

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WINNEMUCCA INDIAN COLONY, a
Federally-recognized Indian Colony;

Case No.: 20-1618 L

Plaintiff,

**FIRST AMENDED
COMPLAINT**

v.

UNITED STATES OF AMERICA *ex rel.*
SECRETARY OF THE DEPARTMENT OF
THE INTERIOR, BUREAU OF INDIAN
AFFAIRS,

Defendants,

COMES NOW, the Winnemucca Indian Colony, by and through its duly
appointed Council and their attorneys of record, and complains as follows:

STATEMENT OF THE CASE

This action is initiated to recover actual damages, just compensation, an
accounting, declaratory judgment, and injunctive relief, arising from Defendants'
breach which resulted in takings of property, property rights and monetary assets of
the Winnemucca Indian Colony and its individual members during the past decades
while the Bureau of Indian Affairs arbitrarily, capriciously and unreasonably
breached its trust responsibility to this federally recognized tribe to protect its lands
and resources.

These actions and inactions resulted in a group of non-Indians and non-
members unlawfully occupying the Colony's lands; other non-members and non-
Indians were allowed to strip all income from the Colony through the loss of
economic development; easements were allowed or even granted over Colony land
without obtaining corresponding income and without obtaining the consent of the
Colony Council or membership; encroachments by adjacent development occurred
on the Colony's lands and the trustee did nothing to stop these encroachments,

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1 water rights were never acquired and wet water flowing across the lands were
2 diverted and no longer available for use on the lands of the Colony; the Bureau of
3 Land Management restored certain lands of Western tribes, but omitted the Colony
4 because the Trustee failed and refused to recognize a government or appear on
5 behalf of the Colony which cost the Colony the loss of in excess of a potential
6 restoration of over 1,000 acres. For all these reasons and others, the Colony and its
7 members, individually, have been deprived of their lands and resources. The natural
8 resources of the Colony have not been protected and the Colony has lost income and
9 grant and contract funds, due and owing to it as a result of the acts of the United
10 States of America through its agency the Bureau of Indian Affairs. The acts and
11 failure to act of the government were not just a bad investment or negligence, the
12 acts were intentional deprivation of the use of the lands of the Winnemucca Indian
13 Colony to its members.

14 The loss of the quality of life and standards of living for all members and
15 residents because of the lack of recognition of the government is unfathomable.
16 Whereas BIA doesn't provide anything close to a Shangri-La for reservations, it does
17 provide welfare, shelter, food and protective services according to its legal obligation
18 and as delegated by Congress. As trustee of the lands of the Colony, the BIA failed to
19 protect the lands of the Colony and the use of those lands for the Colony members.

20 The members were not able to claim and contract for P.L. 93-638 funds and
21 the members individually suffered the loss of health care and educational support
22 payments, among other payments and were deprived of the standing to seek federal
23 resources to aid families and individuals seeking affordable homes in a safe and
24 healthy environment. For two decades, Defendants refused support, took away the
25 federal safety net, and deprived the members of the Winnemucca Indian Colony of
26 family, community, and the ability to preserve traditions. Two decades of the BIA
27 claiming that it could not recognize a government because there were two factions,
28 when BIA held in its files the family trees and proof of who the members were for
over three decades, divided this community irretrievably and robbed it of a

1 substantial opportunity cost of not becoming a unified community with a viable
2 economy.

3 The Council members were denied their civil right to serve in their elected
4 offices. By failing to verify the status of the members from its own files, the
5 government deprived the members of their government and the Council from serving
6 as a government and building this reservation into homes and a community.

7 **JURISDICTION**

8
9 1. This Court has subject matter jurisdiction over the subject matter of this action
10 under 28 § 1491 (The Tucker Act), as this action involves claims against the United
11 States for unliquidated money damages, which does not sound in tort and is brought by
12 an Indian Tribe, arising under the Constitution, laws, treaties or regulations of the
13 United States, and Executive Orders of the President of the United States. The damages
14 are due to the Colony by virtue of breach of the trust obligations of the United States to
15 tribes and because the failures of the government violate the statutes and laws that
16 mandate money damages to the Colony. (25 U.S.C. § 5301 et. seq., 25 U.S.C. § 4101 et
17 seq., etc.) The Court further has jurisdiction under the Indian Tucker Act, 28 U.S.C. §
18 1505, because this action is in favor of a tribe.
19
20

21 **PARTIES**

22 2. Plaintiff Winnemucca Indian Colony (the “Colony” or “Tribe”) is a federally
23 recognized Tribe.

24 3. The Winnemucca Indian Colony represents its enrolled members who are
25 individuals with the right of membership.
26

27 4. Defendant United States of America is vested with numerous trust, fiduciary and
28 statutorily imposed responsibilities owed to the Colony and employs various federal
departments and agencies to fulfill those obligations. Congress has statutorily

1 designated the Department of the Interior (“DOI”) as being primarily responsible for the
2 management of Indian affairs.

3 5. Defendant Secretary of the Interior (“SOI”) has delegated authority over Indian
4 affairs to several agencies within the Department of the Interior, most notably the
5 Bureau of Indian Affairs (“BIA”).

6 a. The Western Regional Office of the BIA is located in Phoenix, Arizona
7 (“Western Regional Office”), and has authority to manage the trust
8 responsibility to the Winnemucca Indian Colony on behalf of the United
9 States of America.

10 b. The Superintendent of the Western Nevada Agency of the BIA is located in
11 Carson City, Nevada (“Western Nevada Agency”), and has authority to
12 manage the trust responsibility to the Winnemucca Indian Colony on
13 behalf of the United States. The employees, contractors and agents of the
14 Superintendent include the police officers of the BIA that have as their
15 patrol the Winnemucca Indian Colony.
16
17

18 **STATEMENT OF FACTS**

19 **Winnemucca Indian Colony History**

20
21 6. In 1916, Woodrow Wilson signed two Executive Orders setting aside 320 acres in
22 Humboldt County, Nevada.

23 7. In 1928 Congress set aside an additional twenty acres purchased from the
24 railroad for the same homeless Shoshone Indians that received the 320 acres.

25 8. In 1916 a census was taken by the government to determine who was living on the
26 20 acre parcel.
27

28 9. In 1972 the Colony pursuant to the Reorganization Act of 1934 received a
Constitution and Bylaws from the government that set out the requirements to

1 qualify for membership in what was now a federally arecognized Tribe, the
2 Winnemucca Indian Colony.

3 10. The 340 acres set aside for the Winnemucca Indian Colony were titled in the
4 United States of America intended for the benefit of the Winnemucca Indian
5 Colony.

6
7 11. In 1972 pursuant to the Indian Reorganization Act, the Colony adopted a
8 Constitution that stated the requirements for enrollment in the Colony were to be
9 1/4 Paiute and/or Shoshone by blood quantum and to be a descendent of a
10 person listed on the 1916 census of residents on the Colony and to not have taken
11 money or land as a result of membership in another Tribe. These qualifications
12 for membership were recommended by the BIA and voted on by persons who
13 resided at the Colony and have not changed since the date of adoption.
14

15 12. The Indian Self-Determination and Education Assistance Act of 1975 was slow to
16 be implemented. Prior to 1996, Self-Governance was only directly applied to BIA
17 programs, but thereafter, all non-BIA Department of the Interior programs have
18 participated in Self-Governance and the establishment of programmatic targets to
19 transfer programs to federally recognized Indian Tribes.
20

21 13. A tribe must submit an initial contract proposal under Public Law 93-638 to
22 obtain a contract from the BIA to perform its own Tribal functions including police
23 functions, schools, etc. The BIA is obligated under statute and regulation to provide
24 technical assistance to the contracting Tribe.
25

26 14. All Indians who are members of a federally recognized tribe are entitled to
27 annuity monies and, after the age of eighteen years, are entitled to a receipt for their
28 annuity pursuant to 28 U.S.C. § 116.

