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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TIMOTHY AARON JOHN, TRAVIS RAY JOHN, TIFFANY LYNNAE JOHN, and TYRONE FRED JOHN SHIRLEY L. PALMER, LESLIE L. PALMER, JALEEN M. FLOWERS, and JESSE WADE PALMER,

Plaintiffs,

v.

THE SECRETARY OF THE INTERIOR, through its Acting Assistant Secretary, BUREAU OF INDIAN AFFAIRS, its officers, servants, agents, employees, representatives, and attorneys,

Defendants.

Case No. 3:14-cv-247-RCJ-VPC

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

COMES NOW, Plaintiffs, TIMOTHY AARON JOHN, TRAVIS RAY JOHN, TIFFANY LYNNAE JOHN, TYRONE FRED JOHN, SHIRLEY L. PALMER, LESLIE L. PALMER, JALEEN M. FLOWERS, and JESSE WADE PALMER, Western Shoshone Indians, by and through their counsel, Reno Law Group, and move this Court to find summary judgment in their favor that the decision of the Secretary of the Interior to exclude these Plaintiffs from the Rolls of the Western Shoshone was arbitrary, capricious, violated the rules and policies of the agency and the decision

was made in contravention of the facts accepted by the Agency and adopted by the Plaintiffs' Tribe. In support of this Motion, the Plaintiffs refer to the Administrative Record submitted by the Defendants and the Supplemental Documents from the Defendants and the exhibits and affidavit attached as well as any arguments to the Court.

Dated this 14th day of May, 2018.

____//*Treva J. Hearne*//_____
Treva J. Hearne, Attorney for Plaintiffs

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I. Statement of the Issues

This action is initiated to prohibit the United States through the Department of the Interior, Bureau of Indian Affairs, from denying that these plaintiffs are 25% blood quantum Western Shoshone entitled to all rights granted with that status. This action is based upon the fact that the decision and the decision-making process of the Bureau of Indian Affairs was arbitrary and capricious, unreasonable and not based upon true and verifiable information. Further the decision was made in violation of the Bureau's adopted policy and directives and in clear error. The acts of the Assistant Secretary deprived the Plaintiffs of their due process rights and equal protection rights under the Constitution of the United States to be declared 25% blood quantum Western Shoshone based upon the best evidence available and, therefore, the Plaintiffs must be added to the Roll of the Western Shoshone forthwith.

This action is further based upon the failure of the Bureau of Indian Affairs, a federal agency, to respond to a request for information and documentation that was the basis of the government's decision thus depriving the Plaintiffs of full disclosure of the documents held by the Agency until days before this Motion was to be filed. The BIA has violated the law in its refusal to respond and its refusal to disclose the documentation and information to the Plaintiffs and their agents until years after the Plaintiffs' application. Further the Defendants have failed to give notice to the Plaintiffs that their blood quantum was challenged as early as 1977 in order for the Plaintiffs to answer to those false allegations.

The central issue of this challenge to the Administrative Agency's decision is a decision made in the 1980's. The United States Attorney deflects this argument

by stating that the present decision does not include the arbitrary and capricious decision made in the prior distribution. (See, quote of email from United States Attorney, Exhibit 1, Declaration of Treva J. Hearne) In fact, it does.

In 1977 the BIA determined that the descendants of Hattie Dyer were entitled to Norther Paiute Judgment Fund distribution because Hattie Dyer was ½ Paiute. Given the supplemental disclosure of May 8, 2018, it is evident that the BIA made this determination based upon a letter from an unknown person who made an entirely unsupported and unsworn statement. Every descendant since that time and the Tribal rolls have listed Hattie Dyer as 4/4 Shoshone. Further in 1999 the Agency confirmed the blood quantum of Hattie Dyer as 4/4 Shoshone. The BIA gave no notice to the family of Dorothy Austin that this challenge to the blood quantum of her mother had occurred.

Repeatedly in the record filed by the Agency in this matter, the notes to the file indicate that no sufficient evidence was filed to support the decision that Hattie Dyer was ½ Paiute. The supplemental documentation now provided to the Plaintiffs' counsel on May 8, 2018, would have been available to the Agency in 1980 and 1999 when employees of the Agency noted to the files of the Agency that insufficient evidence was submitted to change the blood quantum of Hattie Dyer.

