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Sand/gravel mine opposed by Bay Area Tribe
Fremont Indian State Park Museum/Archaeological Site
Community Scale : Crow Nation – Compressed Earth Block Housing Pe Project
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Litigation to Protect Western Shoshone Territorial Integrity

Sunlight passing through the wings of a Black Jacobin Hummingbird forms a prism of rainbows
(Photo: Christian Spencer) (Thanks, Laurel Weaver)

Plans for a huge new sand and gravel mine at the southern tip of Santa Clara County are **running into opposition from a local band of Native Americans** who count the mine's land as one of their most sacred sites.

Fremont Indian State Park Museum/Archaeological Site was established to preserve Clear Creek Canyon's treasury of rock art and archaeological sites. In November 1983, during construction of Interstate 70 through Clear Creek Canyon, the largest known Fremont Indian village was discovered.

Five Finger Ridge Village contained more than 100 separate structures, and in its prime, probably housed 200 to 300 people. Several tons of cultural material were found including pottery, arrowheads and grinding stones. All materials excavated are now displayed or stored in the museum. After archaeological excavation, the actual village site was-destroyed by I-70 construction.

Fremont Indian State Park Visitor Center/Museum.

Twelve interpretive trails lead the visitor into legend and history depicted through pictographs and petroglyphs. Camping, hiking, biking and horse trails are also available.

Seasons / Hours **Open daily, year-round. $6 day use fee.**

Visitor Center/Museum

Memorial to Labor Day weekends 9:00 am to 6:00 pm; other 9:00 am to 5:00 pm; closed major holidays.

Facilities/Features
Stores/Museum
The Visitor Center includes a museum with information about Fremont and present-day Native Americans. An orientation video may be viewed. Books, postcards and other items are for sale. Also housed at the facility is the almost 7 tons of cultural material that came from the massive salvage operation. Many of these artifacts are displayed in the exhibit room which was honored with a first place national award in 1988 given by the National Association of Interpretation.

Programs/Events
Numerous activities occur during the summer months including an Atlatl throwing competition. Call for a schedule.
Food/Supplies
Motels, gasoline, groceries, trailer parks, laundries and other services are available in Richfield, 21 miles northeast.

Accessibility
The Visitor Center, parking area, and rest rooms are handicapped accessible. A short, paved petroglyph trail beginning at the Visitor Center is wheel chair accessible.

Read more: https://www.desertusa.com/freut/#ixzz5srwK8Oc4

http://coolstuffinterestingstuffnews.com/these-self-assemble-tiny-houses-from-3600/?fbclid=IwAR0x7SucEKXRiZrSi-t9D__F1dJyAb5TmIcwg4QnOEBX kriSIM3Mys2rF65Q

Community Scale Crow Nation – Compressed Earth Block Housing Project

http://goodearthlodges. crowtribe.com/

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NRCS Earth Team

Since 1985, Earth Team volunteers have provided a valued source of talent and enthusiasm to the USDA/NRCS. Every day, these dedicated volunteers work with conservation professionals on private lands to improve soil quality, conserve water, improve air quality and enhance wildlife habitat.

Available to anyone 14 and older, the Earth Team provides a variety of opportunities: full- or part-time; outdoor or indoor activities; and as an individual or part of a group. There is something for everyone.

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Litigation to Protect Western Shoshone Territorial Integrity

WESTERN SHOSHONE INTERVENTION IN *U.S. v. NYE COUNTY*
and
WESTERN SHOSHONE VERSUS THE UNITED STATES AND ORO NEVADA RESOURCES, INC.
and
COMPLAINTS OF JUDICIAL MISCONDUCT

Background

The Western Shoshone have been litigating the territorial integrity of their homeland since at least 1951, when a claim was filed, purportedly in their behalf, before the Indian Claims Commission. A full statement of this history is in Elmer R. Rusco, "Historic Change in Western Shoshone Country: The Establishment of the Western Shoshone National Council and Traditionalist Land Claims," 16 *American Indian Quarterly* 337 (1992).