1 15. Prior to 1986 there had been a diaspora of members of the Colony due to
2 enlistment in the fighting for the two world wars and because families with children
3 were escaping from the Colony to save their children from conscription into the Stewart
4 Indian residential school.

5 16. The Colony members lived on the Colony sporadically, but returned to bury their
6 relatives on the lands and returned for family gatherings.

7
8 17. In 1986 the BIA reviewed the list of persons who alleged qualification for
9 distribution of the Northern Paiute Judgment Fund and who resided at the
10 Winnemucca Indian Colony and noted that those applicants were members of the Ft.
11 McDermitt Paiute Tribe and the Lovelock Paiute Tribe and were using those Ft.
12 McDermitt and Lovelock Paiute memberships as the underlying right to collect funds
13 under the Northern Paiute Judgment Fund. Some of these persons were also claiming
14 to serve as the Council of the Winnemucca Indian Colony in violation of the
15 membership qualifications of Ft. McDermitt and Lovelock which disallowed
16 membership in two tribes coincidentally and who didn't qualify for membership in the
17 Winnemucca Indian Colony pursuant to its Constitution and Bylaws. Merely residing
18 on an Indian Colony is not a qualification for membership.
19
20

21 18. The Western Nevada Agency held in its records the ancestry research on the
22 residents and persons attempting to claim membership to the Winnemucca Indian
23 Colony which either proved or disproved their right to membership. These records were
24 placed in the BIA files circa 1986.

25
26 19. The Winnemucca Indian Colony Constitution excludes persons who took
27 distribution as a result of membership in another Tribe from being members of the
28 Colony which is a standard clause in BIA generated Constitutions adopted throughout

1 Indian country in the IRA timeframe. Non-members of the Colony could not serve as
2 Council members.

3 20. On February 5, 1987, a memo written by the Superintendent of the Western
4 Nevada Agency affirmatively stated: “At the present time, there are no eligible members
5 residing on the Winnemucca Colony.” The Superintendent added: “We further advised
6 the Area Office that it is not the Bureau’s wish to have the land withdrawn from trust
7 protection or declared as surplus property, as the lands were set aside for the use of
8 homeless Shoshone Indians. . .”

9
10 21. The same memo stated the BIA had presumed that the persons living on the
11 Colony qualified for membership but as a result of the Northern Paiute Judgment Fund
12 distribution, the Council members serving in Winnemucca were not members and could
13 not qualify as members of the Colony.
14

15 22. The Western Nevada Agency allowed the persons who resided on the
16 Winnemucca Indian Colony to choose which Tribe they intended to be a member of, and
17 when all the members chose to join or had always been a member of a Tribe other than
18 the Winnemucca Indian Colony in order to qualify for the Northern Paiute Judgment
19 Fund, the BIA took control of the assets of the Colony and withdrew recognition of the
20 government of the Colony in 1986.
21

22 23. The BIA stated that the persons serving as Colony Council were not qualified to
23 be members of the Colony according to the adopted Constitution and By-laws, and,
24 therefore, the government had to be reorganized with qualified members.
25

26 24. The Western Nevada Agency took control and acted as a trustee of the Colony’s
27 smoke shop and other assets until a proper government could be organized. All the
28 funds were collected and turned over to the new government when it was established.

1 The new government comprised of persons who were qualified to be members of the
2 Colony.

3 25. The BIA took over a year to search for persons who qualified to be members of
4 the Winnemucca Indian Colony and, in the meantime, did ancestry research on all
5 members that applied to verify their qualification as members, including, as discovered
6 in 2016, ancestry research on many residents of the Colony demonstrating that they did
7 not qualify for membership in the Winnemucca Indian Colony.

9 26. Seventeen persons qualified as members and became the official membership
10 list, including Glenn Wasson, Sharon Wasson, Thomas Wasson, Thomas Magiera,
11 Elverine Castro, Andrea Davidson, Alma Gregory, Trudi Hodson, Renee Johnson,
12 Paulette Kelley, Lucy Lowrey, Carlene Likins, Merlene Magiera, Richard Tom, Ida
13 Whiterock and Alyce Williams.

15 27. After solicitation of members and an election, by 1990 a government had been
16 recognized for the government-to-government relationship with the United States and
17 the lands and assets returned to the management of the Colony Council.

19 28. The newly certified members and recognized Council of the Winnemucca Indian
20 Colony repeatedly requested information and documentation from the BIA about the
21 history and origins of the Winnemucca Indian Colony and the records of membership.

22 29. In 1997, when the Lovelock Housing Authority empowered by the BIA to manage
23 the housing on the Colony's lands was found to have diverted the funds from the
24 intended purpose, the BIA directed the Lovelock Housing Authority, already in breach
25 of its agreement and without consent from the Colony Council, to convey a leasehold
26 interest to the each non-member resident of the HUD home, thus conveying all but one
27 home to non-members without requiring rental or any payment at all, effectively
28 excluding the members from all residential housing on the Colony.

1 30. The BIA failed and refused to furnish any of this documentation from 1990 until
2 2013, and the ancestry information was not furnished until 2016. This fact is significant
3 in that during the entirety of the time, 2000 – 2014, the BIA claimed that there was an
4 intra-tribal dispute and thus it would not recognize a government. Yet the BIA knew and
5 had documentation in its files that proved certain persons requesting recognition,
6 referred to as the Ayer group and the Bills group, did not qualify for membership, nor
7 did any person residing on the Winnemucca Indian Colony without right or authority
8 (referred to herein as “the trespassers”).
9

10 **Winnemucca Indian Colony Tribal Government History**

11 31. In 1934 the Indian Agency of Nevada stated that the lands of the Winnemucca
12 Indian Colony were reserved for bands of Western Shoshone Indians living in the area.

13 32. The BIA in 1990 recognized the government of the Colony as Glenn Wasson,
14 Chairman; Lucy Lowry; Sharon Wasson; Elverine Castro; and Richard Tom.
15

16 33. In 1997, when there was a recognized Council on the Colony, the BIA approved a
17 conveyance of the HUD homes on the lands of the Colony to the lessees without Council
18 approval and the leases were conveyed to non-members and the BIA failed to require
19 rents to be paid to the Colony for the use of the homes causing inestimable damages from
20 loss of residential housing for members and, at a minimum, \$300 - \$500 a month in
21 rental income to the Colony for each of the five homes for more than 24 years in excess
22 of \$432,000.
23

24 34. In 1999 Richard Tom resigned as a member of the Council and passed away soon
25 thereafter, and William Bills, who had recently presented himself as the son of Ermon
26 Bills, a putative member of the Winnemucca Indian Colony, was appointed to the
27 Council.
28

1 35. On August 5, 1999, William Bills, on his own, without authority from the Council,
2 applied for a grant from the EPA for up to \$75,000. The rest of and majority of the
3 Council, led by Chairman Glenn Wasson, adamantly disapproved of this. Bills had no
4 approval by a majority of the Council for his act as required by the Constitution and By-
5 laws. The Council also voted down a request made by William Bills for an allotment of
6 ten (10) acres of Colony land on which to build a casino.
7

8 36. The EPA did not check with the BIA to determine the proper government and
9 membership of the Winnemucca Indian Colony and paid the \$75,000 grant to William
10 Bills who pocketed the grant for his individual use.

