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8 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
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10 DONNELLY R. VILLEGAS, an
enrolled member of the Spokane Tribe of
Indians;
11 Plaintiff,

12 v.

13 UNITED STATES OF AMERICA;
14 DEPARTMENT OF THE INTERIOR;
BUREAU OF INDIAN AFFAIRS;
15 BUREAU OF LAND MANAGEMENT;
BUREAU OF SAFETY AND
16 ENVIRONMENTAL ENFORCEMENT
(FORMERLY THE MINERALS
17 MANAGEMENT SERVICE);
ENVIRONMENTAL PROTECTION
18 AGENCY; OFFICE OF NATURAL
RESOURCES REVENUE; LISA P.
19 JACKSON; STANLEY SPEAKS;
KENNETH L. SALAZAR; ROBERT
ABBAY; AND JAMES WATSON,

NO. 12 - 0001

FIRST AMENDED COMPLAINT

1 Defendants.
2

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

5 **I. INTRODUCTION**

6 1. This action arises out of Federal Defendants' continuing breaches of
7 inherent and statutory fiduciary duties owed to Plaintiff, including, but not limited
8 to: the duty to provide full and complete accounting of the administration,
9 management, and control of his trust properties, accounts, and assets; the duty to
10 correct trust accounts improperly accounted for and/or improperly managed; and
11 the duty to make those accounts whole.

12 2. Plaintiff owns an undivided interest in what was once some of the
13 most valuable real estate in America: Allotment No. 156 (the "Allotment"). It is
14 no longer valuable. Plaintiff's land once contained several million tons of the
15 highest-grade uranium ore. But because of Federal Defendants' actions, today it
16 cannot even be logged, let alone mined. Indeed, Plaintiff's land currently allows
17 little to no use or enjoyment, be it for economic or cultural purposes.

18 3. The United States is charged with trust fiduciary duties to correctly
19 administer, manage, and control Plaintiff's trust properties, accounts, and assets,
including the Allotment. But the United States failed to properly carry out its

1 fiduciary obligations to Plaintiff. In dereliction of the duties of care, loyalty,
2 honesty, and good faith that the United States owed to Plaintiff, the United States
3 allowed Dawn Mining Company, LLC, and Newmont USA Limited (collectively,
4 “Dawn/Newmont”) to be unjustly enriched – at Plaintiff’s significant expense.

5 4. Dawn/Newmont has reaped extraordinary profit from Plaintiff’s land
6 and minerals, without proper remuneration to Plaintiff. Dawn/Newmont has
7 pillaged, if not destroyed, Plaintiff’s property, with careless disregard for Plaintiff
8 and his rights.

9 5. Federal Defendants’ have a fiduciary duty to ensure that funds derived
10 from trust properties, accounts, and assets are invested prudently and that a return
11 on such investments is maximized.

12 6. Federal Defendants’ have a fiduciary duty to ensure that non-Federal
13 Defendants did not act in breach of leases, contracts, and agreements as they relate
14 to Plaintiff’s trust properties, accounts, and assets.

15 7. This is an action for declaratory and injunctive relief regarding the
16 administration, management, and control of monies derived from the Allotment.
17 Specifically, Plaintiff’s lawsuit seeks to enforce Federal Defendants’ fiduciary duty
18 to provide a well-maintained and thorough set of supporting information pertaining
19 to the administration, management, and control of his trust properties, accounts,
and assets.

1 **II. JURISDICTION**

2 8. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, which
3 confers original jurisdiction upon the District Courts in all civil actions arising
4 under the Constitution and laws of the United States. Plaintiff asserts claims
5 alleging violations of the laws of the United States, including the Supremacy
6 Clause of Article VI, § 2, and federal common law. *See Valentini v. Shinseki*, 860
7 F.Supp.2d 1079, 1101-1103 (C.D. Cal. 2012).

8 9. This Court also has jurisdiction pursuant to 28 U.S.C. § 1367, which
9 confers supplemental jurisdiction upon the District Courts as to all non-federal
10 claims “so related to claims in the action within such original jurisdiction that they
11 form part of the same case or controversy.”

12 10. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 28
13 U.S.C. § 1402 because a substantial part of the actions or omissions giving rise to
14 the claims occurred in this District and because the property in question is located
15 in this District.

