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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 WINNEMUCCA INDIAN COLONY, *et al*,

13 Plaintiffs,

14 v.

15 UNITED STATES OF AMERICA *ex rel.*
16 Department of THE INTERIOR, *et al*,

17 Defendants.

18 Case No. 3:11-cv-622-RCJ-VPC

19 **PLAINTIFFS' STATUS REPORT;**
20 **REQUEST FOR**
21 **ACKNOWLEDGMENT OF**
22 **AUTHORITATIVE RULINGS;**
23 **AND REQUEST TO SET**
24 **MATTER FOR A HEARING**
25 **SOMETIME AFTER MARCH 1,**
26 **2018.**

27 Now comes Plaintiffs, the Winnemucca Indian Colony, by and through its duly
28 appointed Council, and respectfully submit this Status Report; Request for
Acknowledgment of Authoritative Ruling;¹ and Request to Set Hearing sometime after
March 1, 2018. In support of these requests, Plaintiffs submit the Points and
Authorities that follow. Plaintiffs further rely upon the record in this matter and any
argument made to the Court.

29 DATED: 12/28/2017

/s/Treva J. Hearne

Treva J. Hearne, Esq. NV Bar #4450

30 ¹ Pursuant to Order dated 2/10/14 :“After the parties agree upon a neutral judge or the
31 Court selects one, that judge shall hear the tribal enrollment and election disputes, with
32 recourse to the Inter-Tribal Court of Appeals of Nevada. Once the disputes are final in
33 the Indian Courts, this Court will acknowledge the authoritative rulings for the
34 purposes of the present action.” [Doc. # 204, page 2 of 3]

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. BACKGROUND**

3 ***A. Litigation in This Court.***

4
5 This case was commenced in 2011, seeking an injunction against the BIA which
6 had once again threatened to arrest the properly enrolled members of WIC if they re-
7 entered their lands in Winnemucca, Nevada. WIC obtained both a Temporary
8 Restraining Order [Doc. # 9] and a Preliminary Restraining Order [Doc. # 57]. After
9 the initial Preliminary Injunction against the BIA, the Winnemucca Indian Colony
10 amended its complaint to further request that the BIA recognize a government of this
11 federally recognized Tribe which the BIA had failed and refused to do for over a decade.

12
13 Thus, another preliminary injunction was granted and finally, on September 24,
14 2012, after twelve years of litigation in tribal, federal and appellate courts, this
15 honorable Court entered an Order requiring the BIA to recognize a properly elected
16 government of this federally recognized Tribe. [Doc. # 105] The BIA did not follow the
17 Court's Order and recognize a government for this federally recognized Tribe until
18 December 2014. Since that recognition, the Colony Council has reviewed the
19 applications and enrolled three members since 2014. The Council held a neutrally
20 monitored election in 2016.

21
22 Because WIC could not agree with the BIA on the tribal judge to hear these
23 membership and election matters, the District Judge allowed submissions of names of
24 judges by both parties and appointed the judge recommended by the BIA, Timothy
25 Shane Darrington. The Court did this to stop parties from filing random actions in the
26 CFR Court or other courts. [Doc. # 151]
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1 This Court further ordered on February 10, 2014:

2 After the parties agree upon a neutral judge or the Court selects one, that
3 judge shall hear the tribal enrollment and election disputes, with recourse
4 to the Inter-Tribal Court of Appeals of Nevada. Once the disputes are
5 final in the Indian Courts, this Court will acknowledge the authoritative
6 rulings for the purposes of the present action.

7 [Doc. # 204, page 2 of 3] Now that all matters including the CFR matters are complete,
8 the Winnemucca Indian Colony respectfully requests that this Court acknowledge these
9 authoritative rulings and require that the letter and intent of these rulings be adopted
10 by the Secretary of the Interior.

11 ***B. Tribal Court Litigation.***

12 ***1. Tribal Court Appointed by The U.S. District Court and Agreed To***
13 ***By The Parties.***

14 On June 11, 2014, Allen Amber on behalf of Amelia Ayer, *et al*, filed action 14-001
15 in the Tribal Court appointed by this Court, entitled “Appeal to the Interim Council’s
16 failure to render a decision on the contests, protests and grievances to Council election
17 conducted on the June 29, 2013”. On 12-1-2014, Appellants filed action 14-002 in the
18 Tribal Court appointed by this Court, entitled “Complaint for Injunctive and Declaratory
19 Relief,” seeking relief from the election held October 25, 2014. Both of these actions had
20 at issue the determination of the proper government and membership of the
21 Winnemucca Indian Colony. However, procedurally inadequate and improper these
22 actions were, the Tribal Court and the Inter-Tribal Court of Appeals heard the cases
23 through argument and briefing.