Suffice it to say that the United States government has endeavored for years to extinguish the territorial integrity of the Western Shoshone Nation. The U.S. offered money in exchange for land and, when the Shoshone refused to accept, presumed to accept on their behalf. This is an example of so-called "federal trusteeship" and "plenary power" over Indian affairs, which the U.S. Supreme Court upheld in *United States v. Dann*, 470 U.S. 39 (1985), stating that "the Shoshone's aboriginal title has been extinguished" because the U.S. accepted the money from itself on behalf of the Western Shoshone. That decision is attacked by the Western Shoshone in the litigation discussed here.

The Western Shoshone National Council is the traditional government of the Western Shoshone Nation, continual and unbroken from time immemorial and established by the Western Shoshone People for the protection of their fundamental rights as a separate and distinct People.

The land that is the subject of this litigation is within the ancestral territories of the Western Shoshone Nation, recognized in the Treaty of Peace and Friendship signed at Ruby Valley in 1863. An indefinite number of Western Shoshone People exist in, and have never relinquished their fundamental relationship to, these territories. The Council's decision to litigate was based on its responsibility for exercising the People's inherent rights to self-determination and self-government in accordance with laws and instructions given to the People by the *Ah-Peh* (Father). This litigation and related complaints of judicial misconduct are being conducted jointly by the Western Shoshone National Council on behalf of the Nation, through Chief Raymond D. Yowell, and by Chief Yowell as representative of the class of Shoshone persons who assert individual relationship to the lands.

Chronology of the Court Actions

INTERVENTION IN *U.S. v. NYE COUNTY*

On June 30, 1995, the Council moved to intervene in a lawsuit that had been commenced in Federal District Court earlier in the year by the United States against Nye County, Nevada, to determine ownership of "public lands" within the county. Nye County had asserted control over these lands through various ordinances and by physical confrontation with federal officials. The United States brought suit to assert its own title and control under various treaties and statutes.

On July 25, 1995, the District Court, Chief Judge Lloyd D. George, presiding, denied the Western Shoshone motion to intervene, on the ground that "the Shoshone do not have a legally-protectible (sic) interest in the land...." The Court cited the case of *United States v. Dann*, 470 U.S. 39 (1985) to hold that "the Shoshone's aboriginal title has been extinguished." This was the position taken by the United States and Nye County in opposing the Shoshone motion to intervene.

On August 14, 1995, the Western Shoshone filed a Notice of Appeal to the United States Court of Appeals for the Ninth Circuit. Their brief on appeal was substantially the same as that filed with the Motion to Intervene. Their reply brief, however, consisted of a concise analysis and critique of the so-called "federal plenary power over Indians." The related doctrines of "plenary power" and "trustee power" were the basis for the U.S. Supreme Court decision in *United States v. Dann*.

The Western Shoshone reply brief is a significant historical document, raising sharply for the first time in a court proceeding a wholesale rejection of the structure and doctrine of federal "trusteeship" asserted by the United States over American Indians.

On September 14, 1995, the Court of Appeals issued an Order, by the Clerk, directing Appellant Western Shoshone National Council to show cause why it should not be dismissed as a party to the appeal. On September 22, 1995, the Council filed an Exception and Preliminary Statement of Cause why it should not be dismissed as a party and on September 29, 1995, a Statement of Cause with supporting Affidavits from the Chief, Sub-Chief, and Secretary of State and Treasurer of the Western Shoshone National Council. On November 20, 1995, the Court of Appeals Appellate Commissioner Shaw issued an Order referring the issue to the panel that would decide the intervention appeal.

On November 27, the appeal was docketed in the Court of Appeals, No. 95-16599. A district court's denial of a motion to intervene as of right is reviewed *de novo* (*United States. v. Oregon*, 913 F.2d 576, 587 (1990)). On February 7, 1996, the United States filed an opposition to intervention. The Western Shoshone filed a reply the same month. On March 7, 1996, the Court of Appeals gave notice that it was considering submission of the case without oral argument.

On May 12, 1997, the Western Shoshone -- having heard news reports of possible dismissal of the U.S. action against Nye County -- filed an objection to dismissal in the District Court. The objection was denied as moot on June 6, 1997, on the grounds that the action had been dismissed on May 6, 1997.

Complaint of Judicial Misconduct:
As of May 1997, when the district court action was dismissed, the court of appeals had entered no decision in the matter of intervention. The matter was therefore still pending.