16 11. Plaintiff’s action for declaratory relief is authorized by FED. R. CIV.
17 PROC. 57 and by 28 U.S.C. §§ 2201-2202. Plaintiff’s action for injunctive relief is
18 authorized by FED. R. CIV. PROC. 65.

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1 **III. PLAINTIFF**

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

7 **IV. DEFENDANTS**

8 13. Defendants Department of the Interior; Bureau of Indian Affairs
9 (“BIA”); Bureau of Safety and Environmental Enforcement (formally the Minerals
10 Management Service); and Office of Natural Resources Revenue, are agencies of
11 Defendant the United States Government.

12 14. Defendant Lisa P. Jackson is the Administrator of the Environmental
13 Protection Agency; Defendant Stanley Speaks is the Acting Superintendent of the
14 Bureau of Indian Affairs for the Northwest Region; Defendant Kenneth L. Salazar
15 is the United States Secretary of the Interior; Defendant Robert Abbey is the
16 Director of the Bureau of Land Management; and James Watson is the Director of
17 the Bureau of Safety and Environmental Enforcement (formally the formerly the
18 Minerals Management Service). These individuals are sued in their official
19 capacities only.

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V. FACTS

15. Under longstanding constitutional, statutory, and federal common law, and based upon the historic relationship between Defendant United States and Indian tribes, the United States assumed the obligations and duties of a trustee by establishing and maintaining comprehensive regulatory administration, management, and control of funds derived from tribal properties, accounts, and assets. Defendant United States owes a trust duty to tribal members. In the exercise of that trust duty, Federal Defendants are held to the most exacting fiduciary standards.

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

17. The Spokane Indian Reservation was created on January 18, 1881, by an Executive Order of President Rutherford B. Hayes, whereby the land was designated to be “set aside and reserved for the use and occupancy of the Spokane

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

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

19 19. On May 29, 1908, Congress passed a statute entitled an “Act [t]o
authorize the Secretary of the Interior to sell and dispose of the surplus unallotted

1 agricultural lands of the Spokane Indian Reservation, Washington, and for other
2 purposes.” The Act directed the Secretary of the Interior to make allotments to all
3 Indians having tribal rights and belonging to the Spokane Indian Reservation who
4 had not theretofore received allotments, and directed the Secretary of Interior to
5 classify the surplus lands as agricultural and timber lands.

6 20. These allotments were patented to individual Indians, with legal title
7 thereto held by Defendant United States as trustee for the allottee.

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

12 [T]he UNITED STATES OF AMERICA, in consideration of the
13 premises, has allotted, and by these presents does allot, unto the said
14 Edward Boyd the land above described, and hereby declares that it
15 does and will hold the land thus allotted (subject to all statutory
16 provisions and restrictions) for the period of twenty-five years, in trust
17 for the sole use and benefit of the said Indian, and at the expiration of
18 said period the United States will convey the same by patent to said
19 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
their names a patent in fee for said land, or cause said land to be sold
for the benefit of said heirs as provided by law.

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

5 23. On February 21, 1939, Edward Boyd died intestate and his interest in
6 the allotment was divided between his spouse and six children.

7 24. In a direct breach of the statement issuing the Allotment, it appears
8 that the fee title to the patent “free from all charge and incumbrance whatsoever”
9 was never issued to Edward Boyd.

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

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

16 27. On July 15, 1954, Dawn Mining Company leased from the United
17 States approximately 571 acres of Spokane Indian Reservation lands for mining
18 uranium. Floyd H. Phillips, Superintendent of Defendant United States
19 Department of Interior’s Colville Indian Agency, entered into the mining lease “for

1 and on behalf of the Spokane Tribe of Indians.” The lease was later approved by
2 the Acting Director of Defendant United States Bureau of Indian Affairs.

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

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

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

18 31. The leases, *inter alia*, provided Defendant United States Secretary of
19 the Interior with the authority to suspend operations; to collect a bond; to inspect
the property; to approve the lessee’s attempt to terminate the lease upon a

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

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

9 33. Specifically, the lease required that "the ore grade assays for each lot
10 shall be adjusted to the nearest 0.01 percent of U₃O₈ content and applied . . . to
11 ascertain the dollar value per dry ton of crude uranium."