11 37. The BIA recognized the Colony's government until the year 2000 as Glenn
12 Wasson, Chairman; Elverine Castro; Lucy Lowery; and Thomas Wasson, and, in the
13 Fifth Council position, alternatively from 1990 to 2000, as Thomas Magiera or Sharon
14 Wasson, or William Bills or Richard Tom.
15

16 38. In the regularly scheduled February 2000 meeting of the Winnemucca Indian
17 Colony, the Chairman, Glenn Wasson, reported to the Council that William Bills might
18 not qualify as an Indian since he may have been adopted and had provided a fraudulent
19 birth certificate with his application for membership and, further, that he was diverting
20 mail belonging to the Colony. The Chairman stated that action would have to be taken
21 on this matter at the March 2000 meeting.
22

23 39. On February 22, 2000, Glenn Wasson was murdered by multiple stab wounds in
24 his back on the doorsteps of the Colony's Administration Building. The federal
25 government has failed to arrest anyone for this murder and failed to make any credible
26 investigation.
27

28 40. On March 1, 2000, William Bills had soil removed from the Colony lands in and
around the Administration Building, including but not limited to the area where the

1 murder occurred. Bills acted without majority Council approval as required by the
2 Constitution and Bylaws of the Colony as adopted in 1972 and excluded the other
3 Council members from their lands

4 41. The BIA was the sole policing agency on the lands of the Colony and refused to
5 remove the trespassers and refused to remove the non-Indian acting as Chairman. Once
6 again, the members of the Colony were forced to leave their lands out of fear for their
7 lives after the murder of Glenn Wasson and the failure of the police officers to protect
8 them from further violence.

9
10 42. Although the Colony Council submitted evidence of William Bills' lack of blood
11 quantum in the form of his birth certificate, the BIA did nothing to remove him from the
12 lands of the Colony.

13
14 43. Further, the BIA knew that the persons claiming to support William Bills as the
15 Chairman were not qualified to be members of the Winnemucca Indian Colony based
16 upon the ancestry research done in 1986-1987.

17
18 44. During the year 2000, the BIA first recognized William Bills, then Sharon
19 Wasson, then William Bills, and then withdrew recognition of the government.

20 45. From the year 2000 the BIA did nothing to secure the trust assets and resources
21 of the Colony for its members.

22 46. When this dispute arose, the Western Nevada Agency of the BIA declared the
23 Tribe's government dysfunctional and did not recognize any government as of July
24 2000.

25
26 47. In December 2000, the Regional Office overruled the Western Nevada Agency
27 and made an affirmative finding that the Western Nevada Agency could not find the
28 government to be dysfunctional. Still, the BIA continued its refusal to recognize a
government for this federally recognized Tribe.

1 48. Despite repeated requests, the BIA failed to recognize a government of the
2 Winnemucca Indian Colony from July 2000 until ordered to do so by the United States
3 District Court, District of Nevada, in December 2014.

4 49. In October 2000 when the government of the Winnemucca Indian Colony had an
5 election on the Colony lands, the BIA arrested Thomas Wasson and Sharon Wasson and
6 the members of the election committee and qualified members of the Winnemucca
7 Indian Colony.
8

9 50. The election was eventually held and Sharon Wasson, Thomas Wasson, Elverine
10 Castro, Thomas Magiera and Merlene Magiera were elected as Council members.

11 51. On March 31, 2005, the United States District Court entered an Order finding
12 that the Wassons and the election committee had been wrongfully arrested in violation
13 of their Constitutional rights when the arrests were made by the BIA.
14

15 52. In July 2000, Bank of America, which held the account of funds of the
16 Winnemucca Indian Colony in the approximate sum of \$500,000.00, froze the accounts
17 in order to determine who was the proper party to access the account, and filed the
18 account in interpleader due to the allegations by both William Bills and Sharon Wasson
19 claiming to be Chairman of the Winnemucca Indian Colony. The case was entitled *Bank*
20 *of America v. William Bills and Sharon Wasson*, Case No. CV-N-00-450-HDM (VPC),
21 filed in the United States District Court, District of Nevada.
22

23 53. On May 19, 2000, the Tribal Court, Judge Kyle Swanson, at the request of
24 William Bills, issued an order excluding all council members from the Colony but for
25 William Bills. The Order was in violation of the Constitution and Bylaws of the Colony,
26 but the BIA police officers enforced the Order and did not allow the members to re-enter
27 their lands.
28

1 54. That Order was appealed to the Inter Tribal Court of Appeals of Nevada, a body
2 that was funded by the BIA.

3 55. On March 21, 2001, the parties were ordered to have another trial over the
4 matters before a Tribal Court agreed to by William Bills and Sharon Wasson because of
5 the failure of the Tribal Judge Kyle Swanson to hold a hearing, take evidence or create
6 any record whatsoever.
7

8 56. A Tribal Court hearing was scheduled, and Steven Haberfeld of Sacramento,
9 California, recommended by Larry Echohawk, then affiliated with the Native American
10 Rights Fund, was agreed to by the parties as the Tribal Judge to officiate and render an
11 opinion.
12

13 57. During 2000 and 2001, a Tribal Court proceeding was held for more than five
14 weeks of testimony, with hundreds of exhibits entered into evidence, costing the Colony
15 over \$70,000 in Tribal funds to pay for the proceedings because the BIA refused to
16 provide 638 funding to the Colony.
17

18 58. In May of 2002, the acting Tribal Court determined that no members existed and
19 that the acting Court would decide the membership and conduct the election and be
20 paid for by the Winnemucca Indian Colony in excess of another \$50,000.00.

21 59. All parties agreed that an appeal of this decision was necessary; however, the BIA
22 had failed to fund the Inter Tribal Court of Appeals in Nevada and, thus, no appellate
23 process was available to Indians in Northern Nevada.
24

25 60. Pursuant to a Ninth Circuit mediation that was convened to settle some matters
26 on appeal in this litigation, counsel for William Bills et al. and counsel representing the
27 members of the Colony agreed that a panel of judges would be chosen to hear the appeal
28 of the Winnemucca Indian Colony Tribal Court decision.

1 61. The United States District Court, District of Nevada, provided a courtroom and
2 the Appellate Panel, which was the Specially Appointed Appellate Panel of the
3 Winnemucca Indian Colony also known as the “Minnesota Panel,” because the Judges
4 were judges from the Sioux Tribes in Minnesota.

5 62. The Minnesota Panel was paid for by the bank account belonging to the
6 Winnemucca Indian Colony, in an amount more than \$50,000.00.

7
8 63. On August 16, 2002, the “Minnesota Panel” issued an opinion recognizing
9 Sharon Wasson as the Chairman of the Winnemucca Indian Colony and the other
10 members of the Council as Elverine Castro, Thomas Wasson, William Bills and Thomas
11 Magiera. Mr. Mageira was required to be replaced because of his decease prior to the
12 hearing. This decision recognized a Council with a clear majority of members that are
13 Plaintiffs herein.

14
15 64. The Winnemucca Indian Colony requested that the BIA recognize the
16 government as recognized by the Minnesota Panel, but the BIA refused in 2002 to
17 recognize a government of this federally recognized Tribe, did not remove the
18 trespassers from the Colony’s lands, and did not protect the resources and assets of the
19 Colony.
20

21 65. On May 17, 2007, all Tribal remedies were again exhausted regarding the
22 matters of government recognition and Tribal membership by virtue of a decision of the
23 reconstituted Inter-tribal Court of Appeals of Nevada dismissing all further appeals in
24 recognition of the prior Minnesota Panel decision as final.

25
26 66. In 2007, the Winnemucca Indian Colony again requested that the BIA recognize
27 the government as affirmed by the Inter Tribal Court, but the BIA refused.
28

1 67. On March 6, 2008, United States District Court Judge Brian Sandoval issued an
2 opinion that all Tribal remedies had been exhausted and the decision of the “Minnesota
3 Panel” was granted comity.

