

1 Treva J. Hearne, Esq. NV Bar #4450
2 Reno Law Group
3 595 Humboldt Street
4 Reno, NV 89509
5 (775) 329-5800-Telephone
6 (775) 329-5819-Facsimile

7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

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

10 **TIMOTHY AARON JOHN, TRAVIS**
11 **RAY JOHN, TIFFANY LYNNAE JOHN,**
12 **and TYRONE FRED JOHN**
13 **SHIRLEY L. PALMER, LESLIE L.**
14 **PALMER, JALEEN M. FLOWERS,**
15 **and JESSE WADE PALMER,**

16 **Plaintiffs,**

17 **v.**

18 **THE SECRETARY OF THE INTERIOR,**
19 **through its Acting Assistant Secretary,**
20 **BUREAU OF INDIAN AFFAIRS, its**
21 **officers, servants, agents, employees,**
22 **representatives, and attorneys,**

23 **Defendants.**

24 **PLAINTIFFS' REPLY TO**
25 **DEFENDANTS' RESPONSE TO**
26 **PLAINTIFFS' MOTION FOR**
27 **SUMMARY JUDGMENT**

28 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 reply to the
Defendants' Response to the Plaintiffs' Motion for Summary Judgment and
respond to the Defendants' Motion for Summary Judgment.

Dated this 21st day of June, 2018.

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

Reno Law Group, LLC
595 Humboldt Street
Reno, NV 89509
(775) 329-5800-Telephone
(775) 329-5819-Facsimile

I. The “evidence” used by the Agency didn’t require expertise by its specialized knowledge.

The Agency alleges that the Administrative Record contains certain references used by the Agency to determine Hattie Dyer’s blood quantum, but, in fact, those references can be viewed by any objective observer and dismissed as insufficient, (Doc.#37, p.10):

1. The 2010 memo of the BIA referenced in the brief made the assumption that Hattie Dyer had submitted an application for the Northern Paiute funds. Hattie Dyer was deceased. (AR pp. 16 – 19)
2. Testimony establishes Hattie Dyer is of Paiute descendency, but no record of any testimony is submitted or attached. (AR, pp. 16-19)
3. The mere statement in the probate record of reference to testimony that was not attached is reference to nothing. This statement was gratuitous since the Probate proceedings and settlement did not require any testimony or identification of Hattie Dyer’s blood affiliation in order to conclude the matter.
4. Hattie Dyer was deceased when the Northern Paiute Judgment Fund application was submitted, appealed and distributed.
5. The documents submitted for the appeal include one vague, unverified statement by Wuzzie George who was 95 – 97 years old at the time of the statement and now unavailable.

The evidence that Hattie Dyer was 4/4 Western Shoshone is supported by every census taken by the United States since 1937. The evidence that Hattie Dyer was 4/4 Shoshone is supported by the records kept by the Tribe. This is the evidence that the Agency was directed to use in determining Western Shoshone status for

Reno Law Group, LLC
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Reno, NV 89509
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1 enrollment on the Western Shoshone Distribution Rolls. See 25 CFR § 61¹ The
2 Agency acknowledges that this documentation exists by a certification from Fred
3 Drye of the Western Nevada Agency in 1999 (Affidavit of Jennifer John, Motion,
4 Doc.# 36, attachment at page 30). In 2010, the Agency pivots and relies upon an
5 unverified statement of a person whose statement is less than clear (her
6 grandfather was either from Schurz or Fallon) and who is unavailable for
7 clarification.
8

9 In fact, the Agency relied upon a single document that it kept hidden until June
10 of 2018 in obvious embarrassment over its lack of veracity and support. Although
11 the Agency makes a list as though there were several documents. (Doc.# 37, p. lines
12 2 – 5) The Agency relied upon a single document, the statement of Wuzzie George.
13 The probate records referring to some unknown testimony, the census showing Levi
14 Longweather and family trees relied upon are meaningless without that single
15 unverified statement of Wuzzie George submitted by Hattie Dyer’s daughter after
16 Hattie herself died. Contrary to the Agency’s allegation (Doc. # 37, p.4., lines 8 –
17 12), there was no statement signed by Hattie Dyer herself stating that she was
18 anything but a Shoshone.
19
20

21 Speaking volumes are the documents that are absent. Although there is a
22 census with Levi Longweather alleged half-brother of Hattie Dyer, where he is
23

24 ¹ **§ 61.11 Action by the Director or Superintendent.**

25
26 **(a)** The Director or Superintendent shall consider each application, all
27 documentation, and when applicable, tribal recommendations or determinations.