Federal Rules of Civil Procedure, Rule 41, provides that an action may be dismissed by stipulation "signed by all parties" [FRCP 41 (a)(1)(ii)] and by order of the court; except that "If a counterclaim has been pleaded by a defendant prior to the service...of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication...." [FRCP 41 (a)(2)]

FRCP Rule 41(c) states further, clearly and unambiguously, that "The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim."

The Western Shoshone petition to intervene constituted a "third-party claim" that would not "remain pending for independent adjudication" if the action were dismissed. The Western Shoshone objection was therefore a bar to dismissal under FRCP Rule 41. So long as appeal of the petition denial remained unresolved, the Rule precluded dismissal of the action over Western Shoshone objection. Dismissal of the action against their objection constituted a denial of due process.

On May 12, 2000, more than four years after notification that the Court of Appeals was considering the intervention petition without oral argument, the Western Shoshone inquired by letter as to the status of the appeal. The letter asserted that the Western Shoshone, as third-party

intervenors, retained rights in the matter, notwithstanding the district court's order of partial judgment as between the United States and Nye County. The letter also asserted that the matter involved continuing unresolved issues regarding the relationship of the Western Shoshone to the United States.

The Court of Appeals replied with copies of docket sheets indicating a series of events and filings in the District and Appeals Courts prior to dismissal of the action and after the Western Shoshone intervention petition, involving the United States, Nye County, and other parties -- including other intervenors. The Western Shoshone had not received notice of any of these events or filings.

According to the docket sheets, the Western Shoshone intervention appeal was submitted to a Court of Appeals screening panel on December 15, 1997 -- 28 months after filing, 21 months after notice that the appeal would be considered without argument, and 7 months after dismissal of the District Court action. The docket showed that intervention was denied December 19. The Western Shoshone had received no notice of this decision.

At no point did it appear from the docket sheets that the court of appeals considered the Western Shoshone intervention on its merits or in relation to FRCP Rule 41. The Western Shoshone were effectively shut out from participation in the case, including opportunity to file timely objection to dismissal to preserve their third-party cause of action.

Not until Chief Yowell inquired by letter to the clerk of the Court of Appeals in May 2000, were the Western Shoshone informed of the status of the intervention petition and provided with a docket sheet showing the course of litigation that had been conducted and concluded entirely without notice to them.

On February 28, 2001, on the basis of these facts and in accordance with 28 U.S.C. § 372(c)(1) and the rules of the Ninth Circuit, the Western Shoshone National Council and Chief Yowell filed a Complaint of Judicial Misconduct against Judge Lloyd D. George, District Court, Nevada, and Judges Joseph T. Sneed, Edward Leavy, and Stephen S. Trott, Court of Appeals, Ninth Circuit (who are listed in the docket sheets as the screening panel). The Clerk assigned docket number 01-80020 to this complaint.

The Western Shoshone believe that the judges' actions were prejudicial to the fair, effective, and expeditious administration of the business of the courts. They believe that the Nevada District Court and the 9th Circuit Court of Appeals failed to provide fair, effective, and expeditious means to litigate Western Shoshone rights. They state that the judges precluded, without due process of law, Western Shoshone intervention in litigation affecting Western Shoshone rights.

A companion Complaint of Judicial Misconduct was filed against Judge Howard D. McKibben, District Court, Nevada,in regard to the case discussed below.

WESTERN SHOSHONE VERSUS U.S. AND ORO NEVADA

On March 20, 1997, the Western Shoshone filed a complaint in federal district court against the United States, various officials of the Department of the Interior and Bureau of Land Management, and Oro Nevada Resources, Inc., a mining company. The complaint alleges a

number of different invasions of Western Shoshone territorial integrity, and asks for injunctive and declaratory relief as well as monetary damages. The basis of the complaint is the Treaty of Ruby Valley, a treaty of peace and friendship signed in 1863 between the United states and the Western Shoshone.

The United States and the mining company filed a motion for summary judgment, to dispose of the case without a hearing. This motion was denied and the case proceeded into discovery phase, in which the Shoshone sought documents related to the defendants' claims of ownership and control of the lands in question. An amended complaint was filed in October, 1997, to clarify the inclusion of ranchers and ranching activity and the assertion of individual aboriginal rights.

