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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

WESTERN SHOSHONE NATIONAL  
COUNCIL, KENN JOEEDY, JOHN WELLS,  
PAULINE ESTEVES, and KEVIN GILLETTE,

Plaintiffs,

Case No:

v.

**COMPLAINT**

UNITED STATES OF AMERICA,  
SAMUEL W. BODMAN, Secretary of  
the United States Department of Energy,  
and GALE NORTON, Secretary of the  
United States Department of the Interior,

Defendants.

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COMES NOW, Plaintiffs, WESTERN SHOSHONE NATIONAL COUNCIL, JOE KENNEDY, JOHN WELLS, PAULINE ESTEVES, and KEVIN GILLETTE, by and through their attorneys HAGER & HEARNE, who allege and complain against Defendants herein as follows:

**PARTIES AND JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1337, 1353, 1361, 1362, 2201, 2202, 5 U.S.C. 702 and 706, and the Fifth Amendment to the Constitution of the United States. This is a civil action brought by Indian Tribes or bands and

arises under the Constitution, treaties and agreements between the United States and the Tribe, federal common law and the federal statutes. The venue is proper pursuant to 28 U.S.C. § 1391.

2. Plaintiff WESTERN SHOSHONE NATIONAL COUNCIL is a governing body of the Western Shoshone Nation, and represents the interests of certain Western Shoshone tribes and bands which are parties and successors in interest to the Ruby Valley Treaty of 1863. The Western Shoshone National Council was established to represent the Western Shoshone peoples who had been force marched to reservations and those who had remained on their lands despite the government prohibition. The Western Shoshone National Council joins in this action on behalf of its members and the Western Shoshone people and the Western Bands of the Shoshone Nation of Indians (hereinafter “Western Shoshone Nation”).

3. JOE KENNEDY, JOHN WELLS, PAULINE ESTEVES, and KEVIN GILLETTE are individuals who are the descendants of the Western Shoshone people who entered into the Ruby Valley Treaty of 1863, and who are, therefore, alleged herein to have rights which arise under said Treaty.

4. Defendant UNITED STATES OF AMERICA is the other party to the Ruby Valley Treaty of 1863, and which is, therefore, bound by the terms of said Treaty as alleged herein.

5. Defendant SAMUEL BODMAN is the Secretary of the Department of Energy of the United States.

6. Defendant GALE NORTON is the Secretary of the Department of the Interior of the United States.

### **GENERAL ALLEGATIONS**

7. The Western Shoshone people identified themselves as *Newe*, a word that means “the people.” The earth, *Newe Sokopia*, must be taken care of by the people, the *Newe*, and the people must live in unity with it. Their homelands stretch in the east from Salt Lake Valley in Utah to the west across most of eastern and central Nevada into California, and includes the Yucca Mountain, Nevada.

8. Prior to the appearance of white people, the Western Shoshone lived in extended family groups throughout Nevada. The Western Shoshone people were joined by other Western Shoshones fleeing from the massacres of their people in Utah and Oregon. Nevada has been a homeland for Western Shoshone since time immemorial and a refuge for other Western Shoshone since the early 1800's.

9. Today the Western Shoshone people generally live in various communities, some of which include: the Battle Mountain Indian Colony, Elko Indian Colony, Wells Indian Colony, South Fork reservation, Ruby Valley Allotments, Odger's Ranch, Dann Ranch, Yomba Reservation, Duckwater Reservation, Ely Indian Colony, Winnemucca Indian Colony, and the Timbisha Community.

10. The Western Shoshone Nation is comprised of bands or tribes of Native American Indians. Some of the Bands have been formally recognized by the Congress of the United States under the Indian Reorganization Act in exchange for being given food in the 1930's when the country was deep in depression. The Bands have always considered themselves a part of the Western Shoshone Nation and never intended to give up that distinction. Other Shoshone peoples have been forcibly placed on Paiute lands by the government, but wished to always be considered a part of the Western Shoshone Nation. Other Shoshone peoples have continued to live where their fathers and their fathers before them have always lived and consider themselves a part of the Western Shoshone Nation.

11. The people of the Western Shoshone, and their bands, tribes and communities shall be collectively referred to as the "Western Shoshone Nation". Plaintiffs bring this action on behalf of themselves and the Western Shoshone Nation and bring this action as representatives of the Western Shoshone peoples.

12. Prior to the incursion of immigrant settlers, the Western Shoshone Nation owned and occupied a large tract of land in Nevada, California, Idaho and Utah which exceeds over 60 million acres.