28 **(b)** The Director or Superintendent, when tribal recommendations or
determinations are applicable, shall accept the recommendations or determinations
of the Tribal Committee unless clearly erroneous.

1 listed as 1/2 Pai and 1/2 Sho, (Supplemental Documents, p. 4) there is no census with
2 the alleged mother of Hattie Dyer, Judy Longweather. It takes no special Agency
3 “expertise” to acknowledge the absence of proof and recognize unsubstantiated
4 proof. It merely requires the Agency to admit it made a mistake in 1977 in
5 determining Hattie Dyer was Paiute.

6
7 The Agency’s directives were to determine who could offer sufficient proof of
8 their 25% blood quantum of Western Shoshone by submission of their family tree.
9 Hattie Dyer is the last verifiable ancestor of these Plaintiffs on the maternal side of
10 the family. There is no verifiable evidence of her parents. She was certified by the
11 Bureau of Indian Affairs to be 4/4 Shoshone in 1999.

12
13 The Agency’s longtime employees, Fred Drye and Curtis Milsap verified and or
14 questioned any proof that Hattie Dyer was 4/4 Shoshone. Fred Drye of the
15 Western Nevada Agency of the BIA certified Hattie Dyer as 4/4 Shoshone in 1999
16 (Affidavit of Jennifer John, attachments, p. 30), Curtis Milsap questioned that any
17 proof had been submitted that Hattie Dyer was anything but 4/4 Shoshone in 1980.
18 (AR 23, 24) The same documents available to Robert Hunter in his undated but
19 presumably 1977 reversal of Marie Loper’s right to collect Northern Paiute
20 Judgment funds were available to Curtis Milsap in 1980 and Fred Drye in 1999.

21
22 The Agency also, by footnote (Footnote 8 on p 13, Doc.# 37) alleges that this
23 case is analytically similar to the Danley Adkins matter previously submitted to this
24 Court. In the Adkins matter, the relative seeking Northern Paiute Judgment
25 Funds had submitted documentation that was sworn and verified by Tribal
26 membership personnel. That is hardly true here. The vague letter stating someone
27 from Fallon or Schurz was Hattie Dyer’s grandfather, was not sworn to and the
28 statement was not from Tribal enrollment personnel. Wuzzie George was, in fact, a

Reno Law Group, LLC
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1 well-known local personage and was interviewed extensively by the Nevada
2 Women’s Project and according to the website, her age more than likely was 97 at
3 the date of this statement. (See, www.nevadawoman/wuzziedickgeorge.unr.edu)

4 The government admits that Hattie Dyer was deceased when the application for
5 Northern Paiute funds was initiated but continues to refer to the application as one
6 submitted by Hattie Dyer. (Doc. #37, p. 10, lines 2 – 8)) Hattie Dyer did not send a
7 message from the grave contradicting her last known statement that she was a
8 Shoshone Indian made in her son’s probate proceeding. Hattie Dyer did not sign
9 any submission claiming any Paiute blood.

10 Marie Loper was the single, sole source of the evidence of Hattie Dyer’s alleged
11 Paiute relations. Marie Loper and her children were the sole surviving benefactors
12 of the Paiute Judgment distribution. The direct family of these Plaintiffs did not
13 apply for Northern Paiute Judgment funds because they knew they were not Paiute.
14

15 The BIA gave no notice to the Plaintiffs or their families that the Western
16 Shoshone blood quantum of Hattie Dyer was being challenged. The BIA failed and
17 refused to turn over this paltry “evidence” until June of 2018. Essentially, the
18 Agency stole the cultural identity of these Plaintiffs without notice, a right to be
19 heard and based on inadmissible and unsupported evidence. The Agency refused to
20 reveal the evidence because the challenge to its authenticity would exclude the
21 evidence from consideration immediately.