In October, the Shoshone also filed a memorandum in support of their *pro se* appearance in response to the judge's questioning of their right to appear in court without a lawyer. The United States opposed the *pro se* appearance. After a hearing on January 8, 1998, the judge entered an order granting the *pro se* appearance.

On February 5, 1998, the U.S. filed a motion to dismiss. One day later, the Shoshone filed a motion for preliminary injunction, seeking to stop a pattern of harassment by the Bureau of Land Management against Shoshone cattle ranchers who are included in the lawsuit. On March 5, a memorandum was filed in reply to the U.S. opposition to the preliminary injunction. On March 11, the Shoshone filed a request for an extension of time to file their opposition to the defendants' motion to dismiss, citing the continuing BLM harassment as the reason for the need for more time. The extension was granted and the opposition to the motion to dismiss was filed on April 23.
A hearing on the motion for a preliminary injunction was held May 4, at which Chief Yowell argued the grounds for issuing the injunction. On May 5, the Magistrate Judge issued a Report recommending that the Bureau of Land Management "be enjoined from impounding, confiscating, or forcibly removing" Shoshone livestock. The District Court adopted the report and recommendation on June 2 and ordered the injunction.

The Court re-confirmed its injunction order on July 24, denying a United States' motion to alter or amend. On July 27, the Magistrate Judge denied as moot a Shoshone motion to correct a clerical error in the Magistrate's Report. These two motions revolved around the Magistrate's use of the word "fungible" in reference to Western Shoshone livestock.

On July 29, 1998, the Magistrate Judge recommended that Defendants' motion to dismiss be granted and the injunction dissolved, on the following grounds: (1) the Western Shoshone Nation's assertion of self-government "flies in the face of reality" because the relationship of American Indians to the United States "is not, and has not traditionally been, one which could be characterized as a foreign or independent nation" (citing *Cherokee Nation v. Georgia* and *Seminole Nation v. United States*); (2) application of "alleged principles of international law" contrary to "controlling precedent of the United States Courts" is not "appropriate in this case" (citing *Tag v. Rogers*); (3) "both tribal and individual aboriginal title to the Western Shoshone lands ... have been extinguished and compensation paid therefore." (citing *United States v. Dann* cases); (4) the issues raised have been " previously litigated [and] conclusively decided and Plaintiffs should be precluded from relitigating them" (citing Indian Claims

Commission and other decisions); and (5) the Treaty of Ruby Valley authorizes "all types of mining."

The Western Shoshone filed their objections to the Magistrate's recommendation on August 12, vigorously attacking all aspects of the Magistrate's reasoning and asking the court to set a date for hearing the complaint. Defendants oppositions to the objections, filed August 31, characterized the Western Shoshone arguments as a "dissertation" and "irrelevant."

On September 10, the Court adopted that portion of the Magistrate's recommendation dismissing "claims based on aboriginal tribal title," but allowed the Western Shoshone "to amend the complaint to state claims based on individual aboriginal title with more particularity," thus denying in part and granting in part the Defendants' motion to dismiss. The Court cited *United States v. Dann* and *United States v. Kent*.

A second amended complaint was filed on October 5. It preserved the dismissed counts for later appeal and stated with more particularity that individual Western Shoshone persons "possess, reside on, occupy, and use exclusively as individuals and with members of their extended families various specific and discrete lands and places within ancestral territories of the Western Shoshone people."

On October 22, Defendants moved to dismiss the second amended complaint and to dissolve or modify the injunction, asserting: (1) sovereign immunity; (2) failure of the complaint to identify "particular parcels of land" and "occupation [of the parcels] by ... individual's lineal ancestors"; and (3) Chief Yowell may not represent group rights pro-se. The Western Shoshone filed their opposition to the motion on December 4, arguing: (1) the complaint is sufficient to meet the requirements of the federal rules of civil procedure; (2) no "heightened pleading requirement" exists for allegations of individual aboriginal title; and (3) the complaint is not a "class action" but an action affecting group rights of the Western Shoshone, which may be represented by their National Council and Chief Yowell.