This decision is critical to the decision made by the Agency in 1977. A 2010 decision based upon an arbitrary and capricious decision that was not supported by the facts and evidence in 1977, is, without doubt, an arbitrary and capricious decision in 2010.

II. STATEMENT OF FACTS

1. On October 1, 1863, the United States and the Western Shoshone Nation entered into a treaty identified as the Treaty with the Western Shoshone of

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1863, 18 Stat. 689, Ratified June 26, 1866, Proclaimed October 21, 1869 (hereafter, the Treaty of Ruby Valley or Treaty).

2. The only amendment to the Treaty is that the Senate filled in the blank in Article 8 with the word "five" to set the dollar amount of provisions and clothing that were to be paid to the Western Shoshone. The amounts filled in were never paid to the Western Shoshone.

3. The Western Shoshone Claims Distribution Act of July 7, 2004, Pub. L. 108-270, 118 Stat. 805 and Title 25 of the Code of Federal Regulations, Part 61 also referred to as Docket 326-K as passed by the United States Congress, was intended to resolve the failure of the United States to pay the Western Shoshone the amounts due under the Treaty of Ruby Valley.

4. The Bureau of Indian Affairs, Phoenix Regional Office was given the task of preparing the Rolls of Indians as directed by Section 61.4(k) which defined who would be eligible to receive distributions.

5. The Bureau of Indian Affairs adopted guidelines of what historical data would be used to determine the Rolls of Indians. (See, 25 CFR 61)

6. The historical data to be used was to consist of certain yearly census taken by the United States of America of its citizens and residents plus Tribal membership rolls as the primary supporting documentation of blood quantum. (See, 25 CFR 61)

7. The persons who were 25% Western Shoshone by blood quantum were eligible to be on the Roll of Indians for the Western Shoshone Settlement distribution. (25 CFR 61.4(k)(2)

8. The Plaintiffs herein submitted documentation on more than one occasion to

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prove that they are 25% Western Shoshone by blood quantum and eligible to be on the Roll of Indians. (Exhibit 2, Affidavit of Jennifer John and attachments)

9. Although Census earlier than 1940 were contradictory in listing the great grandparents of these Plaintiffs as Paiute or Shoshone, such contradictions were not unusual and often the tribal affiliation was omitted altogether. The Indian officials who were white around the turn of the century did not differentiate between Paiute and Shoshone accurately. This was taken into consideration by the Tribe and the 4/4 Shoshone status had never been challenged from the early Census of 1937. (Affidavit of Jennifer John)

10. By the January 1, 1937 Census Frank Dyer and Hattie Dyer were listed as Shoshone as were their children, **Dorothy,** Agnes, Johnson, George, Lillie, Marie, and Mike. A granddaughter was listed as ½ Shoshone, proving that partial blood quantum was a census denotation, if applicable. Thus if Hattie Dyer had been only ½ Shoshone, that would have been noted. (AR 51/52 "Indian Census Roll 1940, first line Leona Dyer, granddaughter, ½ S; also pa. 53/54 Indian Census Roll of 1937, Leona Mine now Hicks listed as ½ S)[1]

11. In the 1940 Census Albert Hicks was listed as Full Shoshone and his wife, Lorraine, as Full Paiute, which made their children, Theodore, Albert Jr., Thelma, Lillie, **Fred**, Floyd, Donald and Richard ½ Shoshone and ½ Paiute. Again, Frank and Hattie Dyer and their children were listed as 4/4 Shoshone

[1] The AR (Administrative Record) has copies of the historical documents eight times for each file of a Plaintiff. For convenience, this brief will refer to one page that contains the document rather than all eight pages of the AR that contain the document in most cases. Also, since the electronic numbering differs whether you are scrolling from the front of the document to the back, or back to front, this brief will cite the heading of the page in order to hopefully alleviate the confusion over which document is referred to in the AR.