4 68. In 2008, the Winnemucca Indian Colony again requested that the BIA recognize
5 the government as recognized in comity by the United States District Court, District of
6 Nevada, but the BIA refused.

7
8 69. On June 29, 2009, William Bills, holding himself out as “Tribal Chairman” for
9 the Colony, executed a certified resolution for the “Winnemucca Indian Colony”
10 certifying and authorizing the Glacier International Depository Bank as its “Central
11 Bank and Depository.”

12
13 70. The alleged GID bank defrauded foreign investors and was eventually criminally
14 investigated, resulting in the conviction of a known associate of William Bills. Upon
15 information and belief, William Bills testified in exchange for leniency in his role, as the
16 GID Bank was falsely authorized by him as the Chairman of the Winnemucca Indian
17 Colony.

18
19 71. Since the GID Bank was chartered by William Bills acting as the Winnemucca
20 Indian Colony, the name of the Colony will always be associated with defrauding foreign
21 investors of hundreds of thousands of dollars.

22 72. On October 14, 2010, the Ninth Circuit Court of Appeals affirmed the decision of
23 the U.S. District Court that recognized the Minnesota Panel decision. *Certiorari* was
24 denied by the United States Supreme Court on April 18, 2011.

25
26 73. The Winnemucca Indian Colony again requested that the BIA recognize the
27 government as recognized by the Ninth Circuit and the United States Supreme Court,
28 but the BIA refused.

1 74. The Interior Board of Indian Appeals (“IBIA”) determined that the BIA was
2 required to recognize the government of a federally recognized Tribe when a reason
3 existed and ordered the BIA to recognize a government of the Winnemucca Indian
4 Colony because of allegations of trespass on the lands of the Colony.

5 75. The Winnemucca Indian Colony again requested that the BIA recognize the
6 government of the Colony as ordered by the IBIA, but the BIA refused.

7 76. On or about the middle of May 2011, the Winnemucca Indian Colony entered
8 their lands and began work to rehabilitate the smoke shop located on the 320 acre
9 parcel of the Winnemucca Indian Colony that was abandoned when Glenn Wasson was
10 murdered in February 2000 and the other members threatened with violence.

11 77. The contractors that were retained to work on the rehabilitation of the smoke
12 shop were approached by police officers from the BIA on or about July 31, 2011.

13 78. BIA agent Hermes stated that he had been directed by his employer that no one
14 had any authority to be on site and that the workers were to depart by the next morning
15 or, by implication, they would be arrested.

16 79. None of the trespassers inhabiting the 20 acres of the Winnemucca Indian
17 Colony lands was required to leave by the BIA officers.

18 80. The members of the Winnemucca Indian Colony were, thereby, again, effectively
19 excluded from their own lands by the BIA.

20 81. The lands of the Winnemucca Indian Colony continued to be occupied by non-
21 members of this federally recognized Tribe, all allowed by the BIA by its continuing
22 failure to secure the lands and resources of the Colony.

23 82. On August 10, 2011, an urgent request letter was sent to the Superintendent of
24 the Western Nevada Agency of the BIA asking that the Winnemucca Indian Colony be
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26
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28

1 allowed to return to their lands, but the Superintendent failed and refused to respond to
2 this urgent request.

3 83. On August 31, 2011, the United States District Court, District of Nevada, granted
4 the Colony's motion for a temporary restraining order against the BIA to stop it from
5 interfering with the Winnemucca Indian Colony re-entering its lands.

6
7 84. On September 1, 2011, a corresponding preliminary injunction against the BIA
8 was granted, ordering the BIA to recognize a government of this federally recognized
9 tribe.

10 85. For each and every day that the Winnemucca Indian Colony was excluded from
11 its lands, there was a loss in cultural rights, habitation, economic development and
12 income to the Colony and its members, and as a result, the Colony and its members
13 suffered irreparable harm and monetary damages.

14
15 86. On January 31, 2012, the United States District Court, District of Nevada, entered
16 an Order stating that the BIA's "continued refusal. . .to grant the Colony adequate
17 interim recognition without restrictions. . .amounts to a de facto termination of the
18 sovereign recognition granted by Congress, which is likely to lead to the irreparable
19 political dissolution of the Colony's sovereign existence.. ."

20
21 87. On July 9, 2012, after hearing, the United States District Court, District of
22 Nevada, gave the BIA seven days to recognize either Thomas Wasson or William Bills -
23 but not both - and that the BIA should review the record in the case to make a
24 reasonable decision.

25
26 88. Within seven days, the BIA, having met exclusively with William Bills and his
27 attorney and no other party, recognized William Bills as the government of this
28 federally recognized tribe. William Bills is 100% Filipino by blood quantum and
evidence of that fact had been submitted to the BIA in 2000.

1 89. On September 25, 2012, the United States District Court, District of Nevada,
2 entered an Order stating that:

3 ...the Court rules that the decision by the BIA to recognize Bills
4 on July 17, 2012 was an abuse of discretion and not in
5 accordance with law, see 5 U.S.C. § 706(2)(A), because the BIA
6 based its decision purely on its interpretation of tribal law,
7 which is territory into which neither the BIA nor this Court is
8 to tread. (The government did not appeal this decision.)

9 90. Thomas Wasson, Judy Rojo, Misty Morning Dawn Rojo Alvarez, Katherine
10 Hasbrouck, and Eric Magiera were recognized as the government of the Winnemucca
11 Indian Colony by letter from the BIA on December 14, 2014, but the BIA which
12 continues to be the only police force on the Colony refuses to remove the trespassers
13 who hold possession of the twenty acres where the only residential housing is located.

14 91. The Colony members funded an election, from their own personal funds, because
15 the BIA refused to enter into a aid to tribal government contract with the Colony.

16 92. An election monitored by the Inter Tribal Council of Nevada on June 29, 2013.
17 The report of the election was submitted to the United States District Court, District of
18 Nevada and to the Western Nevada Agency asking for recognition of the Colony Council
19 as Judy Rojo, Misty Morning Dawn Rojo, Katherine Hasbrouck, Willis Evans and
20 Thomas Magiera, II.

21 93. The Winnemucca Indian Colony had no funds because of the failure of the BIA
22 since 2000 to enter into aid to tribal government contracts and protect the lands and
23 resources for the Colony members, which resulted in a loss of funds that were allocated
24 to the Winnemucca Indian Colony by the federal government in excess of
25 \$2,984,781.00.
26

27 94. Further, the Colony had no funds because the BIA has allowed a group of
28 trespassers to occupy the lands of the Winnemucca Indian Colony and operate the

1 smoke shop on those lands and keep the funds for their own personal use and further
2 use and reside on the lands without collecting rents, which loss to the Colony exceeds
3 \$2,760,000.00

4 95. Further, the Colony had no funds because the BIA has failed and refused to
5 protect the members of the Colony from the threats of violence made by the occupation
6 group and William Bills, thus the members fear to enter their lands and risk personal
7 injury or death.
8

9 96. On December 13, 2014, the BIA in response to Court Order finally recognized the
10 government of the Winnemucca Indian Colony.

11 97. In April 2015, the Tribal Court of the Winnemucca Indian Colony issued a five-
12 day eviction order directed to the trespassing occupants of the Colony in order for the
13 United States Environmental Protection Agency, which had already agreed to fund a
14 clean up, to enter the lands unmolested and assess the hazardous and solid waste
15 contamination of the lands.
16

17 98. The Order of the Tribal Court was delivered to the BIA police for enforcement.