On December 23, 1998, the federal Defendants filed a reply to the Western Shoshone opposition, reiterating that because Chief Yowell is not licensed to practice law he may not represent the interests of other persons, and arguing for the first time that the complaint is defective because it fails to plead the Quiet Title Act, a federal statute providing for actions to challenge land title of the United States. The reply waived objection to a Western Shoshone surreply on this issue.

Before a Western Shoshone surreply could be filed, the Magistrate Judge issued a report and recommendation (January 12, 1999) that the motion to dismiss be granted and the injunction dissolved. The report stated (1) the court had jurisdiction under two federal statutes; (2) the complaint did not provide sufficient information about individual persons, parcels of land, and ancestral activities to sustain an action for indiviudal aboriginal rights.

On April 2, 1999, the Court granted a Western Shoshone motion to file a surreply. In their surreply, the Western Shoshone distinguished between "usufruct rights" and a "quiet title" action and argued that precedent cases (citing *Cramer v. United States*, *United States v. Santa Fe R.R*, and *United States v. Dann*) have never restricted individual aboriginal rights to the terms of a quiet title action. The surreply includes an extensive listing of the "uses and occupations" that the

Western Shoshone continue to exercise as "from time immemorial." The surreply asserted that the purpose of the action is "to prepare the way for individuals to represent themselves," not to represent individuals and that in this context the complaint is "ample and adequate" under the federal rules.

The pending motions were argued in a telephonic hearing on May 10, 1999. Thereafter, the Court ordered that the report and recommendation of the Magistrate judge be affirmed, vacating the injunction and dismissing the complaint without prejudice.

The Western Shoshone filed a notice of appeal on all issues -- both tribal and individual rights -- together with a motion for a stay of the order vacating the injunction. The federal Defendants opposed the motion for a stay, on the grounds that the Western Shoshone have "shown no likelihood of success on the merits" and "no possibility of irreparable injury" if the injunction is removed. In a reply to this opposition, the Western Shoshone argued that the cases cited by Defendants were misstated and that continuance of the injunction is both necessary and appropriate.

Complaint of Judicial Misconduct:
In April 2000, after ten months without word from the District Court or the Appeals Court, the Western Shoshone inquired as to the status of the case. They discovered that a minimum of six filings and the last page of the docket sheet were missing from the District Court and that the notice of appeal had never been processed.

On April 24, 2000, the Western Shoshone hand-delivered a letter to the District Court with a list of documents known to be missing. These included the following:

1. Plaintiffs' Surreply to Defendants' Consolidated Reply, filed April 1999.
2. Plaintiffs' Notice of Appeal, filed June 2, 1999.
3. Plaintiffs' Certificate That No Transcript Is Ordered, filed June 2, 1999.
4. Plaintiffs' Motion for Stay of Order Vacating Injunction and Sworn Statement in Support Thereof, filed June 2, 1999.
5. Federal Defendants' Opposition to Plaintiffs' Motion for Stay of Order Vacating Injunction, filed June 21, 1999; and
6. Plaintiffs' Reply to Federal Defendants' Opposition to Plaintiffs' Motion for Stay of Order Vacating Injunction, filed July 7, 1999.

File-stamped copies of documents originally filed by the Western Shoshone were provided to the Court with the letter. The letter also stated that the loss of documents constituted a violation of Federal Rules of Civil Procedure Rule 79, which requires the clerk to keep a record of all papers filed, and substantially interfered with the right to appeal and to obtain injunctive relief. Were it not for the fact that the Western Shoshone kept file-stamped copies of all pleadings, there would have been no proof that the appeal and motion for stay were actually filed.

On May 18, 2000, the District Court issued a Minute Order acknowledging the loss of documents. In the same Order, the Court also denied the motion for stay.

The denial of the motion for stay occurred without opportunity for argument. The Western Shoshone motion for a stay of the District Court's order deserved to be considered on its merits.

Instead, the motion was denied in the same order wherein the Court acknowledged loss of the filing itself.

Astoundingly, the Court thereafter lost the refiling of the notice of appeal. As the original time-stamped copies of the notice were still in their possession, the Western Shoshone were able to reinstate their appeal after this second mishandling of their filings. By some series of actions in the District Court, both the first and second refilings came to be forwarded to the Appeals Court, resulting in duplicative appeals, one of which was subsequently dismissed.