13. In 1863, the United States government and the Western Bands of the Shoshone Nation entered into a treaty known as the Treaty With The Western Shoshone, 1863. 18 Stat. 689, Ratified June 26, 1866, Proclaimed October 21, 1869 (The "Treaty of Ruby Valley") . A copy of the Treaty of Ruby Valley is attached hereto as Exhibit A, and it is incorporated herein by this reference.

14. The Treaty of Ruby Valley is a valid and binding contract between the United States and the Western Shoshone Nation. The Treaty of Ruby Valley is enforceable by law.

15. Article 5 of the Treaty of Ruby Valley states as follows:

It is understood that the boundaries of the country claimed and occupied by said bands are defined and described by them as follows: On the north by Wong-goga-da Mountains and Shoshone

River Valley; on the west by Su-non-to-yah Mountains or Smith Creek Mountains; on the south by Wi-co-bah and the Colorado Desert; on the east by Po-ho-no-be Valley or Steptoe Valley and Great Salt Lake Valley.

The boundaries described in Article 5 are generally shown in the map attached hereto as Exhibit B. This is the map approved and adopted by the Western Shoshone National Council as an accurate representation of the lands owned and occupied by the Western Shoshone Nation.

16. Under the Treaty of Ruby Valley, the Western Shoshone Nation and the United States of America agreed that there would be certain specific uses allowed to occur on said land covered by the Treaty, which uses were specified to include only the establishment of mines, ranches, settlements, and military posts, and the construction of roads and a railroad to facilitate those specified uses.

17. The restriction of uses on land covered by the Treaty of Ruby Valley was a bargained for consideration under that written agreement between the Western Shoshone nation and the United States of America, and that restriction of use is a covenant and restriction which runs with the land to forever prohibit any use which is inconsistent with those uses specifically allowed under the Treaty.

18. Upon information and belief, the Defendants have proposed to alter the use of the Yucca Mountain in Nevada in order to establish nuclear waste dump where poisonous, toxic, radioactive nuclear waste originating from outside the Shoshone Nation and the United States would be brought and stored, and Defendants and their predecessors have issued decisions and taken action designed to facilitate the establishment of said nuclear waste dump on said lands covered by the Treaty.

19. The establishment of a nuclear waste dump is not an allowed use agreed to by the parties under the Treaty, and is therefore a use which is prohibited by law. The dispute is ripe for decision because the Defendants have announced their intention to file an application to develop the Yucca Mountain as a nuclear waste repository.

20. A nuclear waste dump can only be established at Yucca Mountain if an amendment is negotiated and agreed to by both parties to the Treaty of Ruby Valley, and the Western Shoshone Nation has never consented to such an amendment of said Treaty.

21. The Treaty of Ruby Valley provides for certain easements in favor of the United States and the people of the United States generally. Those easements include:

**Article 2:** “The several routes of travel through the Shoshonee country, now or hereafter used by white men, shall be forever free, and unobstructed by the said bands, for the use of the government of the United States, and of all emigrants and travellers (sic) under its authority and protection, without molestation or injury from them.”

“Military posts may be established by the President of the United States along said routes or elsewhere in their country; and station houses may be erected and occupied at such points as may be necessary for the comfort and convenience of travellers or for mail or telegraph companies.”

**Article 3:** “. . .telegraph and overland stage lines having been established and operated . . . may be continued without hindrance, molestation, or injury. . . And further, it being understood that provision has been made by the government of the United States for the construction of a railway from the plains west to the Pacific ocean, it is stipulated by the said bands that the said railway or its branches may be located, constructed, and operated, and without molestation . . .

**Article 4:** “It is further agreed by the parties hereto, that the Shoshonee country may be explored and prospected for gold and silver, or other minerals; and when mines are discovered, they may be worked, and mining and agricultural settlements formed, and ranches established wherever they may be required. Mills may be erected and timber taken for their use. . . “

22. Neither Articles 2, 3, or 4 of the Treaty of Ruby Valley provide for the right to the United States to develop a nuclear waste repository that will render the land toxic for any other use. This would destroy the reversion implied in favor of the Western Shoshone peoples by the use easement granted to the United States by the Treaty.

23. In the late 19<sup>th</sup> century and throughout the 20<sup>th</sup> century, mining and agricultural settlements were formed and ranches were established on the Western Shoshone lands and in keeping with the treaty provisions, the Western Shoshone people have not waged war against the United States for the use of these lands.