18 99. The BIA police refused to enforce the Order, and the Western Nevada Agency
19 delivered a letter to the Winnemucca Indian Colony on April 15, 2015, refusing to
20 enforce the Tribal Court Order and the Acting Superintendent of the Western Nevada
21 Agency, Marilyn Bitsilie, declared that the 20 acres were not held in trust status for the
22 benefit of the Winnemucca Indian Colony thus depriving the Colony of all use and
23 protection of the twenty acres.
24

25 100. On August 24 and 28, 2015, the Winnemucca Indian Colony made demands for
26 the removal of the unlawful trespassers from the lands of the Colony, removal or
27 compensation for the easements granted without authorization, restoration of the water
28 rights to the 320 acres, a demand that the 20 acres which was declared held in trust by

1 the United States for the Winnemucca Indian Colony in an opinion by the Solicitor
2 General in 1993 be declared trust lands and other demands, so that the members could
3 once again re-enter their lands and use the lands of the Winnemucca Indian Colony for
4 the benefit of the membership.

5 101. Sometime in the spring of 2016, the Superintendent of the BIA, Western Nevada
6 Agency, declared verbally to the Chairman of the Winnemucca Indian Colony in person
7 that the 20 acres of the Winnemucca Indian Colony was held in trust for the Colony and
8 had been since at least 1928, essentially reversing the statement of the interim
9 Superintendent, but still refusing to evict the trespassers and allow the EPA to conduct
10 its assessment.

11 102. In August 2020, the BIA provided a Certified Title Status Report that revealed
12 that the lands of the Winnemucca Indian Colony were held in trust for the benefit of the
13 Colony and its members with no lawful liens or encroachments.

14 103. The Superintendent stated that the documents held by the BIA that regarded the
15 Western Nevada Agency would be turned over to the Colony.

16 104. The Superintendent stated that a \$50,000.00 grant would be authorized for the
17 Winnemucca Indian Colony but that the Colony would have to account for every cent of
18 the grant before any further monies would be authorized under the 638 powers of the
19 BIA.

20 105. The Superintendent further stated that BIA would resolve the unauthorized CFR
21 Court issue and hold a meeting in April 2016 in Phoenix to that end.

22 106. No determination or decision has been made by the BIA, and the CFR Court has
23 announced that it will hold court and has assumed jurisdiction. Its Orders have resulted
24 in the loss of grant funds, and the increased cost of activities authorized by the grant
25 funds are in excess of \$50,000.00.
26
27
28

1 107. The CFR Court appointed by BIA has held court without jurisdiction, which
2 required the Colony to retain counsel to represent its interests. The CFR Court has
3 scheduled multiple hearings even after it was informed that it no longer had jurisdiction
4 since a Tribal Court had been appointed in 2015. The CFR Court did not transfer to the
5 Tribal Court the cases over which CFR court had no jurisdiction until June 2021. The
6 Colony incurred attorneys' fees and costs in excess of \$71,000.00 because of this CFR
7 court action.
8

9 108. The Superintendent further stated that it was too dangerous for the membership
10 to return to its lands and that it should set up an office in Reno, Nevada, until the lands
11 are cleared of non-members, requiring the Colony to expend over \$60,000.00 in rental
12 costs for being in Reno and being excluded from its lands.
13

14 109. No attempt has been made to clear the lands of trespassers for the five years since
15 the government has been recognized.
16

17 110. The Superintendent provided copies of the leases for the HUD housing located on
18 the lands of the Winnemucca Indian Colony, which leases clearly expired at the latest in
19 1997.
20

21 111. The BIA has failed and refused to remove the persons living in the HUD homes
22 with expired leases.
23

24 112. The BIA has failed and refused to remove persons who are trespassers, non-
25 members and non-Indians, living in makeshift, unhealthy and unauthorized housing on
26 the lands of the Colony.
27

28 113. The BIA has failed and refused to allow the United States Environmental
Protection Agency to enter the lands of the Colony and assess the hazardous and solid
waste contamination on the site which is open and obvious.

1 114. The cost of removal of the waste deposited on the lands by the trespassers non-
2 members and occupiers will exceed \$350,000.00.

3 **The Tribal Lands**

4 115. President Woodrow Wilson set aside 160 acres for the benefit of the homeless
5 Shoshone by Executive Order dated June 18, 1917, described as the NE ¼ of Section 32,
6 Township 36N., Range 38E., M.D.M. (Mount Diablo Meridian).
7

8 116. President Wilson set aside an additional 160 acres for the benefit of the homeless
9 Shoshone by Executive Order dated February 8, 1918, described as the SE 1/4 of Section
10 32, Township 36N., Range 38E., M.D.M. (Mount Diablo Meridian).

11 117. These two contiguous parcels are commonly referred to by the Tribe as the “320
12 acres.”
13

14 118. In 1928, because the BIA records reflected that the homeless Shoshone were still
15 living on 20 acres near the railroad where they worked, a separate 20 acres was
16 conveyed by Congressional Act, described as N1/2 NE1/4 SW1/4, Section 29, Township
17 36, Range 38 East, Mount Diablo Meridian, Nevada, containing 20 acres more or less.
18

19 119. This parcel is commonly referred to by the Tribe as the “20 acres” and is the only
20 parcel which has ever been occupied until 2019.

21 120. These three parcels have at all times since 1928 been referred to and recognized
22 as the lands of the Winnemucca Indian Colony.

23 121. These lands are potential irrigable acreage and have a right to water rights
24 incumbent thereto as agricultural lands.
25

26 **BIA’S TRUST RESPONSIBILITY TO THE TRIBE**

27 122. The United States of America has a trust responsibility to protect the value of
28 Indian land and its use for the benefit of Indians. As explained in *United States v.*
Mitchell, 463 US 206, 223 (1983):

1 The Secretary is empowered to grant rights-of-way for all purposes across
2 trust land, 25 U. S. C. § 323, provided that he obtains the consent of the
3 tribal or individual Indian landowner, § 324, and that the Indian owners
4 are paid appropriate compensation, § 325. Regulations detail the scope of
5 federal supervision. 25 CFR pt. 169 (1983). For example, an applicant for a
6 right-of-way must deposit with the Secretary an amount not less than the
7 fair market value of the rights granted, plus an amount to cover potential
8 damages associated with activity on the right-of-way. The Secretary must
9 determine the adequacy of the compensation, and the amounts deposited
10 must be held in a special account for distribution to Indian landowners. See
11 25 CFR §§ 169.12, 169.14 (1983).

Water Issues

123. The United States of America has a trust responsibility to protect the value of
124 the land and its use for the benefit of the Indians, including obtaining water rights
125 for the 320 acres for agricultural purposes or any purpose for the beneficial use of
126 the lands since the lands are located in Nevada, a desert, and not usable without
127 water.

128. At the time it was conveyed to the Tribe, the 320 acres had a stream with free
129 flowing water in an amount in excess of 60 cfs which ran across the 320 acres.

130. Upon information and belief, Offenhauser Development Company diverted
131 the water without obtaining permission from the SOI or the United States Congress.

132. No monetary benefit was or is paid to the Winnemucca Indian Colony for this
133 water diversion.

134. Additionally, Offenhauser Development Company designed its subdivision so
135 that storm sewer runoff from the subdivision discharges directly onto the 320 acres.

136. Such storm sewer runoff is untreated and contains contaminants harmful to the
137 Tribal lands and continues to run onto the lands of the Colony.

1 129. The BIA failed and refused, and continues to fail and refuse, to protect the lands
2 of the Winnemucca Indian Colony from the loss of the water flowing across its lands
3 from the stream originating in the Humboldt Mountains.