24 WIC as defendant/appellee in these actions argued that the Plaintiffs, in order to
25 bring any action before the Tribal Court, had to properly apply for membership as
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1 directed by this Court. The Tribal Court dismissed both actions due to lack of personal
2 jurisdiction, lack of standing and lack of evidence by Order dated 1-16-2015. A true and
3 accurate copy of that Order is attached to this Status Conference Report as Exhibit “1”
4 and Plaintiffs request that the Court take judicial notice of the exhibits filed herewith
5 pursuant to Fed. R. Evid. 201(b).²

6
7 **2. Appeal to the Inter-Tribal Court of Appeals of Nevada**

8 Amelia Ayer, *et al*, filed appeals from the Tribal Court orders in both matters to
9 the Inter-Tribal Court of Appeals of Nevada (ITCA) on 1-27-2015, as provided for in
10 this Court’s 9/24/2012 Order, which were consolidated on appeal at the ITCN by order
11 dated 7-23-2015.

12
13 After full briefing and oral argument on 01/21/2016 before the ITCN, the Court
14 issued an opinion on 02/24/2016, remanding the matters to the trial court with
15 instructions that it enter an order and judgment dismissing each action, with prejudice,
16 and set aside its judgment awarding attorney fees and costs, with prejudice, and on
17 remand take no further action regarding fees.

18
19 On 03/07/2016, Amelia Ayer, et al, filed a Motion for Reconsideration with the
20 ITCA. WIC filed an Opposition on 03/17/2016 and Amelia Ayer, et al, filed a Reply on
21 04/06/2016. The ITCN issued its Order denying the Motion for Reconsideration on
22 04/10/2016 thus rendering all issues regarding the proper membership and
23
24

25 ² A fact is subject to judicial notice if it is “not subject to reasonable dispute in that it is either
26 (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate
27 and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”
28 Fed. R. Evid. 201(b). The Court “shall take judicial notice if requested by a party and supplied
with the necessary information” and such notice “may be taken at any stage of the proceeding.”
Id. at (d), (f). The Court may take judicial notice of matters of public record. *United States v.*
14.02 Acres of Land, 547 F.3d 943, 955 (9th Cir. 2008) (the court “may take judicial notice of
matters of public record”) (citations and internal quotation marks omitted).

1 government final. (Exhibit “2” and Exhibit “3”) Decisions of Inter-Tribal Court) Judge
2 Darrington issued his Order on Remand dismissing the two cases, with prejudice and
3 setting aside the award of attorney fees and costs, with prejudice, on
4 06/24/2016. (Exhibit “4”, Order on Remand of Judge Darrington)

5 **3. CFR Court Matters**

6
7 In April 2015, the Winnemucca Indian Colony chairman and its counsel met
8 with the BIA in Phoenix, Arizona to resolve the court recognition issues. The crux of
9 the problem stemming from 2000 is the recognition of the government and the
10 recognition of the court system of this sovereign Tribe. At the meeting in Phoenix, the
11 Colony Council stated that it would recognize the CFR Court for criminal matters and
12 the Tribal Court must be recognized for civil matters so that the Tribal Court of the
13 Winnemucca Indian Colony would be the forum for election and membership issues
14 and would not be one appointed by BIA. The BIA made a statement at that meeting
15 that a decision would be made within ninety days of the request for resolution of this
16 matter. Over two years have passed and BIA has failed and refused to resolve this
17 matter.
18
19

20 As a result of this failure by BIA to resolve the jurisdiction of the CFR Court, the
21 CFR Court at Ft. McDermott continued with its assigned civil docket that included
22 2013 cases filed by Allen Ambler challenging the same issues of membership and
23 election that were before the Tribal Court of Judge Darrington and the Inter-Tribal
24 Court of Appeals and one matter filed by William Bills which appeared to challenge
25 Tribal membership issues also although it wasn’t completely clear. The Colony was
26 required to brief these matters in order to get them dismissed.
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1 The William Bills matter was dismissed without prejudice in April 2017 and has
2 not been refiled. The Allen Ambler matters were continued for briefing and finally
3 dismissed with prejudice after full briefing and oral argument. Copies of the Orders
4 dismissing the last three pending CFR civil cases are attached as Exhibit 5.

5 The presence and appearance of jurisdiction in the CFR Court for civil matters is
6 duplicative, burdensome and costly for this fledgling Colony. The BIA is in breach of
7 its trust obligation to the Colony in its failure to resolve this dual jurisdiction matter.
8

9
10 **II. STATUS REPORT**

11 ***A. The Council for the Winnemucca Indian Colony has conducted***
12 ***regularly scheduled meetings plus special meetings in order to***
13 ***do all the work necessary to carry on the government.***

14 The Council meets every second Saturday of the month for its regular meeting.
15 Additional special meetings have been held in order to address specific and timely
16 actions. The Council has met with the Bureau of Indian Affairs in order to apply for
17 funding and improve police protection. The central and continuing issue before the
18 Council is that: **Although the BIA has increased police presence on the**
19 **Colony, it has failed and refused to remove the persons who live on the**
20 **Colony who are white and who are not qualified as members. The Colony**
21 **continues to be a trash dump and the BIA has refused to allow EPA to**
22 **enter the boundaries of the Colony's 20 acres to assess the hazardous and**
23 **solid waste contamination that exists.**

24 The inability of the Winnemucca Indian Colony to clean up its lands inhibits its
25 ability to move forward with any other effort at tribal independence. Moving any tribal
26 members onto the land is impossible, as is economic development and/or construction
27 of new administrative or other buildings. Cleaning up the property is the first and
28

1 foremost priority of the Council, yet BIA, as the only police force available, inhibits
2 every effort to do so.