12 34. On September 18, 1964, Edward Boyd's remaining heirs to the
13 Allotment, "Ortencia Anne Ford; the Superintendent of the Colville Indian Agency
14 on behalf of Donnelly Robert Villegos [sic], a minor; and the Old National Bank of
15 Spokane, as Guardian of the Estate of Richard Boyd" entered into a mining lease
16 with Dawn/Newmont for another ten-year stretch with the same terms.

17 35. In an Order Approving Compromise, *In the Matter of the Estates of*
18 *Richard Boyd*, dated May 4, 1973, a one-half interest in the 120 acres covered by
19 the lease with Dawn Mining Company was awarded to the Spokane Tribe, with the
remaining 60-acre interest retained by Plaintiff's sister, Ortencia Ford, and

1 Plaintiff. Also as part of a probate settlement, Plaintiff was awarded an interest in
2 stockpiles of high-grade uranium located in Ford, WA.

3 36. The funds derived from the interests awarded to Plaintiff in the
4 probate settlement were to be paid into an account managed by Willard J. Sharpe
5 and ONB Bank and Trust only until October 1, 1974. Federal Defendant BIA
6 continued to pay Defendants Willard J. Sharpe and ONB Bank and Trust until
7 March of 1978, however. Plaintiff never received those funds.

8 37. Dawn/Newmont paid its rents and royalties directly to Defendant
9 Bureau of Indian Affairs, and Defendant Mineral Management Service was
10 charged with conducting audits of those rents and royalties. The Mineral
11 Management Service was also charged with monitoring the status of the Midnite
12 Mine's reclamation fund, which was maintained by Dawn/Newmont.

13 38. Defendant Bureau of Indian Affairs was charged with supervising the
14 Midnite Mine's surety bond.

15 39. Defendant Bureau of Land Management was obligated to cooperate
16 with other agencies – specifically, Defendants Environmental Protection Agency
17 and Bureau of Indian Affairs – to ensure compliance with all federal laws and
18 Indian trust obligations.

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

1 41. The failure of Federal Defendants to hold Allotment lessees
2 accountable to Plaintiff has been ongoing, and continues to this day.

3 42. The failure of Federal Defendants to provide accounts and records
4 pertaining to these leases/royalty payments has been ongoing, and continues to this
5 day.

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

10 44. At times, Dawn/Newmont operated on the Allotment without
11 permission and/or under an expired lease. This occurred under the supervision and
12 knowledge of Federal Defendants, in violation of federal law.

13 45. Once leasing agreements were signed, Dawn/Newmont breached, and
14 continues to breach, those agreements. This occurred under the supervision and
15 knowledge of Federal Defendants, in violation of federal law.

16 46. Dawn/Newmont has mixed low-grade ore with Plaintiff's high-grade
17 ore without first paying Plaintiff for his ore, according to the agreement. This
18 occurred under the supervision and knowledge of Federal Defendants, in violation
19 of federal law.

1 47. Dawn/Newmont has placed Plaintiff's funds into an escrow account
2 and charged Plaintiff for reclamation and restoration of the mine, backdated to
3 October 1, 1974. This occurred under the supervision and knowledge of Federal
4 Defendants, in violation of federal law.

5 48. Dawn/Newmont have been manipulating, and continue to manipulate,
6 the "grade" of its ore, royalties, interest, and taxes in order to defraud Plaintiff.
7 This occurred and continues to occur under the supervision and knowledge of
8 Federal Defendants, in violation of federal law.

9 49. Dawn/Newmont have charged over \$5 per pound of uranium profits
10 for reclamation and restoration, while the lease agreement specifically states that
11 these charges will not be taken out of Plaintiff's payments. This occurred under
12 the supervision and knowledge of Federal Defendants, in violation of federal law.

13 50. Dawn/Newmont have charged Plaintiff for services, such as heating
14 its facilities, under the guise of "chemical costs" that were paid by Plaintiff. This
15 occurred under the supervision and knowledge of Federal Defendants, in violation
16 of federal law.

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

1 52. Upon information and belief, Federal Defendants have sold at least
2 one stockpile of Plaintiff's uranium to Dawn/Newmont for a sum of approximately
3 \$1.3 million. Although Plaintiff was entitled to the full amount of this payment,
4 interests in which were awarded to Plaintiff in the May 4, 1973 probate settlement,
5 Plaintiff was paid a mere \$6,095.52.

6 53. Federal Defendants have failed to account for the remaining
7 stockpiles of uranium, interests in which were awarded to Plaintiff in the May 4,
8 1973, probate settlement.