4 130. The BIA failed and refused, and continues to fail and refuse, to protect the lands
5 of the Winnemucca Indian Colony from the discharge of storm sewer water or the use of
6 such easement by the City of Winnemucca.

7
8 131. The BIA failed and refused, and continues to fail and refuse, to reserve water
9 rights for the best and appropriate use of the 320 acres as agricultural lands.

10 **Encroachment by Substation, Power Lines, Buildings and Roads**

11 132. The 320 acres that belong to the Winnemucca Indian Colony were set aside by
12 President Wilson as a rectangle of land.

13
14 133. Within the four years since recognition, the Colony Council has repeatedly
15 requested that BIA survey the Colony lands to determine the encroachments by
16 subdevelopers – now the City of Winnemucca and NV Energy, by an electrical
17 substation, a substandard road and overhead power lines which are, upon information
18 and belief, encroaching upon the property and easements to the property.

19
20 134. Upon information and belief, NV Energy placed the electrical substation and
21 overhead power lines upon Colony land without obtaining a right of way or, if a right of
22 way was obtained, it has now expired by its terms.

23
24 135. Upon information and belief, NV Energy and the BIA had a right of way
25 agreement that paid nothing to the Colony and was not approved by the Colony's
26 government, and that expired sometime after 2010.

27 136. No monetary benefit was or is paid to the Winnemucca Indian Colony for these
28 power lines or electrical substation, nor are they maintained by the Winnemucca Indian
Colony.

1 137. The Winnemucca Indian Colony surveyed the twenty acre parcel in 2019 and
2 found encroachments from buildings by a neighboring subdivision; easements from a
3 neighboring subdivision and the City of Winnemucca, and other encroachments upon
4 the lands.

5 138. The City of Winnemucca has built and used a road across the lands of the
6 Winnemucca Indian Colony without the consent of the Colony and without the Colony
7 receiving any compensation for the encroachment of Highland St. upon the lands of the
8 Colony, all with BIA's knowledge and consent.

9 139. The BIA had not surveyed the lands nor protected the Colony's lands from these
10 encroachments.

11
12 **Loss of Economic Development Income**

13 140. The approximately \$500,000.00 interpled by Bank of America and \$500,000
14 taken from the person of Glenn Wasson when he was murdered was all money
15 generated by the Smoke Shop managed by the Colony membership between 1993 and
16 1999. The Smoke Shop thus generated profits in excess of \$100,000 per annum in 1990
17 valued dollars.

18 141. Due to actions taken by the BIA, the Tribe was stopped from reopening the
19 Smoke Shop from 2000 to 2011 by the occupation of the lands by non-members and the
20 threat of arrest from the BIA police.

21 142. Due to the long vacancy at the Smoke Shop, the Tribe was informed by a licensed
22 contractor that the building was no longer useable, and it has now been removed from
23 the lands of the Winnemucca Indian Colony.

24 143. Upon information and belief, the Colony and its membership have lost in excess
25 of \$100,000 per year because of the loss of the economic use of the smokeshop and have
26 been required to replace the smokeshop building for in excess of \$300,000.00.
27
28

Loss of use of Administration Building

1
2 144. The 20 acres of the Winnemucca Indian Colony contained an administration
3 building built for the purpose and use of administrative duties of the Colony
4 membership.

5 145. The Administration Building was occupied by the persons who were trespassers
6 from 2000 to 2014.

7
8 146. The Administration Building was left by the trespassers with defective and
9 hazardous electrical wiring, black mold, and other structural defects, making the
10 building too hazardous for human use.

11 147. The Administration Building is trust property.

12 148. The estimate to rehabilitate the Administration Building for reuse is in excess of
13 \$300,000.00.

14
15 149. The Administration Building as trust property was the responsibility of the BIA
16 and its loss is directly attributable to the breach of trust by BIA.

17
18 **First Claim for Relief**
19 **Violation of 25 USC § 323 et seq. – land use**

20 150. Plaintiff incorporates all paragraphs of this complaint by reference as if fully set
21 out herein.

22 151. 25 USC § 324 and the regulations promulgated under 25 USC § 323, codified at
23 25 CFR pt. 161.1 et seq. (1967), restrict Defendants’ power to convey Indian land by
24 requiring that consent of Tribal officials be obtained before making a conveyance
25 pursuant to 25 USC § 323.

26
27 152. Upon information and belief, the BIA allowed the waste of natural resources and
28 use of the lands within the Winnemucca Indian Colony within the past ten years, and

1 constructed a two-lane, partially paved road called Highland Road which crosses Colony
2 land without the approval of the Colony and without compensation to the Colony.

3 153. Upon information and belief, Defendants have allowed the City of Winnemucca
4 to continue to use and maintain the twolaned, partially black-topped road.

5 154. Upon information and belief, Defendants allowed the City of Winnemucca to
6 place the road upon Colony land without obtaining proper approvals or consent for the
7 right-of-way from the Tribe and the SOI. Additionally, upon information and belief, the
8 City of Winnemucca approved a subdivision for ingress and egress from a back parking
9 lot over Colony lands without any approvals, consent or compensation to the Colony.

10 155. No monetary benefit was or is paid to the Tribe for the right of way for this road.

11 156. Plaintiffs have suffered actual harm by the loss of its lands.

12
13
14 **Second Claim for Relief**
15 **Violation of 25 USC § 323 et seq. – land use in relation to energy station**

16 157. Plaintiff incorporates all paragraphs of this complaint by reference as if fully set
17 out herein.

18 158. Upon information and belief, Defendants allowed Sierra Pacific Power Company
19 d/b/a NV Energy, Inc. (“NV Energy”) within the past thirty (30) years, to construct an
20 electrical substation and place overhead power lines upon Colony land, and, in 2018,
21 allowed NV Energy to grade a road alongside the lands of the Winnemucca Indian
22 Colony without authorization or notice to the Colony which road impeded water running
23 onto the lands of the Colony and has caused erosion and disruption to the lands of the
24 Colony.
25

26 159. Upon information and belief, Defendants have allowed NV Energy, Inc., to
27 continue to use the power lines that are now on the lands of the Winnemucca Indian
28

1 Colony, without authorization or right or payment demanded from the BIA on behalf of
2 the Colony.

3 160. Upon information and belief, Defendants allowed NV Energy, Inc., to construct
4 the electrical substation and place overhead power lines on Colony land without
5 obtaining proper approvals or a right-of-way from the Tribe and the SOI.

6 161. No monetary benefit was or is paid to the Winnemucca Indian Colony for the
7 right-of-way for the electrical substation, the road, or overhead power lines.

8 162. Plaintiffs have suffered actual harm in the loss of use of these easements or the
9 loss of negotiated trade for services for these easements and has further suffered
10 damages to the lands by erosion and loss of water flow.

11
12 **Third Claim for Relief**
13 **Breach of Trust - Water**

14 163. Plaintiff incorporates all paragraphs of this complaint by reference as if fully set
15 out herein.

16 164. Under the *Winters* doctrine, established in *Winters v. United States*, 207 U.S.
17 564, 577–78, 28 S.Ct. 207 (1908) and also known as the reserved-water-rights doctrine,
18 when the United States reserves land for an Indian tribe, it also by implication “reserves
19 [the] amount of water necessary to fulfill the purpose of the reservation” *Cappaert*
20 *v. United States*, 426 U.S. 128, 141, 96 S.Ct. 2062 (1976).

21 165. Defendants reserved Colony land for the Tribe by Executive Order for the
22 purpose of the lands being the home of the Winnemucca Indian Colony and, therefore,
23 its trust duties extend to Tribal water.