24. Upon information and belief, the Defendants have proposed to alter the use of the so-called Caliente Corridor in Nevada in order to construct and establish a railroad for the sole and specific purpose of transporting poisonous, toxic, radioactive nuclear waste originating from outside the Shoshone Nation and the United States, to the Defendants’ planned Yucca Mountain nuclear waste dump. Defendants and their predecessors have issued decisions and taken action

designed to facilitate the establishment of said nuclear waste dump on lands covered by the Treaty.

25. The Treaty provides for the establishment of routes of travel and a railroad to facilitate travel “through the Shoshone country”, and said authorized transportation uses must be read to have been agreed upon in connection with the uses allowed on lands covered by the Treaty, so that roads and a railroad could and can be constructed to facilitate the establishment of mines, ranches, settlements, and military posts, but a railroad can not be constructed or used for the purpose of transporting nuclear waste across lands covered by the Treaty.

26. Principles of trust and fair dealing have controlled the government’s dealing with Indian nations, and Treaties between Indian Tribes and the United States are to be interpreted as the Indians understood them, with any ambiguities construed liberally in favor of the Tribes.

27. The Western Shoshone people continue to occupy and use the land covered by the Treaty, and continue to hold the land in reverence as the place that their future generations will make their home.

28. The restrictions on use of lands covered by the Treaty reflect the spiritual beliefs of the Western Shoshone people who hold the earth and all living things sacred, and it is the responsibility of Plaintiffs to past, present and future generations to prevent the despoiling of traditional Western Shoshone lands which the proposed Yucca Mountain nuclear waste dump would portend.

### **COUNT 1**

(Writ of Prohibition)

29. Plaintiffs repeat and re-allege each and every paragraph of this Complaint as if fully set forth in this Count.

30. The Treaty of Ruby Valley establishes which uses can occur on land covered by said Treaty, including Yucca Mountain, Nevada, regardless of who later holds title to the land.

31. The restrictions on use of lands covered by the Treaty are covenants and restrictions which run with the land in perpetuity, unless said restrictions are later modified or removed by mutual amendment of the Treaty.

32. Title to the lands covered by the Treaty is irrelevant to the issues raised by this action, and the proposed transportation and storage of nuclear waste on lands covered by the Treaty is unlawful and prohibited regardless of who currently holds title to the land on which such use is proposed.

33. The Defendants have proposed and have now adopted a schedule to develop a nuclear waste repository at Yucca Mountain and a railroad to transport said nuclear waste to said dump through the so-called Caliente Corridor.

34. The Defendants admit that all peoples will be prohibited from using the lands of Yucca Mountain for any purpose for tens of thousands of years in the future, and will be restricted from approaching the lands of Yucca Mountain for many miles.

35. The premises of Yucca Mountain will be covered with toxic materials for which no technology exists to reclaim the land for use by humans, and said land would be forever lost for the use of the people.

36. The premises of Yucca Mountain and the land used to construct and operate the nuclear waste railroad will no longer be available for uses allowed under the Treaty.

37. The Western Shoshone National Council, the Western Shoshone Nation, the Western Shoshone people and the individual Plaintiffs will suffer irreparable harm to their lands if the Defendants are allowed to complete their plans to build a nuclear waste repository at Yucca Mountain and a railroad to transport nuclear waste to said nuclear waste dump.

38. Plaintiffs are entitled to an order in the nature of a Writ of Prohibition to prevent Defendant officials and employees and Defendant United States of America from authorizing or approving any action by any person or entity which is designed to permit or condone the establishment of a nuclear waste repository at Yucca Mountain or the construction of any railroad intended to be used to transport nuclear waste to Yucca Mountain.

39. Plaintiffs were required to retain counsel to prosecute this Count.

## **COUNT II.**

(Injunction)

40. The Plaintiffs incorporate each and every paragraph of this Complaint as if fully set forth in this Count.

41. The Treaty of Ruby Valley only allows certain specific activities and uses to occur on the lands covered by the Treaty. None of those activities that were stated or contemplated included a nuclear waste repository or any activity which would make the lands unuseable by the Western Shoshone people or the people of the United States of America.

42. The Defendants have proposed a plan that would allow citizens of other States and other countries to send the poisonous, toxic, radioactive waste created by those outside persons to Yucca Mountain for the purpose and with the effect of contaminating the land and making it

44. The Plaintiffs have no other adequate remedy at law than to prohibit desecration, irreversible toxic contamination, and unlawful use threatened by the Defendants.

45. The action threatened by Defendants is unlawful under the Treaty and the laws of the United States, and will cause irreparable harm to the lands and to the Plaintiffs.