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in 1940. (AR 1095 – 1097, Indian Census Roll of 1940)

12. On May 6, 1977, the daughter of Hattie Dyer sent a letter to someone with an attached statement of a 95 year old woman. The handwriting of the statement does not match the signature and there is no documented proof as to who this person was. The other documents show that Levi was a half brother who was Paiute/Shoshone making it more than possible that Hattie Dyer was 4/4 Shoshone and still his half-sister. (Declaration of Treva J. Hearne, Supplemental Documentation from United States Attorney, pp. 3, 4)

13. Further the Bureau of Indian Affairs, Western Nevada Agency certified on September 9, 1999, that Hattie Dyer was on the Fallon Census Role of 1940 as no. 87 and was Full Blood Shoshone. (Affidavit of Jennifer John, attachments, p. 30)

14. Sometime in 1977, the BIA determined that, based upon an unsworn reference in a BIA Probate proceeding, that Hattie Dyer was ½ Paiute. This reference was not supported by any documentation in the Administrative Record filed initially with this Court but was supplemented on May 8, 2018 by the United States Attorney after a request by the Plaintiffs' counsel. (Declaration of Treva J. Hearne, attachments, AR p. 27/28 "In the Matter of the Last Will and Testament of Hattie Dyer)

15. Hattie Dyer testified in that probate proceeding that she was a Shoshone Indian. (AR 29/30 "In the Matter of Hattie Dyer")

16. On April 29, 1980, Curtis Milsap, realty officer for the Western Nevada Agency of the BIA stated that no documentation existed to support that Hattie Dyer was ½ Paiute, but that Hattie Dyer had testified in her son's probate that she was a Shoshone Indian. (AR 23, 24, Memorandum, Tribal

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17. The Fallon Paiute Shoshone Tribe issued a verification on January 11, 2008 of the blood quantum of Dorothy Austin, the daughter of Hattie and Fred Dyer born on 2/17/1913 with an enrollment date of 5/21/73 as 4/4 Shoshone. (AR 11, 82, 158, 316, 390, 478, 561 "Fallon Paiute Shoshone Tribe Membership verification)

18. On September 27, 2010, the BIA memo noted that the appeal of the decision that Hattie Dyer was 4/4 Shoshone was filed by Marie Loper, her daughter, on 4/27/1977, not Hattie Dyer, as Hattie Dyer was deceased as of January 10, 1976. (AR 39, 40, 41)

19. Hattie Dyer did not sign any document or attestation that she was anything but 4/4 Shoshone. (See Affidavit of Jennifer John, paragraphs 5, 7)

20. The notes further fail to calculate the blood quantum correctly by stating that Fred Dyer is 4/4 Shoshone, Hattie Dyer allegedly was ½ Shoshone, but the children would be only ½ Shoshone. (AR 19 20 "Notes of September 27, 2010")

21. On November 3, 2010, the Regional Office of the BIA in Phoenix, Arizona, made a preliminary determination that Hattie Dyer was ½ Paiute by blood quantum although the correction does not state that Hattie Dyer is one-half Shoshone nor does it state what the preponderance of the evidence is. (AR 91,92,93 Letter from Bryan Bowker, Regional BIA)

22. The Regional Office of the BIA failed and refused to reveal to the Plaintiffs the basis of the determination that Hattie Dyer was ½ Shoshone by blood quantum until May 8, 2018. (Affidavit of Jennifer John and Declaration of Treva J. Hearne)

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23. On November 15, 2010, the Plaintiffs responded with more information regarding their ancestry and the proof that their great-grandmother Hattie Dyer was Full Blood Shoshone. The information submitted included the Indian Census rolls for Albert Hicks, Jr. and Hattie Dyer. (Affidavit of Jennifer John, pp. 1, 2)

24. The records were certified by both the BIA and the Fallon Paiute Shoshone Tribe clearly demonstrating the family tree and its Shoshone Blood line, Fred Hicks Sr. as ½ Western Shoshone, grandfather of the Plainitffs, and Leona Mina Dyer, grandmother of the Plaintiffs as ½ Western Shoshone which made these grandparents, common to all these Plaintiffs passing on Western Shoshone lineage sufficient to make these Plaintiffs ¼ Shoshone blood quantum. (Affidavit of Jennifer John, pp. 1, 2)

25. On June 21, 2012, the Washington D.C. office of the BIA confirmed the decision of the Phoenix Regional Office reaffirming that Hattie Dyer was only ½ Shoshone by blood quantum without reviewing any additional information. (AR 2,3,4 Letter from Acting Secretary in Washington, D.C.)

