
11 leases, contracts, and agreements and accepted payment and maintained accounts  
12 pursuant to those leases, contracts, and agreements.

13 87. Federal Defendants and non-Federal defendants breached these  
14 leases, contracts, and agreements on numerous occasions by, for instance:

15 a. Charging and/or overcharging Plaintiff for services not allowed  
16 by the leases, contracts, and agreements;

17 b. Operating on the Allotment without permission and/or under an  
18 expired lease;

19 c. Mixing low-grade ore with Plaintiff's high-grade ore without  
first paying Plaintiff for his ore;

- 1 d. Failing to enter the correct amount into Plaintiff's trust account;
- 2 e. Withdrawing, or allowing withdrawals against Plaintiff's trust
- 3 account improperly or without explanation;
- 4 f. Charging Plaintiff for reclamation and restoration;
- 5 g. Manipulating the "grade" of Plaintiff's ore, royalties, interest,
- 6 and taxes;
- 7 h. Allowing Plaintiff's timber to become irradiated to the point
- 8 that it cannot be logged.
- 9 i. Other breaches as alleged above.

10 88. In breaching and allowing breaches of contract to take place  
11 unabated, Federal Defendants have breached, and continue to breach, their trust  
12 duty to Plaintiff. In the exercise of that trust duty, the United States is held to the  
13 most exacting fiduciary standards. By allowing numerous breaches of contract to  
14 occur unabated, directly and negatively affecting Plaintiff, these standards were not  
15 fulfilled, in violation of federal law.

16 **VIII. THIRD CLAIM FOR RELIEF**  
17 (Fraud, Constructive Fraud, and Breach of Fiduciary Duty and Contract)

- 18 89. Plaintiff hereby incorporates all prior allegations by reference.
- 19 90. Non-federal Defendants have falsely represented their actions that  
they have taken upon Plaintiff's interests in the Allotment, as described above.

1 91. In breaching contracts and fiduciary obligations to Plaintiff, Federal  
2 and non-Federal Defendants have falsely represented the actions that they have  
3 taken upon Plaintiff's interests in the Allotment, as described above.

4 92. These misrepresentations were made in reference to material facts.

5 93. Plaintiff was induced into signing agreements with Federal and non-  
6 Federal Defendants as a direct result of justifiable reliance upon such  
7 misrepresentations.

8 94. The result of this reliance was to the detriment of Plaintiff.

9 **IX. FOURTH CLAIM FOR RELIEF**  
10 (Breach of Fiduciary Duty)

11 95. Plaintiff hereby incorporates all prior allegations by reference.

12 96. The Supreme Court and Ninth Circuit have continually recognized  
13 that the federal government is bound by a "distinctive obligation of trust" in its  
14 dealings with Indians.

15 97. The Indian Mineral Leasing Act and other federal statutes and  
16 regulations impose fiduciary responsibilities on the federal government for non-oil  
17 and gas leases, as well as extensive responsibilities on the federal government in  
18 leasing mineral right for the benefit of Indians in a detailed and comprehensive  
19 fashion.

1 98. Numerous leases, contracts, and agreements were approved by  
2 Federal Defendants, who owe a trust duty to Plaintiff to ensure that non-Federal  
3 Defendants do not act in breach of those leases, contracts, and agreements. In  
4 many instances, Federal Defendants' duties of supervision were laid out  
5 specifically in the leases, contracts, and agreements. These duties of supervision  
6 were breached.

7 99. The Secretary of the Interior and other Federal Defendants failed to  
8 fulfill their trust duties, as numerous leases, contracts, and agreements were  
9 breached by non-Federal Defendants, at Plaintiff's peril, under the direct  
10 supervision of Federal Defendants.

11 100. By allowing and taking part in the defrauding of Plaintiff by moving  
12 the Allotment from its original placement, Federal Defendants have breached  
13 numerous fiduciary duties, and violated of federal law, regulations, and the  
14 Constitution.

15 101. Federal Defendants have grossly mismanaged Plaintiff's royalties and  
16 paperwork pertaining thereto, from 1954 to the current day.

17 102. As trustee of Plaintiff's trust accounts, the United States owes –  
18 continuously and since the inception of the accounts – certain duties to Plaintiff as  
19 an account holder and trust beneficiary, including, but not limited to the duties:

1 a. to maintain adequate records of accounts; including, without  
2 limitation, records to the leases and other contractual agreements giving rise  
3 to income from allotments, and as to all other invests of trust monies;

4 b. to maintain adequate records as to the ownership of such  
5 accounts; including, without limitation, records as to the devolution of  
6 rights in and to such accounts, by assignment, bequest, devise, or otherwise;

7 c. to maintain adequate systems and controls to guard against  
8 error and dishonesty on the part of all Federal Defendants/non-Federal  
9 Defendants;

10 d. to invest such funds as permitted by law and to deposit them in  
11 such depositories as are permitted by law, to exercise prudence in the  
12 selection of such investments, and to maximize return on such investments  
13 as allowed by law;

14 e. to account regularly and accurately to the beneficiaries, to give  
15 them accurate information upon reasonable request, and to pay them on  
16 demand such amounts as they may be entitled to; and

17 f. to refrain from self-dealing and benefiting from the  
18 management of such funds.