46. Plaintiffs are entitled to an order declaring the above-described implementation of the Defendant's scheme to transport and store nuclear waste to be in violation of the uses allowed under the Treaty of Ruby Valley, and of the Treaty, and enjoining the Defendants from implementation of the planned Yucca mountain nuclear waste dump and railroad through the Caliente Corridor.

47. Plaintiffs were required to retain counsel to prosecute this Count.

**COUNT III**

(Declaratory Judgment)

48. The Plaintiffs incorporate each and every paragraph of this Complaint as if fully set forth in this Count.

50. The Plaintiffs desire a judicial determination of Plaintiff's rights and duties to restrict uses on lands covered by the Treaty of Ruby Valley, and those of Defendants to permit and authorize only those uses allowed under the Treaty on lands covered by the Treaty, regardless of who holds title to said lands.

51. Plaintiffs are entitled to a decree which declares that Defendants are prohibited from approving or permitting any uses on lands covered by the Treaty of Ruby Valley which are not specifically authorized under said Treaty.

52. Plaintiffs were required to retain counsel to prosecute this Count.

**CLAIM IV.**

(Violation of Treaty Rights)

53. The Plaintiffs incorporate each and every paragraph of this Complaint as if fully set forth in this claim.

54. The Plaintiffs entered into the Treaty of Ruby Valley with the United States of America, and the Defendants have announced plans to violate the provisions of the Treaty.

55. The Defendants have announced to the public that they have adopted a schedule to

develop a nuclear waste repository at the Yucca Mountain and to construct a railroad to transport nuclear waste to said dump, both of which threatened projects are on lands covered by the Treaty of Ruby Valley.

56. By permitting and authorizing the nuclear waste dump at Yucca Mountain, the Defendants are violating the treaty rights of the Western Shoshone Nation, the Western Shoshone people and the Plaintiffs by using the lands in a manner that are not allowed or provided for under the Treaty.

57. The Western Shoshone nation and its people have at all times honored the Treaty of Ruby Valley and its provisions, and the threatened use of lands covered by the Treaty to accumulate from far away lands the most toxic substance ever known to mankind, and to then dump the same on the sacred lands of the Western Shoshone people is offensive to the spiritual principles of the Plaintiffs, and to the standards of decency to which the Western Shoshone people are entitled.

58. The United States, through the individual Defendants, is violating the provisions of the Treaty by allowing and permitting the present activities at Yucca Mountain which are inconsistent with the uses allowed on lands covered by the Treaty of Ruby Valley.

59. The Plaintiffs will be irreparably harmed by the violation of the Treaty and its entitlements.

60. Plaintiffs are entitled to a judgment by this Court settling aside said actions and holding the past approvals and permits and activities at Yucca Mountain and the full force and effect implementation of Defendants' said decisions, and those of Defendants' predecessors, to be unenforceable and void and enjoining further implementation or enforcement thereof.

61. The Plaintiffs have been required to retain counsel to defend their Treaty rights.

WHEREFORE THE PLAINTIFFS pray for relief as follows:

1. For an Order in the nature of a Writ of Prohibition to prevent Defendant officials and employees and Defendant United States of America from authorizing or approving any action by any person or entity which is designed to permit or condone the establishment of a nuclear waste repository at Yucca Mountain or the construction of any railroad intended to be used to transport nuclear waste to Yucca Mountain.

2. For an Order declaring the implementation of Defendants' scheme to transport and store nuclear waste to be in violation of the uses allowed under the Treaty of Ruby Valley, and of the Treaty, and enjoining Defendants from implementation of the planned Yucca Mountain

nuclear waste dump and the railroad through the Caliente Corridor.

3. For a Declaratory Judgment which declares that Defendants are prohibited from approving or permitting any uses on lands covered by the Treaty of Ruby Valley which are not specifically authorized under said Treaty.

4. For an Order declaring and adjudging that Defendants are obligated to perform as promised under the Treaty of Ruby Valley by permitting and allowing only those uses which were agreed to by the parties to said Treaty.

5. For an Order declaring and adjudging that the prior decisions of Defendants, and their predecessors, which have approved and authorized activities to be performed at Yucca Mountain designed to result in the establishment of a nuclear waste dump at that location, and the full force and effect implementation of said prior decisions to be in violation of law, and void, and enjoining further implementation or enforcement thereof.

With respect to all causes of action, Plaintiff prays for relief as follows:

6. For reasonable attorneys' fees and costs of suit herein.

7. For such other and further relief as the Court deems just, proper, and equitable.

Dated this \_\_\_\_ day of March, 2005.

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