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6  
7 UNITED STATES DISTRICT COURT

8 DISTRICT OF NEVADA

9 WINNEMUCCA INDIAN COLONY, et al.,

10 Plaintiffs,

11 v.

12 UNITED STATES OF AMERICA ex rel.  
THE DEPARTMENT OF THE INTERIOR,  
13 et al.,

14 Defendants.

Case No. 3:11-CV-00622-RCJ-VPC

**RESPONSE TO PLAINTIFFS' STATUS  
REPORT (ECF NO. 288)**

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

18 **BACKGROUND**

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

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

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

## 11 ARGUMENT

12 **A. Plaintiffs’ request that the Court “acknowledge” tribal rulings, and order the BIA**  
13 **to adopt “the letter and intent” of such rulings, should be denied as vague and**  
14 **ambiguous and, in any event, as unwarranted and unnecessary.<sup>1</sup>**

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

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23 <sup>1</sup> As a preliminary matter, Defendants repeat, and incorporate by reference, their previous  
24 arguments challenging subject matter jurisdiction in this action. (*See* Defendants’ motions to  
dismiss at ECF Nos. 15-16, 36 and 80).

1 the Court to “acknowledge” tribal rulings and order the BIA to “adopt” the “letter and intent” of  
2 such rulings should be denied.

3 **B. The Court lacks subject matter jurisdiction to decide the remaining issues raised in**  
4 **Plaintiffs’ status report.**

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

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

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

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

3 Even if the Court were to consider Plaintiffs’ assertions about issues unrelated to tribal  
4 leadership, Plaintiffs’ allegations about those issues would fail. Most of Plaintiffs’ allegations are  
5 not supported with record citations or evidence and thus those allegations should be disregarded.  
6 Plaintiffs also ask the Court to take judicial notice of six exhibits totaling 53 pages that Plaintiffs  
7 attach to their status report. (ECF No. 288, at p. 5 n.1). Plaintiffs provide only a terse and  
8 conclusory argument about why those exhibits should be subject to judicial notice. Under the  
9 circumstances, the Court should decline to invoke the judicial notice doctrine. *See United States*  
10 *v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990) (“It is not enough to merely mention a possible  
11 argument in the most skeletal way, leaving the court to do counsel’s work.”); *Costa County*  
12 *Deputy Sheriffs Association v. Mitchoff*, 2015 WL 1322577 \*2 (N.D. Cal. March 24, 2015)  
13 (requiring party who seeks judicial notice to explain relevance of documents); *Greenwood v. FAA*,  
14 28 F.3d 971, 977 (9th Cir. 1994) (“We will not manufacture arguments for an appellant[.]”). Even  
15 if the Court were to take judicial notice of Plaintiffs’ exhibits, the contents of those documents  
16 would still be inadmissible. *See Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001)  
17 (“when a court takes judicial notice of another court’s opinion, it may do so ‘not for the truth of  
18 the facts recited therein, but for the existence of the opinion, which is not subject to reasonable  
19 dispute over its authenticity’”). Accordingly, Plaintiffs’ unsupported allegations should be  
20 disregarded and Plaintiffs’ request that the Court take judicial notice of the information contained  
21 in Plaintiffs’ exhibits should be denied.

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1 **D. Contrary to Plaintiffs’ assertions, the BIA has been working with the Colony to**  
2 **address issues of concern to the Tribe.**

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

15 **CONCLUSION**

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

18 DATED: June 11, 2018.

Respectfully submitted,

19 DAYLE ELIESON  
20 United States Attorney

21 s/ Holly A. Vance  
22 HOLLY A. VANCE  
23 Assistant U.S. Attorney  
24

**CERTIFICATE OF SERVICE**

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

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DATED: June 11, 2018.

s/ Holly A. Vance  
HOLLY A. VANCE