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

12 DOREEN BROWN, et al.

13 Plaintiffs,

14 v.

15 THE UNITED STATES OF AMERICA;
16 THE UNITED STATES DEPARTMENT
17 OF INTERIOR, BUREAU OF INDIAN
18 AFFAIRS; et al.

19 Defendants,

20 and

21 WINNEMUCCA INDIAN COLONY,

22 Intervening Defendant.

Case No.: 21-CV-00344-MMD-CLB

OPPOSITION TO CROSS MOTION FOR
SUMMARY JUDGMENT FILED BY
UNITED STATES OF AMERICA

23 Plaintiffs, DOREEN BROWN, LOUELLA STANTON, ELDON BROWN, DWIGHT
24 BROWN, ELENA LOYA, ELISA DICK, LOVELLE BROWN, KEVIN DICK & LESLIE
25 SMARTT, JR. [hereinafter "Plaintiffs"] by their attorneys, file their Opposition to the Cross
26 Motion for Summary Judgment filed by the Defendants, THE UNITED STATES OF
27

1 AMERICA; THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN
2 AFFAIRS; DEB HAALAND, SECRETARY, UNITED STATES DEPARTMENT OF
3 INTERIOR, in her official capacity; BRYAN NEWLAND, ASSISTANT SECRETARY,
4 DEPARTMENT OF INTERIOR, INDIAN AFFAIRS, in his official capacity; RACHEL
5 LARSON, SUPERINTENDENT, WESTERN AGENCY, BUREAU OF INDIAN AFFAIRS, in
6 her official capacity [“Defendants”].
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8 The essence of the Defendants’ argument is that (1) “Plaintiffs fail to establish any
9 specific trust duties . . . let alone establish a breach of such a duty.” Cross Motion for Summary
10 Judgment [“CMSJ”] at 9, line 26-28. Defendants also argue that (2) Plaintiffs’ failed to establish
11 that the confiscation of Plaintiffs’ real and personal property was “caused by or even facilitated
12 by the Judicial Services 638 contract” or establish how reassumption “would have prevented
13 WIC from effectuating the evictions. . . .” CMSJ at 10, lines 7-9. Finally, Defendants argue that
14 (3) they investigated Plaintiffs’ complaints “and then made a valid discretionary decision to
15 protect tribal sovereignty on the Colony by not reassuming the judicial services contract under an
16 emergency or non-emergency basis.” CMSJ at 3, line 10-13.
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19 (1) Defendants’ Had a Trust Relationship with Plaintiffs

20 This Court has already determined that Defendants owed a duty of trust to Plaintiffs
21 because “25 U.S.C. §§ 5329-5330 confer a mandatory duty on the BIA” to consider Plaintiffs’
22 complaints and make a reassumption decision. ECF #97 at 5, lines 16-20. More importantly,
23 Plaintiffs have a claim under the APA to challenge the harm caused by Intervening Defendant,
24 WINNEMUCCA INDIAN COLONY TRIBAL COUNCIL [“WIC”] through the reassumption
25 process. *See U.S. v. Jicarilla Apache Nation*, 564 U.S. 162, 177 (2011)(where Plaintiffs need
26 only establish “a specific, applicable, trust-creating statute or regulation that the government
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1 violated”). Plaintiffs have established those statutes and regulations as 25 U.S.C. §§ 5329-5330
2 and 20 CFR Parts 900.240-940.256. Defendants have a trust relationship with Plaintiffs.
3 Moreover, a trust relationship is not required for Plaintiffs to prevail on their claims under the
4 APA and 24 CFR Part 247(a).
5

