Dear Margaret,

Enclosed is a coloring book that was distributed for the Children at our Victorian Holiday last Saturday.

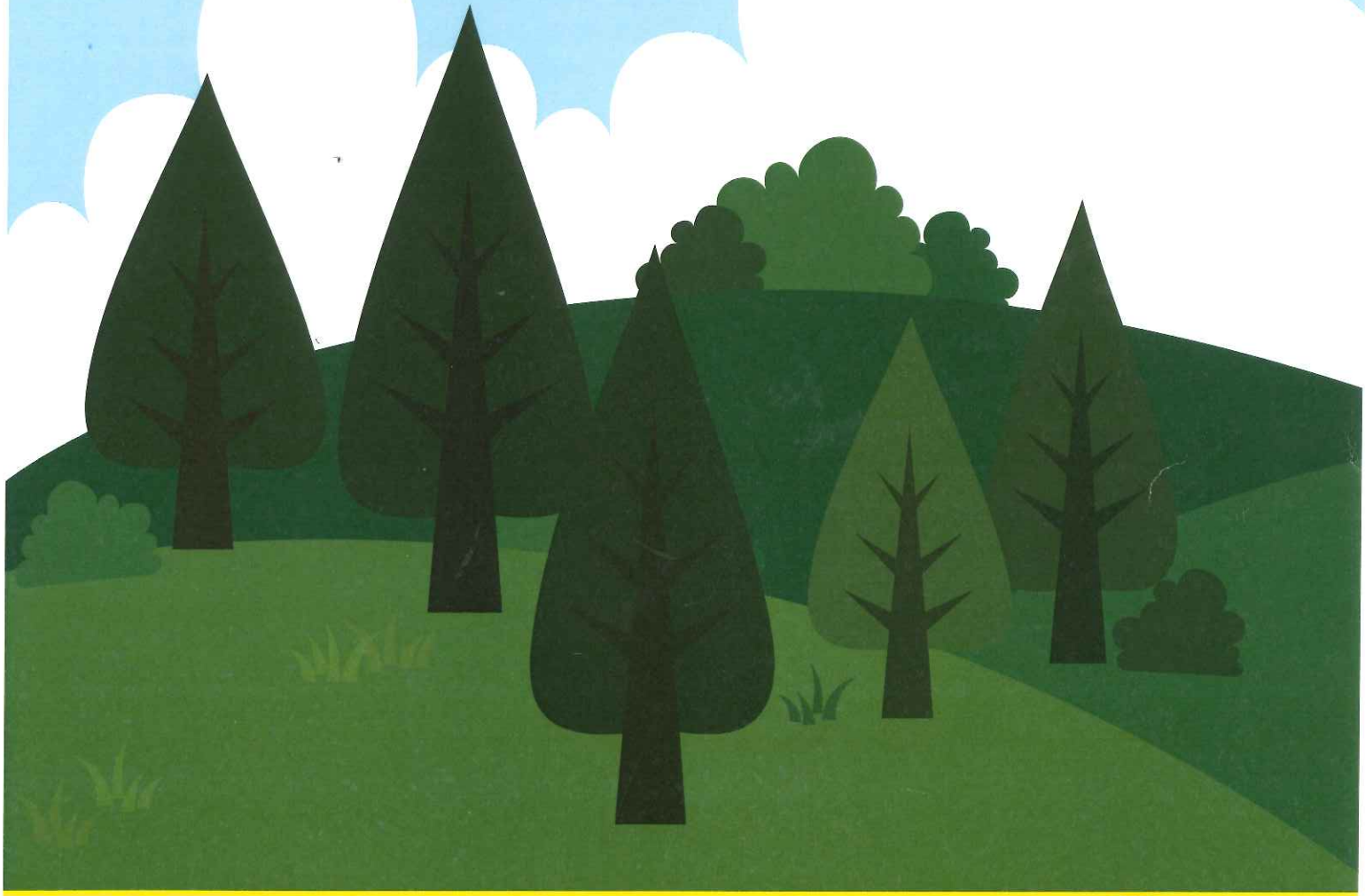
We thought you would enjoy looking at it.