22 The right to cultural identity by these Plaintiffs cannot be simply whisked away
23 by a statement hidden from them for forty-one years by a woman who would be
24 now 136 - 138 years old and not available for questioning. (Motion, Doc.#37,
25 Declaration of Treva J. Hearne, Supplemental documents, page 3) This statement
26 could not identify where the grandfather was from, Fallon or Schurz, or how Hattie
27
28

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1 Dyer was related to Wuzzie George as a cousin. And yet, the Agency relied upon
2 this one statement to deprive generations of their ancestry. The decision by the
3 Agency to deny these Plaintiffs their ancestry was to camouflage an unreasonable,
4 unsubstantiated and undated decision by Robert Hunter of the Agency prior to the
5 Northern Paiute Distribution. (Declaration of Treva J. Hearne, Doc. #37,
6 Supplemental documents, page 1) The Agency can hardly say that Robert Hunter's
7 decision isn't relevant, when that is the decision that was relied upon in this matter
8 to deny the Plaintiffs their rights as Western Shoshone.
9

10 **II. This Court is obligated to determine if the Agency's decision**
11 **was reasonable.**

12 This matter is suitable for summary judgment because the issue is whether the
13 Agency relied upon appropriate documentation to determine the applications of the
14 Plaintiffs for inclusion on the Rolls of the Western Shoshone. The Agency admits
15 how it arrived at its decision and claims that it did so appropriately. The Plaintiffs
16 know how the Agency arrived at its decision and claim that the Agency did so
17 inappropriately, in fact, its decision was unreasonable, arbitrary and capricious. To
18 say that there is a dispute of fact regarding Hattie Dyer's blood identification is not
19 the issue.
20
21

22 The D.C. Circuit Court of Appeals reiterated the directives to the federal courts
23 when reviewing administrative decisions:
24

25 We evaluate the Commission's reasoning to ensure that it has
26 "examine[d] the relevant data and articulate[d] a satisfactory
27 explanation for its action including a rational connection between the
28 facts found and the choice made." National Fuel Gas Supply Corp. v.
FERC, 468 F.3d 831, 839 (D.C.Cir.2006) (quoting Motor Vehicle

1 Manufacturers Ass'n of U.S. v. State Farm Mutual Auto. Insurance
2 Co., 463 U.S. 29, 43, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983) (internal
3 quotation marks omitted). Verizon v. FCC, 740 F. 3d 623 - Court of
4 Appeals, Dist. of Columbia Circuit 2014, p. 644.

5 The basis for the administrative decision must have a rational connection
6 between the facts found and the choice made. In other words, it is not reasonable
7 for the Agency to protect an earlier unreasonable decision by simply adopting it
8 going forward because it was the decision made four decades ago.

9 It is not reasonable for the Agency to refuse to publish the reason for its
10 decision for four decades. It is not reasonable for the Agency to rely upon an
11 unverified statement of a person when verified Tribal enrollment documents exist.
12 The Agency debases its decision-making roll by meting out punishment to future
13 generations because an obscure relative made unsubstantiated allegations to the
14 Agency for a decades old distribution.

15 WHEREFORE, FOR THE ABOVE-STATED REASONS, the Plaintiffs
16 respectfully request that this Court enter Summary Judgment in their favor and
17 find that the Secretary of the Interior through its sub agency the Bureau of Indian
18 Affairs made a decision that was arbitrary, capricious and unreasonable when it
19 failed and refused to add these Plaintiffs to the Rolls of the Western Shoshone
20 Indians.

21 Dated this 21st day of June, 2018.

22
23 //s// Treva J. Hearne
24 Treva J. Hearne
25 RENO LAW GROUP
26 595 Humboldt St., Ste. 1I
27 Reno, Nevada 89509
28 775-329-5800
 Attorney for Plaintiffs

Reno Law Group, LLC
595 Humboldt Street
Reno, NV 89509
(775) 329-5800-Telephone
(775) 329-5819-Facsimile

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Certificate of Service

I hereby certify that on today' date **the Plaintiffs' Reply to the Defendants' Response to the Plaintiffs' 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: 06/ 21/18

/s/Treva J. Hearne
Treva J. Hearne, Esq. NV Bar #4450
595 Humboldt Street
Reno, NV 89509
(775) 329-5800-Telephone
(775) 329-5819-Facsimile

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595 Humboldt Street
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(775) 329-5819-Facsimile