9 54. Defendant United States has held fee title to the Allotment for the use
10 and benefit of Plaintiff and Plaintiff's decedents from January 24, 1910, until the
11 present.

12 55. Dawn/Newmont's Midnite Mine closed in 1981, and is currently the
13 subject of a \$152 million environmental cleanup project.

14 56. The damage to Plaintiff's Allotment, caused by Federal and non-
15 Federal Defendants is substantial. According to a recent article in the Seattle
16 Times,

17 The two mines and the mill were filled with tons of radioactive debris.
18 At the bottom of one of two giant pits at the Midnite Mine, a small
19 lake contains a brew of toxic metals and radiation so poisonous the
 eerily blue water is virtually sterile. Roads along the 18-mile route
 from the Midnite Mine to the mill were littered with spots that set
 Geiger counters whirring. So did driveways at homes, built from
 crushed ore hauled from the mine. Uranium and other toxic metals

1 leached into groundwater, and into the sand and water of several small
2 streams feeding Blue Creek, which runs through the reservation, and
3 eventually into the Spokane River. Fish in Blue Creek had high levels
4 of heavy metals. The roots of plants growing around the mine had
5 radioactive uranium levels as much as 11 times higher than plants
6 from elsewhere in the area. The tribe should basically warn people
7 away from fishing, hunting and berry-picking around Blue Creek
8 because of prolonged contamination, says the U.S. Environmental
9 Protection Agency. One scientific model used by the EPA concluded
10 that someone living on food gathered in the Blue Creek drainage and
11 using the water for sweat lodges had a 1-in-5 chance of getting cancer
12 from the added radiation.

13 Warren Cornwall, *Radioactive Remains: The Forgotten Story of the Northwest's*
14 *Only Uranium Mines*, SEATTLE TIMES, Feb. 24, 2008, available at
15 [http://seattletimes.nwsourc.com/html/pacificnw/2004191779_pacificpuranium24.](http://seattletimes.nwsourc.com/html/pacificnw/2004191779_pacificpuranium24.html)
16 [html.](http://seattletimes.nwsourc.com/html/pacificnw/2004191779_pacificpuranium24.html)

17 57. In 2011, the BIA determined that portions of the Allotment could not
18 be logged due to extensive damage to the Allotment, including the trees being
19 “radioactive.”

20 58. Congress has designated the Secretary of the Department of the
21 Interior as being primarily responsible for the management of Indian affairs
22 generally. 43 U.S.C. § 1457. As such, the Secretary of the Interior is the primary
23 trustee of tribal trust properties, accounts, and assets. *See* 25 U.S.C. § 4011. The
24 Interior Secretary in turn has delegated his or her authority to several agencies

1 within the Interior Department. Historically this delegation primarily was to the
2 BIA.

3 59. With respect to the investment and certain other duties applicable to
4 particular tribal trust properties, accounts, and assets, Congress also has designated
5 the Secretary of the Department of the Treasury as the trustee of such trust funds.
6 *See e.g.* 25 U.S.C. §§ 155 and 161a(a).

7 60. Despite the federal government's well-established responsibilities,
8 “[o]ver the years, countless audit reports and internal studies have detailed a litany
9 of problems in BIA’s control and oversight of [Indian trust] accounts.” *U.S.*
10 *General Accounting Office, Testimony before the U.S. Senate Select Committee on*
11 *Indian Affairs, Financial Management, Status of BIA’s Efforts to Resolve Long-*
12 *Standing Trust Fund Management Problems* at 1 (Aug. 12, 1992).

13 61. To meet the standards required by law, any formal accounting of a
14 trust conducted by a trustee must include at least four basic processes. First is the
15 collection process, which entails the collection of all documents and records that
16 must be analyzed in order to prepare the accounting. Second is the accounting
17 process proper. In this stage, the trustee analyzes the documents and records it has
18 collected. Utilizing the information contained in such documents, the trustee
19 creates a detailed report describing the trustee’s conduct during the relevant time
period, including a description of each item of property within the trust corpus, all