24 166. The United States has a responsibility for the quality of water within the
25 reservation when there is “third-party diversion or contamination.” *Hopi Tribe v.*
26 *United States*, 782 F.3d 662, 669(2015).
27
28

1 167. The standard of duty for the United States as trustee for Indians is not mere
2 “reasonableness,” but the highest of fiduciary standards. *See, e.g., United States v.*
3 *Mason*, 412 U.S. 391, 398, 93 S.Ct. 2202, 2207 (1973); *Cheyenne-Arapaho Tribes v.*
4 *United States*, 206 Ct.Cl. 340, 345, 512 F.2d 1390, 1392 (1975).

5 168. Upon information and belief, Defendants allowed Offenhauser Development
6 Company to divert a stream and remove water from wells from which water was able to
7 reach the Colony’s lands for its highest and best use and as a result there is no available
8 water or water rights located on the 320 acres which renders no water available and
9 which is needed and is now located in upstream wells and holding tanks and not
10 available to the 320 acres in an amount in excess of 60 cfs for use in an upstream
11 diversion and impoundment.

12 169. Upon information and belief, Defendants allowed Offenhauser Development
13 Company to divert the water without obtaining permission from the SOI and without
14 paying any costs for loss of water to the Colony.

15 170. No monetary benefit was or is paid to the Winnemucca Indian Colony for this
16 water diversion.

17 171. No substitute water source has been made available to the Winnemucca Indian
18 Colony in order to make use of their lands for any purpose.

19 172. Plaintiffs have suffered actual harm in an amount in excess of \$6,100,000.00

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21
22
23
24 **Fourth Claim for Relief**
Violation of 25 U.S.C. § 4101

25
26 173. Plaintiff incorporates all paragraphs of this complaint by reference as if fully set
27 out herein.
28

1 174. The BIA caused the Lovelock Housing Authority to convey to non-members the
2 residential housing on the Colony without collection of any rents nor requiring that any
3 rents be paid.

4 175. The residents of the HUD housing believe, based upon assurances from BIA and
5 subsequent actions denying the Colony Council the right to evict these residents, that
6 they have rights to occupy all the residential housing on the Colony without government
7 approval, without paying any rentals to the Colony and ignoring all compliance orders
8 from the Colony regarding use of sanitation facilities and accumulation of solid and
9 hazardous waste upon the lands of the Colony.

10 176. Without residential housing or the ability to enter into a contract or grant with
11 HUD because the Colony did not have a recognized government for fourteen years, the
12 Colony's members were effectively excluded from the Colony's lands.

13 177. Further the Colony members and government could not re-enter their lands
14 because of the threat of arrest for trespass from the only police force on the Colony, the
15 BIA, thus losing the ability to develop a healthy marketplace and engage in economic
16 development.

17 178. Further the Colony members and government could no re-enter their lands and
18 begin the clean up of the hazardous, solid and infectious waste deposited on the
19 Colony's lands by the trespassers.

20 179. The Colony lost the right to apply for grants and contracts and suffered damages
21 in the amount in excess of \$20,000,000.00.

22
23
24
25
26 **Fifth Claim for Relief**
27 **Breach of Trust and Violation of Law pursuant to**
28 **the Indian Non-Intercourse Act**

180. Plaintiff incorporates all paragraphs of this complaint by reference as if fully set
out herein.

1 181. The Tribe is an Indian “tribe” within the meaning of the Indian Non-intercourse
2 Act (“Act”), 25 U.S.C. § 177.

3 182. The Act provides:

4
5 No purchase, grant, lease, or other conveyance of lands, or of any
6 title or claim thereto, from any Indian nation or tribe of Indians,
7 shall be of any validity in law or equity, unless the same be made by
8 treaty or convention entered into pursuant to the Constitution.

9 183. The parcels of land at issue herein are covered by the Act as Tribal land.

10 184. Defendants have never consented to the alienation of the Tribal land.

11 185. The trust relationship between Defendants and the Tribe has never been
12 terminated or abandoned.

13 186. BIA's inherent and statutory fiduciary duties under the Act include, among
14 others, the duty to properly manage the trust property, both real and personal, of
15 Plaintiffs.

16 187. The Act prohibits the conveyance of any interest in Indian lands (real property)
17 without proper federal consent.

18 188. The Tribe has not consented to the conveyance of any property interest in the
19 Colony lands, including any possessory interest.

20 189. Congress has not authorized the conveyance of any interest in the Colony’s lands.

21 190. The BIA, by its arbitrary, capricious and unreasonable failure for fourteen years
22 to recognize a Council of the Winnemucca Indian Colony, and/or to have surveyed the
23 lands, protected from the lands from encroachment, or properly policed the lands, nor
24 protected the natural resources, nor obtained water for the highest and best use of the
25 lands has affirmatively conveyed the possessory interest of the land be held by
26 trespassers which has required the Colony to expend in excess of \$250,000 to attempt
27
28

1 to remove the trespassers from its lands which still has not been accomplished to date
2 by the acts and failure to act by the government.

3 191. As a result of Defendants' actions, the Colony and its members have suffered and
4 continue to suffer considerable damage and harm, including the failure to receive funds
5 for the rights of way being utilized for (i) a road over Colony land; (ii) installation of
6 overhead utility wires over Colony land; (iii) installation of a electrical substation on
7 Colony land; and (iv) diversion of an actual stream in excess of 60 cfs running across the
8 Colony lands; loss of funding; loss of economic development; loss of use of buildings;
9 encroachment upon the lands; and further damages for loss of use of lands and loss of
10 right to conduct governmental functions.

11 192. Plaintiffs have suffered actual harm in an amount in excess of \$100,000,000.

12
13
14 **Sixth Claim for Relief**
15 **Breach of Fiduciary Duty**

16 193. Plaintiffs incorporate all paragraphs of this complaint by reference as if fully set
17 out herein.

18 194. Pursuant to 25 CFR § 2.8, the Winnemucca Indian Colony has repeatedly
19 requested that the twenty acres of the Colony's lands be surveyed by BIA.

20 195. The BIA has failed and refused since 2014 to survey the twenty acre parcel of the
21 Colony's land as an obligation under the trust responsibility to preserve the lands of a
22 federally recognized tribe.

23 196. Upon information and belief, more than one structure has been placed on the
24 Colony's lands by a subdivision located adjacent to the twenty acres, including but not
25 limited to a garage, shed, part of a trailer park, road, and driveway. The Colony's losses
26 exceed \$72,000 per year in loss of energy and use by the subdivisions.
27
28

1 197. No monetary benefit was or is paid to the Winnemucca Indian Colony for this
2 encroachment.

3 198. Plaintiff has suffered actual harm in an amount of more than \$110,000 annually
4 because of Defendants' failure to act on this encroachment. Plaintiff incurred the costs
5 of the survey to the twenty acre parcel of Colony land and specifically identified the
6 encroachments in 2019, but the three hundred and twenty acre parcel still has not been
7 surveyed nor can the Colony afford the cost of the survey.

9 199. Defendants, by their failure to act from 2000 through 2014 in failing to properly
10 recognize a Tribal Council of the Colony, failing to police and protect the lands from
11 encroachment and trespass and interfering with the efforts of the Tribe to re-open the
12 Smoke Shop, violated Defendants' fiduciary responsibilities under federal law, including
13 but not limited to 25 USC 323, 25 USC 4101 and the Non-Intercourse Act.

15 200. As a result of Defendants' actions, the Colony and its members have suffered and
16 continue to suffer considerable economic damage and harm including, without
17 limitation, the loss of at least \$100,000 per annum in lost profits from operation of the
18 Smoke Shop.

20 201. Defendants also violated their fiduciary responsibilities to the Colony under
21 federal law.