19 103. Federal Defendants have consistently and egregiously failed to  
comply with these and other responsibilities of its role as a trustee, and continues

1 to do so, in continuous and ongoing breach of contract and fiduciary duty, and  
2 violation of federal law, regulations and the Constitution.

3 104. Non-Federal Defendants ONB Bank and Trust and William J. Sharpe  
4 also served as trustee on behalf of Plaintiff and accepted payment and maintained  
5 Plaintiff's accounts.

6 105. Defendants ONB Bank and Trust and William J. Sharpe owe a trust  
7 and fiduciary duty to account for Plaintiff's payments and accounts.

8 106. Defendants ONB Bank and Trust and William J. Sharpe have been  
9 unable to account for Plaintiffs payments and accounts, and/or have otherwise  
10 mismanaged those accounts or defrauded Plaintiff of his rights therein.

11 107. At times, Defendant ONB Bank and Trust ONB defrauded Plaintiff by  
12 insisting that Plaintiff pay anywhere from \$500 to \$5,000 per "phone call" to  
13 release his own funds.

14 108. As a result of these breaches of trust and fiduciary duties, Plaintiff  
15 has been denied at least \$500,000.00 in royalties and other funds, very likely more.  
16 However, due to the complicated character of these accounts, and based upon the  
17 fiduciary and trust relationship between the parties, without a true accounting of  
18 those records Plaintiff cannot know exactly the true state of his losses, what  
19 amounts should have been credited to him, what amounts should be credited to him  
in the future, or how much money has been diverted or converted to other uses.

1 109. Also resulting from Defendants' breach of trust, Plaintiff's right to  
2 the use and enjoy his Allotment has been diminished. This diminishment includes,  
3 but is not limited to, his ability to harvest standing timber on the Allotment.

4 **X. FIFTH CLAIM FOR RELIEF**  
5 (Trespass, Continuing Trespass, Trespass to Chattels, and Breach of Contract and  
6 Fiduciary Duties)

7 110. Plaintiff hereby incorporates all prior allegations by reference.

8 111. Plaintiff currently has, and has had, an interest in land and chattels  
9 located on the Allotment.

10 112. By intentionally and wrongfully invading, entering upon, interfering  
11 with, and damaging Plaintiff's interest in land and chattels located on the  
12 Allotment, Federal and non-Federal Defendants have caused damage to that land  
13 and those chattels. To the extent that these actions were by non-Federal  
14 Defendants, these actions occurred under the supervision and knowledge of  
15 Federal Defendants, who failed to intervene and in most instances sanctioned the  
16 conduct.

17 **XI. SEVENTH CLAIM FOR RELIEF**  
18 (Tortious Damage to the Environment)

19 113. Plaintiff hereby incorporates all prior allegations by reference.

1 114. As the direct and proximate result of Federal and non-Federal  
2 Defendants' tortious conduct, Plaintiff has suffered damage to his interest in the  
3 Allotment related to the environment, wildlife, natural resources, and land.

4 **XII. EIGHTH CLAIM FOR RELIEF**  
5 (Violation of the Administrative Procedures Act)

6 115. Plaintiff hereby incorporates all prior allegations by reference.

7 116. By failing to meaningfully consult with Plaintiff, during the  
8 reclamation and restoration process as well as when taking other actions  
9 throughout much of the life of Plaintiff's interest in the Allotment, Federal  
10 Defendants have violated numerous federal laws, regulations, and nondiscretionary  
11 mandates, including United States Presidential Executive Order 13175, numerous  
12 agency-specific laws, regulations, and nondiscretionary mandates; and the federal  
13 common law.

14 117. These acts and/or omissions resulted in numerous arbitrary and  
15 capricious decisions, most notably, the decision to encumber Plaintiff's interests in  
16 the Allotment, in violation of 5 U.S.C. § 706.

17 **XIII. JURY DEMAND**

18 118. Plaintiff hereby demands a trial by jury.

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**XIV. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Preliminarily and permanently enjoin all Defendants from further damaging, devaluing, and interfering with Plaintiff’s uranium and rights therein.

B. Declare the construction of power lines over Plaintiff’s Allotment to be an unconstitutional taking in violation of the Fifth Amendment.

C. Preliminarily and permanently enjoin Federal Defendants from any acts or omissions that affect the Plaintiff’s rights to Allotted properties without first initiating meaningful, informed, and prior consultation.

D. Award Plaintiff’s costs of suit, including, without limitation, attorneys’ fees under the Equal Access to Justice Act and under general principles of law and equity, and the fees and costs of expert assistance.

E. Award actual damages stemming from non-Federal Defendants breaches of contract, constructive fraud, and other damages as Plaintiff may be entitled.

F. Award such other, further, or different relief as Plaintiff may be entitled to in the premises.

**XV. LEAVE TO AMEND**

Plaintiff further reserves the right to seek leave to amend this Complaint to plead new parties, claims and/or allegations.

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DATED this 2nd day of January 2012.

s/Gabriel S. Galanda  
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