1 items of property received into or disbursed from the trust, all income earned by
2 the trust, and all expenses paid by the trust. This report is the “accounting
3 statement.” Third is the reporting process, which entails the delivery of the
4 accounting statement to the beneficiaries of the trust. These three processes occur
5 sequentially. However, there is also a fourth process that occurs simultaneously
6 with the other three: the quality control process. During the collection process, the
7 quality control process consists of measures taken by the trustee to ensure that it is
8 collecting all documents and records necessary to perform an accounting, and that
9 the information contained in the documents and records it collects are reliable and
10 accurate. During the accounting process, the quality control process consists of
11 measures taken by the trustee to ensure that the accounting statement it prepares
12 accurately reflects all of the relevant information contained in the documents and
13 records it has collected. Finally during the reporting process, the quality control
14 process consists of measures taken by the trustee to ensure that all beneficiaries of
15 the trust receive the accounting statement prepared by the trustee, and that they are
16 furnished with all the information they need to make sense of the statement.

17 62. Upon information and belief, Defendants’ breaches and continuing
18 breaches of trust, including, but not limited to, their failure to correctly administer,
19 manage, and control Plaintiff’s trust properties, accounts, and assets, have resulted
and continue to result in harm to the Plaintiff as a trust beneficiary. However, the

1 extent of such harm is unknown to Plaintiff first and foremost because Defendants
2 never have provided Plaintiff with a well-maintained and thorough set of
3 supporting information pertaining to the administration, management, and control
4 of his trust properties, accounts, and assets.

5 63. Plaintiff has no adequate administrative remedies and have suffered
6 from final agency action that is arbitrary, capricious, an abuse of discretion, or
7 otherwise contrary to law, and from unlawful withholding of or unreasonably
8 delayed agency action. Only this Court can provide to Plaintiff the relief to which
9 he is entitled.

10 64. Defendants never have complied with the aforementioned inherent
11 fiduciary and statutory mandates.

12 VI. FIRST CLAIM FOR RELIEF

(Accounting for Profits, Documents Preservation, and Correction of Accounts)

13 65. Plaintiff hereby incorporates all prior allegations by reference.

14 66. Federal Defendants have failed to correctly administer, manage, and
15 control Plaintiff's trust properties, accounts, and assets.

16 67. Plaintiff seeks prospective and injunctive relief to compel Federal
17 Defendants to perform an accounting for profits, as required by the federal law.
18
19

1 68. The Administrative Procedures Act (“APA”), 5 U.S.C. §§ 701-706,
2 waives the United States’ sovereign immunity for claims seeking this type
3 nonmonetary relief.

4 69. As the trustee for tribal trust assets, Federal Defendants have an
5 inherent fiduciary duty to provide full and complete accountings of profits to
6 Indian beneficiaries. The obligation of a trustee to provide an accounting is a
7 fundamental principle governing the subject of trust administration. “[F]ederal
8 common law provides [Indian] plaintiffs with a . . . federal common law cause[] of
9 action [for an] accounting for profits” *Cayuga Indian Nation of N.Y. v.*
10 *Pataki*, 413 F.3d 266, 281 (2nd Cir. 2005) (quotation omitted).

11 70. Through numerous statutes and regulations, the United States
12 maintains comprehensive control over all significant actions occurring on the
13 Allotment. *See e.g.* Indian Nonintercourse Act, 25 U.S.C. § 177; Indian Long-
14 Term Leasing Act, 25 U.S.C. § 396; Indian Mineral Leasing Act of 1938, 25
15 U.S.C. §§ 396a-396g; Federal Oil & Gas Royalty Management Act, 30 U.S.C. §§
16 1701, *et seq.*; Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101, *et*
17 *seq.*; 25 U.S.C. § 152; 25 U.S.C. §§ 155, 155b; 25 U.S.C. §§ 311, 312, 318a, 319,
18 321, 323-28; 25 U.S.C. § 397; 25 U.S.C. §§ 398, *et seq.*; 25 U.S.C. § 399; 25
19 U.S.C. §§ 415-416j; 25 C.F.R. §§ 150-51; 25 C.F.R. § 162; 25 C.F.R. § 166;

1 Indian Trust Fund Management Reform Act, Pub. L. No. 103-412; 108 Stat. 4239
2 (1994); Act of June 13, 1930, 25 U.S.C. §§ 161-62.

3 71. The above-cited statutes and regulations have created heightened
4 responsibilities that are directly implicated in the unique fiduciary relationship
5 between the United States and individual Indian beneficiaries. These statutes and
6 regulations have, in other words, established specific rights-creating and duty-
7 imposing prescriptions that bear the hallmarks of a conventional fiduciary
8 relationship.