6 (2) Causal Connection Between 638 Contract and Irreparable Harm Irrelevant

7 Defendants claim Plaintiffs must establish the loss of their property was “caused by or
8 even facilitated by the Judicial Services 638 contract. . . .” CMSJ at 10, lines 7-9. Defendants do
9 not provide any support for this argument. Here, Plaintiffs need only show that WIC failed to
10 “fulfill the requirements of the contract” and the Defendants’ decision to not reassume the 638
11 Contract was arbitrary and capricious.
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13 As set forth in their Motion for Summary Judgment, confiscation and destruction of
14 personal and real property without a fair hearing denies due process of law. Plaintiffs’ Motion
15 for Summary Judgment (ECF #100) [“MSJ”] at 10, lines 14-28. A constitutional violation would
16 fail to fulfill the requirements of the 638 Contract. The inquiry centers around Defendants’
17 decision to not assume the 638 Contract and whether this decision is arbitrary and capricious, not
18 whether the Contract caused Plaintiffs’ damages.
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20 3. Defendants Reassumption Decision Was Arbitrary and Capricious

21 Defendants argue that it has reviewed the 638 Contract with WIC. Federal law requires
22 the Defendants to reassume the contract if WIC “fails to fulfill the requirements of
23 the contract and this failure poses . . . [a]n immediate threat of imminent harm to the safety of
24 any person.” 24 CFR Part 247(a). 24 CFR Part 247(b) requires reassumption by Defendants if
25 WIC violated “the rights or endanger[ed] . . . the health, safety or welfare of *any person*.” *Id.*
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1 WIC literally destroyed Plaintiffs’ homes and confiscated their land,¹ and as pointed out in
 2 Plaintiffs’ Motion to Summary Judgment, “Destroying the Plaintiffs’ homes without notice
 3 constitutes irreparable harm² because “an alleged constitutional infringement will often alone
 4 constitute irreparable harm.” MSJ at 10, lines 15-16. Furthermore, Plaintiffs’ do not have to be
 5 members of any tribe, just harmed by the “indian tribe” or “tribal organization.” 24 CFR Part
 6 247.
 7

8 Defendants claim a thorough investigation of Plaintiffs’ complaints, but this Court must
 9 “hold unlawful and set aside agency action, findings, and conclusions found to be—(A)
 10 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. . . . 5
 11 U.S.C. § 706(2); *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 413 (1971);
 12 *Natural Res. Council Fund v. Brong*, 492 F.3d 1120, 1125 (9th Cir. 2007). Defendants have
 13 failed to present a “rational connection between the facts found and the conclusions made.”
 14 *Brong*, 492 F.3d at 1125 (internal citation omitted). Defendants claim that their decision
 15 respected the “sovereignty of the Colony,” yet this one factor does not justify destruction and
 16 confiscation of Plaintiffs’ homes and personal property. CMSJ at 3, line 12. This Court must
 17 engage in a substantial inquiry and a “probing, in-depth review.” *Citizens to Preserve Overton*
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 23 ¹ The declarations of Leslie Smartt, Jr. and Elisa Dick are properly introduced and relied upon
 24 to support these facts. The instant case is one to “compel agency action unlawfully withheld or
 25 unreasonably delayed” rather than a final agency action. *Friends of the Clearwater v.*
 26 *Dombeck*, 222 F.3d 552, 560 (9th Cir. 2000). “In such cases, review is not limited to the record
 as it existed at any single point in time, because there is no final agency action to demarcate the
 limits of the record.” *Id.*

27 ² The distinction between “irreparable harm” to qualify for a preliminary injunction also
 28 qualifies for emergency re-assumption, but without the other factors to qualify for a preliminary
 injunction, like balancing of the equities and public interest.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July, 2023, I served the foregoing OPPOSITION TO CROSS MOTION FOR SUMMARY JUDGMENT upon the following person(s), in the following manner:

(ELECTRONIC SERVICE) Pursuant to Fed. R. Civ. P. 5(b)(3) and LR 5-4, the above referenced document was electronically filed and served upon the parties listed below through the Court’s Case Management and Electronic Case Filing (CM/ECF) system:

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/s/ Alexandra Rawlings
An Employee of Nevada Legal Services

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