22 202. Plaintiffs have suffered actual harm in an amount in excess of \$2,000,000.00.

23 **Seventh Claim for Relief**

24 **The Winnemucca Indian Colony has no other means of recovering**
25 **the loss of the value and income from its property wherein it was denied**
26 **management, access and use of its property other than to seek damages**
27 **from the United States.**

28 203. Plaintiffs incorporate all paragraphs of this complaint by reference as if fully set
out herein.

1 204. The Plaintiffs have no other remedy at law or administrative appeal to recover
2 the value of the loss of their lands and sovereignty taken from them by the BIA's
3 breach of trust responsibility, violation of the law, failure of the BIA to follow its own
4 policies in protecting and contracting with the federally recognized Tribes and the
5 BIA's failure to follow the laws adopted by Congress to preserve the lands, enter into
6 contracts for services or provide those services to the Colony, and the its failure to
7 protect the natural resources on the lands of the Colony and conveyed leaseholds on
8 Colony property without compensation and without the consent of the Colony.
9

10 205. The Plaintiffs have suffered irreparable harm from these acts and failures to act
11 by the BIA.

12 206. The Plaintiffs have suffered actual damages from the loss of use of their lands,
13 loss of contracts, loss of grants, and the failure of the BIA to protect the lands and
14 resources of the Colony.
15

16
17 **Eighth Claim for Relief**
18 **Demand for Documents and Accounting**

19 207. Plaintiffs incorporate all paragraphs of this complaint by reference as if fully set
20 out herein.

21 208. As trustees, Defendants manage and control all ownership documents and
22 information concerning Colony land, and Defendants' management of such lands.

23 209. As fiduciaries, Defendants have been and are obliged to account fully to Plaintiff,
24 as trust beneficiaries, for the ownership, management, and disposition of Colony land.

25 210. BIA breached its fiduciary duties and duty of trust by arbitrarily, capriciously and
26 unreasonably failing to properly recognize the Colony tribal government within a
27 reasonable time, despite numerous court orders spanning twelve years and failing to
28 contract with the Colony for the funds allocated specifically by Executive and Legislative

1 Branches of government to the Winnemucca Indian Colony and failing to use those
2 allocations for serices at the Colony but instead diverted those funds for use by the BIA
3 to support its own staff salaries and expenses.

4 211. BIA has a duty to render an accounting to plaintiff to determine damages
5 resulting from any misallocation of funds.

6 212. Plaintiffs hereby demand, on behalf of the Colony and its individual members, an
7 accounting of all Tribal annuities, distributions, allotments, grants wrongfully withheld
8 or diverted and any other payments, including interest thereon, for the period during
9 which Defendants failed to properly pay Plaintiffs in excess of \$35,000,000.00.
10

11 **Ninth Claim for Relief**
12 **Declaratory Judgment - Right to Royalties for Use of Land**

13 213. Plaintiff incorporates all paragraphs of this complaint by reference as if fully set
14 out herein.

15 214. The BIA failed to seek any compensation for the use of the Colony's water, land
16 and other property rights from the third parties using those lands, water, and resources.

17 215. The BIA did not simply undervalue or make bad investments on behalf of the
18 Colony, the BIA did nothing to protect and preserve the lands and resources of the
19 Colony for its members.
20

21 216. The Colony is entitled to fair compensation for use of the Colony's water, land
22 and other property rights pursuant to federal law. Fair compensation requires, among
23 others, an appraisal of the value of the assets and an accounting by the BIA.

24 217. Pursuant to 28 U.S.C. §2201, Plaintiffs seek a declaration that the Colony is
25 entitled to fair and reasonable compensation for past, present and future use of the
26 Colony's water, land and other property rights in excess of \$91,000,000.00.
27
28

Tenth Claim for Relief
Loss of use of lands and rights as Tribal members
by the individual members of the Colony

1
2
3 218. Plaintiffs incorporate all paragraphs of this complaint by reference as if fully set
4 out herein.

5 219. The Winnemucca Indian Colony has had members over the age of eighteen years
6 for the most recent twenty years.

7
8 220. These members have been excluded from the use and enjoyment of their tribal
9 lands because of the occupation of the lands by trespassers allowed and protected by the
10 BIA.

11 221. These members could not engage in economic development of their lands, use
12 their lands, enjoy the benefits of tribal membership because of the lack of recognition of
13 the government of the Winnemucca Indian Colony.

14
15 222. The Colony seeks a judicial declaration that these members each suffered the loss
16 of the use of the lands for twenty years and the benefits of tribal membership for fifteen
17 years in an amount in excess of \$1,000,000 per tribal member.

Eleventh Claim for Relief
Declaratory Judgment – Right to lands granted to the other western tribes
of BLM and other government lands pursuant to the repatriation of Tribal
Lands process

18
19
20
21
22 223. Plaintiffs incorporate all paragraphs of this complaint by reference as if fully set
23 out herein.

24 224. The Bureau of Land Management (“BLM”) manages approximately 1200 acres
25 near or adjacent to the Winnemucca Indian Colony which is considered surplus
26 property by the BLM.
27
28

1 225. In 2012, many Tribes in the western United States made a proposal to have lands
2 that were considered surplus by the BLM returned to the Tribes and conveyed as trust
3 lands for the Tribes' management and control.

4 226. Since the Winnemucca Indian Colony did not have a government recognized by
5 the BIA and the BIA did not protect the interests of the Colony itself by intervening to
6 protect the Colony's interests, the Winnemucca Indian Colony missed the opportunity to
7 petition for the conveyance of the acreage in its purview.
8

9 227. The Colony suffered damages by this omission in excess of \$879,000.00.

10 228. The Colony seeks a judicial declaration that it is entitled to the opportunity to
11 petition for the conveyance of the acreage in its purview.
12

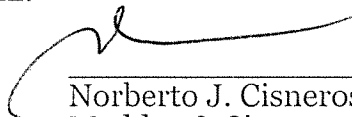
13 PRAYER FOR RELIEF

14 WHEREFORE, Plaintiff prays for judgment against all Defendants, as
15 follows:

- 16 1. A judgment of money due to the Colony and its members of more than \$208
17 million according to proof;
- 18 2. A declaratory judgment that the Colony is entitled to fair and reasonable
19 compensation for past, present and future use of the Colony's water, land
20 and other property rights;
- 21 3. A declaratory judgment that Plaintiff is entitled to the opportunity to
22 petition for the conveyance of acreage in its purview, pursuant to the BLM
23 tribal lands repatriation process;
- 24 4. A declaratory judgment that Colony members each suffered the loss of the
25 use of the lands for twenty years and the benefits of tribal membership for
26 fifteen years in an amount in excess of \$1,000,000 per tribal member;
- 27 5. An accounting for all distributions, annuities, grants and allotments and
28 other monies, including interest thereon, which are due to Plaintiffs;

- 1 6. A judgment in favor of Plaintiffs for their costs of trial and their attorneys’
2 fees in this matter; and,
3 7. Such other and proper orders as the Court deems appropriate.
4

5 DATED this 31st day of January, 2022.

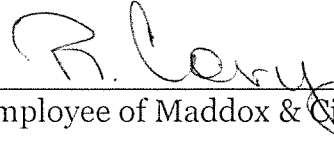
6 
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20 *Attorneys for Plaintiff*
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CERTIFICATE OF SERVICE

1 I hereby certify that on this 1st day of February, 2022, I served a true and correct
2 copy of the above document, entitled **FIRST AMENDED COMPLAINT**, via the
3 Court's electronic filing/service system (CM/ECF) to all parties on the current service
4 list.

5
6 

7 An Employee of Maddox & Cisneros, LLP

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