9 72. By creating such a relationship, Congress intended to impose on
10 trustees traditional fiduciary duties, including the requirement to keep and render
11 clear and accurate accounts with respect to the administration, management, and
12 control of Indian trust properties, accounts, and assets, including nonmonetary
13 assets. *See Martin v. Valley Nat'l Bank of Arizona*, 140 F.R.D. 291, 322 (S.D.N.Y.
14 1991) (“The common law recognizes an obligation on the part of the trustee to
15 provide full and accurate information to the beneficiary on his management of the
16 trust.”).

17 73. As a matter of law, Indian allottees are, like all trust beneficiaries,
18 entitled to receive the maximum benefit and return from the administration,
19 management, and control of their trust properties, accounts, and assets. In order to
comply with this duty, the administration, management, and control of an Indian

1 allottee's trust properties, accounts, and assets must rest on a well-maintained and
2 thorough set of supporting information to be provided to beneficiary at his or her
3 request via an accounting for profits.

4 74. Despite numerous requests, Federal Defendants have failed to provide
5 Plaintiff with an accounting for profits.

6 75. Plaintiff hereby demands an accounting of the administration,
7 management, and control of his trust properties, accounts, and assets, to include a
8 well-maintained and thorough set of supporting information as it relates to:

- 9 a. The collection and/or crediting of funds owed under leases,
10 sales, easements, and other transactions, including without limitation,
11 the collection and/or crediting of all money due, the auditing of
12 royalties, and the collection of interest on late payments;
- 13 b. The investment and management of trust funds;
- 14 c. The distributions and disbursement of trust funds, including
15 whether those assets were distributed to wrong persons and/or wrong
16 accounts;
- 17 d. Any excessive or improper administrative fees;
- 18 e. Deposits into wrong accounts;
- 19 f. Misappropriation;
- g. Funds withheld unlawfully and in breach of trust;

1 h. The loss of funds held in failed depository institutions,
2 including interest;

3 i. Any failure as trustee to control or investigate allegations of,
4 and obtain compensation for, theft, embezzlement, misappropriation,
5 fraud, trespass, or other misconduct regarding trust assets;

6 j. Any failure to pay or credit interest, including interest on
7 special deposit accounts and IIM Accounts;

8 k. Any loss of funds or investment securities, and the income or
9 proceeds earned from such funds and/or securities; and

10 l. Any failure to deposit and/or disburse funds in a timely fashion.

11 76. There is no applicable federal statute of limitations on an accounting
12 for profits claim. *Begay v. Pub. Serv. Co. of N.M.*, 710 F.Supp.2d 1161 (D.N.M.
13 2010). But even was there an applicable statute of limitations, Pub. L. No. 112-74
14 tolls all claims that “concern[] losses to or mismanagement of trust funds.” Here,
15 Plaintiff’s claim for an accounting for profits clearly “concerns losses to or
16 mismanagement of trust funds.”

17 77. Federal Defendants’ failure and continuing failure to provide Plaintiff
18 with full and complete accounting of his trust properties, accounts, and assets has
19 caused and will continue to cause Plaintiff irreparable injury because without such

1 accountings he is unable to determine whether his trust has been mismanaged
2 and/or improperly administered, resulting in losses and other harm to his trust.

3 78. Plaintiff is entitled to mandatory injunctive relief compelling Federal
4 Defendants to perform their duty and provide Plaintiff with full and complete
5 accounting of the administration, management, and control of his trust properties,
6 accounts, and assets, pursuant to the accounting standards ordered by this Court.

7 79. Ancillary to this demand for full and complete accountings, Plaintiff
8 is entitled to mandatory injunctive relief directing Federal Defendants to preserve
9 any and all *documents* concerning Plaintiff's trust properties, accounts, and assets,
10 including funds derived therefrom, that are in the custody, possession, or control of
11 Federal Defendants or their agents, contractors, or consultants. This does not
12 include, however, the preservation of any documents that might possibly interfere
13 with the EPA's cleanup of the Midnite Mine site, to the extent that any such
14 documents exist.

15 80. Plaintiff is entitled to mandatory injunctive relief compelling Federal
16 Defendants to correct Plaintiff's trust account balances in accordance with the
17 standards for full and complete accountings, and to make his accounts whole.