26. On October 22, 2013, Leona Hicks, the granddaughter of Hattie Dyer, wrote a letter to the Western Nevada Agency of the BIA and requested an answer as to why her blood quantum had been altered without notice to her and requesting all the documentation of the change of blood quantum of her grandmother. (Affidavit of Jennifer John, attachments, p. 32)

27. On December 9, 2013, the Superintendent of the Western Nevada Agency responded by an unsigned letter to this request and by failing to make the documentation requested available and stating that the Tribe held the enrollment records. The BIA did not produce the records of Hattie Dyer as

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requested. (Affidavit of Jennifer John, attachments pp. 33-34)

28. On January 8, 2014, Leona Hicks submitted a second letter to Athena Brown, Superintendent of the Western Nevada Agency of the BIA requesting from BIA information/ records concerning change of Indian Blood Degree from Shoshone Indian to Paiute Indian for Hattie Dyer. (Affidavit of Jennifer John, attachments, pp 35-36)

29. On April 25, 2014, Jennifer John, daughter of Leona Hicks, again submitted a letter to the Superintendent of the Western Nevada Agency requesting the records of probate of Hattie Dyer, their blood ancestor, for purposes of claiming and ascertaining Shoshone blood quantum. (Affidavit of Jennifer John, attachments, p. 37)

30. The documents requested are records held by the agency and were used by the agency to make a decision which affects the Plaintiffs herein. (Affidavit of Jennifer John)

31. The Plaintiffs prepared Fallon Paiute Shoshone Records which were submitted to the BIA and those Records confirm that Hattie Dyer is Full Blood Shoshone. (Affidavit of Jennifer John)

III. LEGAL ARGUMENT.

A. Motion for Summary Judgment is appropriate when the facts are undisputed.

The Federal Rules of Civil Procedure provide for summary judgment when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also

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Celotex Corp., 477 U.S. 317, 322 (1986). Rule 56 also allows a court to grant summary judgment on part of a claim or defense, known as partial summary judgment. See, Fed. R. Civ. P. 56(a) ("A party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought."); See, also, *Allstate Ins. Co. v. Madan,* 889 F. Supp. 374, 378-79 (C.D. Cal. 1995) A Motion for Summary Judgment is appropriate where there is no dispute of facts.

There is no dispute of facts. The Agency relied upon the unsupported letter of an unknown 97 year old woman submitted by Marie Loper in 1977 to determine that Hattie Dyer was ½ Paiute. (Declaration of Treva J. Hearne, attachments from the United States Attorney)

In a summary judgment motion, the moving party always bears the initial responsibility of informing the court of the basis for the motion and identifying the portions in the record "which it believes demonstrate the absence of a genuine issue of material fact." *Celotex,* 477 U.S. at 323, cited supra. If the moving party meets its initial responsibility, the burden then shifts to the opposing party to establish that a genuine issue as to any material fact actually does exist. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968).

In attempting to establish the existence or non-existence of a. . . genuine factual dispute, the party must support its assertion by "citing to particular parts of materials in the record or other materials; or showing that the materials cited do not establish the absence or presence of a genuine dispute or that an adverse party cannot produce admissible evidence to support the fact." Fed R. Civ. P. 56(c)(1).

The opposing party must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 251- 52 (1986); *Owens v. Local No. 169, Assoc. of W. Pulp and Paper Workers*, 971 F.2d 347, 355 (9th Cir. 1987).

B. The Administrative Procedure Act provides a remedy for those injured by an arbitrary and capricious decision made by the Agency.

1. The Agency's decision is arbitrary and capricious when the Agency does not follow its own stated policy when making the decision.

The Agency's decision is arbitrary because it did not follow its own adopted policy to rely upon census rolls and Tribal enrollment documents as reliable determination of the blood quantum of the Western Shoshone. 25 CFR 61 states that census rolls between the years of 1885 and 1940 will be used to determine eligibility. The BIA qualifies the use of the census by stating the census taken by agents or superintendent at Carson or Western Shoshone Agencies. The Thirteenth Census of the United States was conducted by agents and agents of agents of the United States of America.

The Agency, in fact, refers these Plaintiffs to the Tribal enrollment records when Plaintiffs inquired about the blood quantum issue. (Affidavit of Jennifer John, attachments, pp. 33-34 Letter from Athena Brown) The Agency does not make Tribal membership decisions and should not be able to overrule a Tribal membership decision.