On February 28, 2001, on the basis of these facts and in accordance with 28 U.S.C. § 372(c)(1) [amended in 2002; judicial misconduct provisions moved to 28 § 351]and the rules of the Ninth Circuit, the Western Shoshone National Council and Chief Yowell filed a Complaint of Judicial Misconduct against Judge Howard D. McKibben, District Court, Nevada. The Clerk assigned docket number 01-80042 to this complaint.

The Western Shoshone believe that the judge's actions were prejudicial to the fair, effective, and expeditious administration of the business of the courts. They believe that the Nevada District Court [and the 9th Circuit] has failed to provide fair, effective, and expeditious means to litigate Western Shoshone rights.

The Western Shoshone evaluate the District Court's loss of documents and prejudicial denial of their motion for stay against the background of related prior litigation, discussed above. A companion Complaint of Judicial Misconduct was filed in regard to that litigation, against Judge Lloyd D. George, District Court, Nevada, and Judges Joseph T. Sneed, Edward Leavy, and Stephen S. Trott, Court of Appeals, Ninth Circuit.

The Western Shoshone National Council states that it needs a fair and judicious review of all proceedings in both cases. Until such a review can be accomplished, the Western Shoshone have decided not to seek further judicial action in these cases.

Points of special note
1. The Western Shoshone are proceeding *pro se* in these cases. This means they are appearing in court "for themselves," not represented by a lawyer. In this way, they hope to avoid the entanglement with lawyer self-interest that has beset their efforts in the past.

2. The Western Shoshone are challenging the fundamental doctrines of federal Indian law -- "plenary power" and "trusteeship" -- on the ground that these are extensions of Christian nationalism inherent in the colonial process.

Case Documents: Treaty of Ruby Valley, 1863

- Motion to Intervene
- Table of Authorities for Motion
- Intervention Appeal, Reply Brief
- Table of Authorities for Reply
- District Court Complaint
- Amended Complaint

- *Pro Se* Memorandum
- Order Granting *Pro Se* [gif]
- Motion for Preliminary Injunction
- Reply to Opposition to Injunction
- Motion to Extend Time
- Opposition to Motion to Dismiss
- Grounds for Issuing Injunction
- Magistrate's Report and Recommendation for injunction
- Court Order: Preliminary Injunction [gif]
- objections to Magistrate's first recommendation to dismiss
- second amended complaint
- opposition to second motion to dismiss
- surreply
- motion for a stay of the order vacating the injunction
- reply to opposition to stay
- Complaint of Judicial Misconduct against Judge Lloyd D. George, District Court, Nevada, and Judges Joseph T. Sneed, Edward Leavy, and Stephen S. Trott, Court of Appeals, Ninth Circuit.
- Complaint of Judicial Misconduct against Judge Howard D. McKibben, District Court, Nevada.

Related Information:

- "Cash vs. an Allegiance to Heritage" *Los Angeles Times* article by James Rainey (February 9, 2000) [Link is to newspaper archive search.]
- Citizen Alert, a 25-year-old grassroots environmental group based in the State of Nevada, providing education, advocacy, and empowerment to citizens on matters of environmental policy and environmental justice
- European Parliament letter (February, 1998) to US Secretary of Interior, expressing concerns about Western Shoshone
- "Federal judge: BLM should not remove livestock from tribal land," *Las Vegas Review-Journal* article by Carri Geer (May 14, 1998)
- How To Kill A Nation: U.S. Policy in Western Shoshone Country Since 1863 Pamphlet published by Western Shoshone National Council
- Shundahai Network, Corbin Harney's web site
- Western Shoshone National Council letter to Bureau of Land Management Protesting Drilling opposition to Oro Nevada Mining company destruction
- The Great Western Shoshone Gold Heist Corporation for Newe Sogobia campaign to "help stop the insanity"
- Western Shoshone Defense Project
- Testimony: Ian Zabarte, World Uranium Hearings, 9/16/92, Salzburg
- Historic map showing Shoshone (Shoshoni) territory (624K jpg)
- Contemporary map showing Western Shoshone territory (100K gif)