3
4 ***B. The Election of 2016 was held and submitted to the BIA and the***
5 ***government was recognized.***
6

7 On October 23, 2016, an election was held by mail in ballot because of the
8 continued danger at the Winnemucca Indian Colony. The election was monitored by
9 Darryl Crawford of the Inter-Tribal Council of Nevada. The result was that the
10 following were elected to the Council: Eric Magiera, Judy Rojo, Katherine Hasbrouck,
11 Misty Morning Dawn Rojo and Mary Olivera.

12 After the election, the Council elected Eric Magiera as Chairman, Katherine
13 Hasbrouck as Vice-Chairman, Misty Morning Dawn Rojo as Secretary and Judy Rojo as
14 Treasurer. An election report is attached as Exhibit “6”. Since the election, Eric
15 Magiera had family considerations that required him to step down as Chairman and
16 Judy Rojo is again serving in that position.

17
18 Three new members have been added. More applications are pending but persons
19 entitled to be members have still been hesitant to apply because of the condition of the
20 twenty acres.
21

22 ***C. The administration building has been closed because of public***
23 ***health and safety considerations.***
24

25 The BIA required that an estimate of the repair costs to the Administration Building
26 be sought from licensed contractors. As a result of this inspection and bid, the Council
27 has closed the Administration Building because of mold and substandard electrical
28 wiring that is a public health hazard. The Building has been used for a few meetings

1 with supervision but the use of the building is not appropriate because of the
2 contamination and safety issues.

3 ***D. Police protection and enforcement.***

4 The residents have reported domestic violence and threats of bodily harm to
5 themselves by other residents. Recently, some residents have reported two deaths as a
6 result of alcohol and/or vehicle wrecks. The Chairman has passed these complaints on
7 to the BIA police.
8

9 In 2015, the Tribal Court, Judge Mark Mausert, issued an Order for the temporary
10 five-day eviction of persons living in hazardous and solid waste affected areas of the
11 Colony. The BIA refused to enforce the Court's Order thus the EPA has not been
12 willing to come to the 20 acres to clean up the solid and hazardous waste deposited
13 upon the grounds because the persons causing the hazards who are potentially violent
14 and aggressive have not been evicted from the Colony. Mr. Harry Allen of the EPA
15 stats that his agency has assessed the site and will clean up the health and safety hazard
16 as soon as the BIA police assure the safety and protection of the EPA agents upon the
17 property. When the BIA refused to allow the clean-up in 2015, the Council has
18 repeatedly requested that the BIA exclude the non-members and white persons causing
19 the conflict but the BIA has failed and refused to initiate actions to accomplish this.
20
21

22 It is now three years later and the Colony members still cannot enter their lands
23 without police protection. The BIA has engaged in delay rendering the recognition of
24 the government a cruel joke because they cannot go to their homelands and begin to
25 establish their Colony.
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III. REQUEST FOR HEARING

The reason that Plaintiffs request that a hearing on this matter take place after March 1, 2018 is to give the BIA a final chance to clean up the 20 acres and exclude those residents engaged in drug manufacturing and waste deposition upon the lands of the Winnemucca Indian Colony. In October 2017 the Council for the Colony passed a Resolution to remove certain non-Indians and non-members from the Colony. That Resolution, backed by an Amended Ordinance, has been provided to the BIA police to begin evictions of the persons dumping hazardous, solid and infectious waste upon the lands of the Winnemucca Indian Colony. Further, the Winnemucca Indian Colony has sought and received offers to assist in developing the land. Economic development on these lands will allow the Colony to grow and prosper without the need to seek BIA funding.

The BIA has directed that the Colony Council not to return to Winnemucca Indian Colony lands until later when the lands have been rendered “safe.” BIA made this statement without specifying when the members can return to their lands and when the occupiers will be evicted so that the lands can be assessed for hazards and cleaned up to a habitable condition. Giving the BIA this notice that the Court will review matters sometime after March 1, 2018, will hopefully provide the impetus that is needed to resolve this problem for the members of the Colony and the citizens and residents of the City of Winnemucca.

IV. CONCLUSION

Because all steps set forth in the Order dated 2/10/14, requiring that tribal enrollment and election disputes be resolved by a tribal court, with recourse to the

1 Inter-Tribal Court of Appeals of Nevada, have been resolved, Plaintiffs request that this
2 Court “acknowledge the authoritative rulings for the purposes of the present action.”

3 [Doc. # 204, page 2 of 3]

4 Due to the remaining issues of interference by BIA in the governance of the
5 Colony in defiance of this Court’s Orders and intent for the Colony to be recognized, the
6 Plaintiffs request that the Court schedule a hearing on the remaining issues set forth in
7 this Status Report after March 1, 2018.

8
9 Dated this 28th day of December, 2017.

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