In fact the Agency discounted Census Rolls and Tribal membership documentation, the sworn statement of Hattie Dyer and relied upon an unsworn statement of a ninety seven year old woman in notes that are not under oath. The weight of the evidence and documentation strongly supports Hattie Dyer as 4/4

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Shoshone and it was unreasonable, arbitrary and capricious for the Agency to rely upon some hand-written notes that have no supporting documentation.

2. The Agency is required by law to disclose documents upon which its decision is made.

After repeated requests for the documentation upon which the BIA made its decision, without notice to the descendants of Dorothy Austin, daughter of Fred and Hattie Dyer, the BIA failed and refused to produce the documentation it relied upon until May 8, 2018. Upon request, FOIA mandates disclosure of records held by a federal agency, see 5 U. S. C. § 552, unless the documents fall within enumerated exemptions, see § 552(b). "[T]hese limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act," *Department of Air Force* v. *Rose,* 425 U. S. 352, 361 (1976); "[c]onsistent with the Act's goal of broad disclosure, these exemptions have been consistently given a narrow compass," *Department of Justice* v. *Tax Analysts,* 492 U. S. 136, 151 (1989); see also *FBI* v. *Abramson,* 456 U. S. 615, 630 (1982) ("FOIA exemptions are to be narrowly construed"). *Dept. of Interior v. Klamath Water Users Protective Assn.,* 532 U.S. 1, 8. (2001)

As soon as the Plaintiffs were aware of a challenge to their blood quantum, they requested the documents from the Agency upon which it made such a challenge. Repeatedly, the Agency failed and refused to produce those documents. In fact, the initial Administrative Record in this matter omitted those documents. It was not until May 8, 2018 that the United States Attorney provided those documents. (Declaration of Treva J. Hearne)

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C. This Court has jurisdiction to determine the reasonableness of the BIA's Decisions by virtue of the Administrative Procedure Act.

For a court to find agency action arbitrary and capricious, the court must find that the agency committed a clear error of judgment based on all of the relevant factors. *Oneida Indian Nation of New York v. Clark*, 593 F. Supp. 257, 262, 263 (N.D. NY 1984), citing *Citizens to Preserve Overton Park v. Volpe,* 401 U.S. 402, 416, 28 L.Ed.2d 136, 91 S.Ct. 814 (1971)

Pursuant to the Administrative Procedure Act, ". . . the reviewing court shall. . .hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law." 5 U.S.C. §706(2)(a) ". . . (T)he Court must affirm if a rational basis for the agency's decision exists." *Bolden v. Blue Cross & Blue Shield Ass'n,* 848 F.2d 201,205 (D.C. Cir. 1988) "The degree of deference a court should pay an agency's construction is, however, affected by the "the thoroughness, validity, and consistency of an agency's reasoning." *Fed. Election Comm'n v. Democratic Senatorial Campaign Comm.,* 454 US. 27, 37 102 S.Ct. 38, 70 L.Ed.2d 23, (1981) See, *Aleutian Pribilof Islands Ass'n, Inc. v. Kempthorne,* 537 F.Supp.2d 1 (2008). Section 706 of the APA grants jurisdiction to a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law." 5 U.S.C.§ 706(2)(a). In the *Aleutian Pribiolof Islands* case cited above, the Federal District Court expressly stated that the agency was required to provide a detailed

explanation of the reason for its decision. This agency decision is the result of a long protracted process wherein the Plaintiffs had no hope for an administrative remedy and, thus, must seek a remedy from the federal court. See, *Hein v. Capitan Grande Band of Diegueno Mission Indians,* 201 F.3d 1256, 1258, 1261 (9th Cir. 2000).

In reviewing an agency decision under the arbitrary and capricious standard, the Court's hands are not tied in examining the complexity and factual basis for the decision.

> "Generally in reviewing agency determinations, judicial review is limited to the administrative record. The Ninth Circuit has identified four exceptions allowing consideration of extra-record materials, however:
> (1) if necessary to determine whether the agency has considered all relevant factors and has explained its decision,
> (2) when the agency has relied on documents not in the record,
> (3) when supplementing the record is necessary to explain technical terms or complex subject matter, [or] ...
> (4) when plaintiffs make a showing of agency bad faith.