18 **VII. SECOND CLAIM FOR RELIEF**
19 (Violation of the Administrative Procedures Act)

81. Plaintiff hereby incorporates all prior allegations by reference.

1 82. Plaintiff has suffered legal wrongs and adverse effects and has been
2 aggrieved because of final agency action that is arbitrary, capricious, an abuse of
3 discretion, or otherwise contrary to law, and from unlawful withholding of or
4 unreasonably delayed agency action.

5 83. Plaintiff is entitled to have this Court decide all relevant questions of
6 law concerning the administration, management, and control of his trust properties,
7 accounts, and assets, and to have this Court issue corresponding declaratory and
8 other equitable relief.

9 84. Plaintiff is entitled to mandatory injunctive relief compelling Federal
10 Defendants to perform their duty and provide Plaintiff with full and complete
11 accounting of the administration, management, and control of his trust properties,
12 accounts, and assets, to include a well-maintained and thorough set of supporting
13 information, pursuant to accounting standards ordered by this Court.

14 85. Plaintiff is entitled to mandatory injunctive relief directing Federal
15 Defendants to preserve any and all *documents* concerning Plaintiff's trust
16 properties, accounts, and assets, including funds derived therefrom, that are in the
17 custody, possession, or control of Federal Defendants or their agents, contractors,
18 or consultants. This does not include, however, the preservation of any documents
19 that would possibly interfere with the EPA's cleanup of the Midnite Mine site, to
the extent that any such documents exist.

1 86. Plaintiff is entitled to mandatory injunctive relief compelling Federal
2 Defendants to correct Plaintiff's trust account balances in accordance with the
3 standards for full and complete accountings, and to make his accounts whole.

4 **VIII. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff respectfully prays for the following relief:

6 A. A determination that Federal Defendants are in violation of federal
7 common law and the Administrative Procedures Act.

8 B. A determination that Federal Defendants have been and continue to be
9 in breach of trust, negligent, or engaged in wrongful conduct regarding the
10 administration, management, and control Plaintiff's trust properties, accounts, and
11 assets.

12 C. A declaration that Federal Defendants have never provided Plaintiff
13 with full and complete accounting of the administration, management, and control
14 Plaintiff's trust properties, accounts, and assets as required by law.

15 D. A declaration of the accounting standards governing full and complete
16 accounts of the administration, management, and control Plaintiff's trust
17 properties, accounts, and assets.

18 E. A mandatory injunction compelling Federal Defendants to provide
19 Plaintiff with full and complete accounting of the administration, management, and
control Plaintiff's trust properties, accounts, and assets.

1 F. A mandatory injunction immediately directing Federal Defendants to
2 preserve any and all documents concerning Plaintiff's trust properties, accounts,
3 and assets, including funds derived therefrom, which are in the custody,
4 possession, or control of Federal Defendants or their agents, contractors, or
5 consultants, not inclusive of any documents that might possibly interfere with the
6 EPA's cleanup of the Midnite Mine site, to the extent that any such documents
7 exist.

8 G. A mandatory injunction compelling Federal Defendants to correct
9 Plaintiff's trust account balances and to make the accounts whole as if there had
10 been no breaches of trust, negligence, or wrongdoing by Federal Defendants, up to
11 and including the date of entry of final judgment in this action.

12 H. A mandatory injunction directing Federal Defendants to develop and
13 implement an adequate, efficient, and reasonably timely plan and process for
14 implementing and achieving the relief granted.

15 I. A declaration that this Court shall retain continuing jurisdiction to
16 supervise and effectuate Federal Defendants' implementation and achievement of
17 the relief granted.

18 J. An award of Plaintiff's costs of suit, including, without limitation,
19 attorneys fees and other costs under the Equal Access to Justice Act, 28 U.S.C. §

1 2412, and attorneys fees, expert witness costs, and other costs as allowed by law
2 and equity.

3 K. Such other, further, or different relief as may be just and equitable.

4 **IX. JURY DEMAND**

5 87. Plaintiff hereby demands a jury.

6 **X. LEAVE TO AMEND**

7 88. Plaintiff further reserves the right to seek leave to amend this
8 Complaint with new claims and/or allegations.

9 DATED this 1st day of March 2013.

10 s/ Gabriel S. Galanda

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11 Anthony S. Broadman, WSBA #39508

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