Biological Diversity v. U.S. Fish, Wildlife, 450 F.3d 930, 943 (9th Cir.2006)

> The Intervenors contend, and the government does not dispute, that materials outside the administrative record may be considered by the court in its review of the agencies' actions under the APA.

Ranchers Cattlemen Action Legal Fund United Stockgrowers of America v. U.S. Dept. of Agriculture, 499 F.3d 1108, 1117 (9th Cir.2007). See, also, *Oregon Natural Desert Ass'n v. Kimbell,* 593 F. Supp.2d 1213, 1216 (D. Oregon 2003).

The Department of the Interior, Bureau of Indian Affairs is an agency of the Executive Department of the United States. The decision to deny these Plaintiffs their Western Shoshone heritage is arbitrary, capricious, unreasonable and has no rational relationship to the records in the files of the BIA in total. The employees of the Western Nevada Agency repeatedly pointed out that there was no supporting documentation for the probate reference that Hattie Dyer was ½ Paiute. Moreover,

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there was no need for the Probate Court to opine on the blood quantum of the deceased Hattie Dyer in order to distribute her estate. Just as the finding that Jensen Dyer, Hattie's son, was 4/4 Shoshone in his probate was irrelevant to the distribution of his estate. (AR 30 – 34) Hattie Dyer's blood quantum had no effect whatsoever on the distribution of her estate to her son, Mike Dyer.

The Agency had the option of recognition of its earlier mistake in the determination of Hattie Dyer's blood quantum for the Northern Paiute Distribution. The Agency could have reviewed its own files and found the discrepancy pointed out repeatedly by its own employees and the affirmation of her 4/4 blood quantum made by an employee in 1999. The BIA chose to ignore this information in its files and cling to the erroneous decision that it made in 1977. The decision was arbitrary, capricious and harmful to these Plaintiffs.

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***D.* The Agency cannot arbitrarily choose what it will recognize regarding blood quantum evidence.**

Blood quantum is only an issue for Native Americans. The Agency must appreciate the need to utilize formalization of the consideration of evidence in order to bring organization and structure to this issue. Blood quantum is the foundation for Tribal membership, distribution, scholarship and other benefit entitlement in exchange for the brutal history suffered by the Native Americans. Blood quantum cannot be a determination based upon the whim of the Agency. The CFR set out that the census of the United States and Tribal determination would be given priority as evidence. See, 25 CFR 61.

Allowing the Agency functionaries to consider extrinsic evidence not disclosed to the entire family gravely undermines the fundamental stability that the founding members of the Tribe sought to establish decades ago by adopting its membership and designating each member's blood quantum. See, *Allery v. Swimmer*, 779 F. Supp. 126 (D. ND. 1991) wherein the Court found the BIA disenrollment decision arbitrary and capricious under the standards of the APA by

relying upon extrinsic evidence. The Court explained that the initial tribal roll is the fundamental starting point for membership determinations in a tribe. The appropriate time to make the corrections to blood quantum was when the Tribe made its membership decision. *Allery,* p. 130. The Tribe's right to define its own membership is fundamental to its existence as an independent political community. See, *Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 72, 56 L.Ed.2d 106, 98 S.Ct. 1670 (1978) Tribal determination of blood quantum is fundamental evidence of membership in a Tribe and the Agency is unreasonable, arbitrary and capricious in ignoring such evidence.

IV. Conclusion

The Agency's decision to refuse to enroll the Plaintiffs as Western Shoshones based upon an extrinsic, unsupported document in the face of certified Census of the United States and the Membership determinations of the Tribe is arbitrary, capricious and unreasonable. The failure of the Agency to disclose this extrinsic documentation to the Plaintiffs indicates the unreasonable basis of the decision and the Agency's desire to hide its error.

WHEREFORE, for the above-stated reasons, the Plaintiffs respectfully request that this Court grant their Motion for Summary Judgment and find that the Administrative Agency's decision to not enroll them as Western Shoshone is arbitrary, capricious and unreasonable.

Dated this 14th day of May, 2018.

__//s// Treva J. Hearne__
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Certificate of Service

I hereby certify that on today' date the **Motion for Summary Judgment** was electronically transmitted to the Clerk of the Court using the CM/ECF System which will send notification of such filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

DATED: 05/ 14/18

/s/Treva J. Hearne

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