Hope to see you soon.

Members of the No New Power Plant & Burrillville Land Trust.

Coloring Fun!

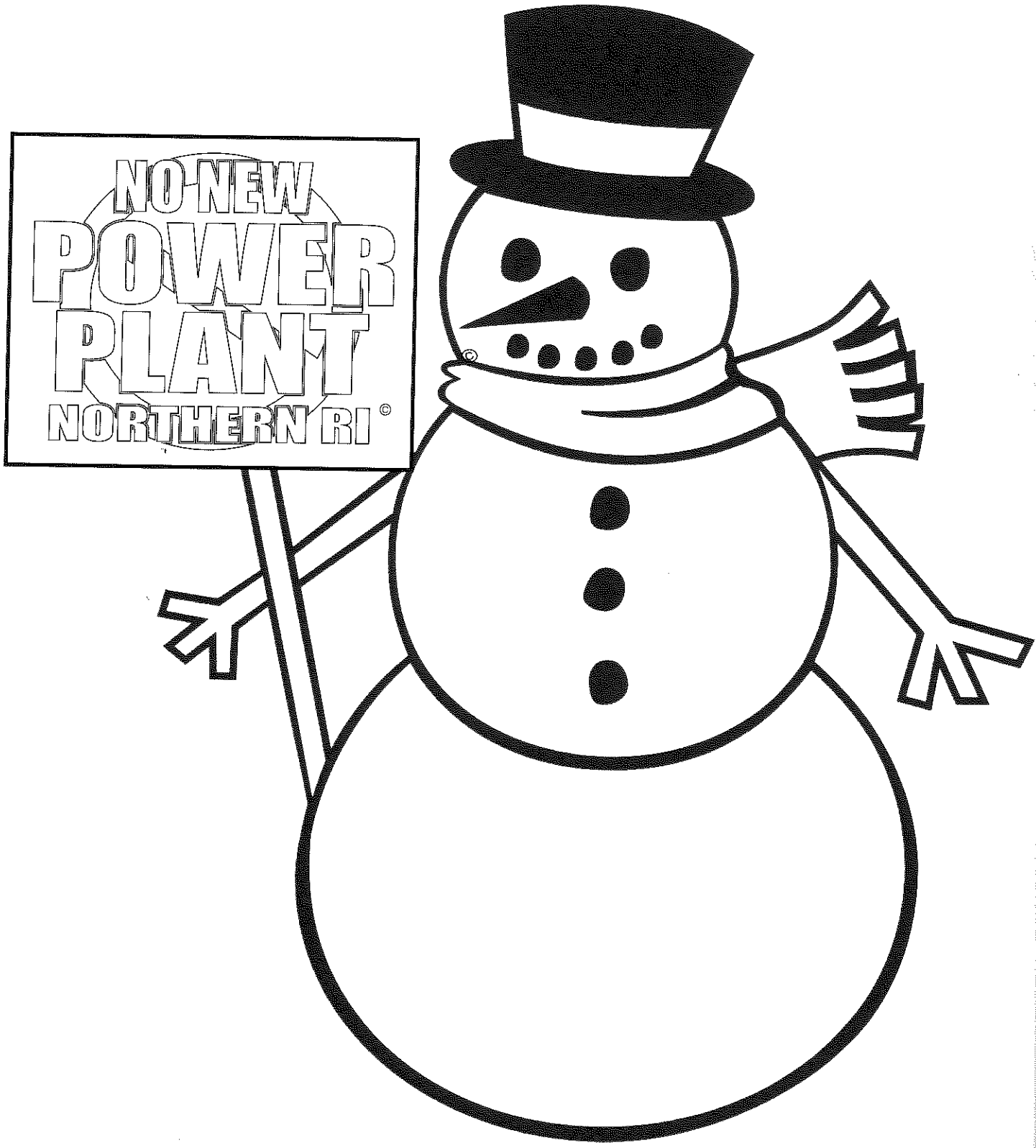
sponsored by
Burrillville Land Trust
and
No New Power Plant



Burrillville Land Trust

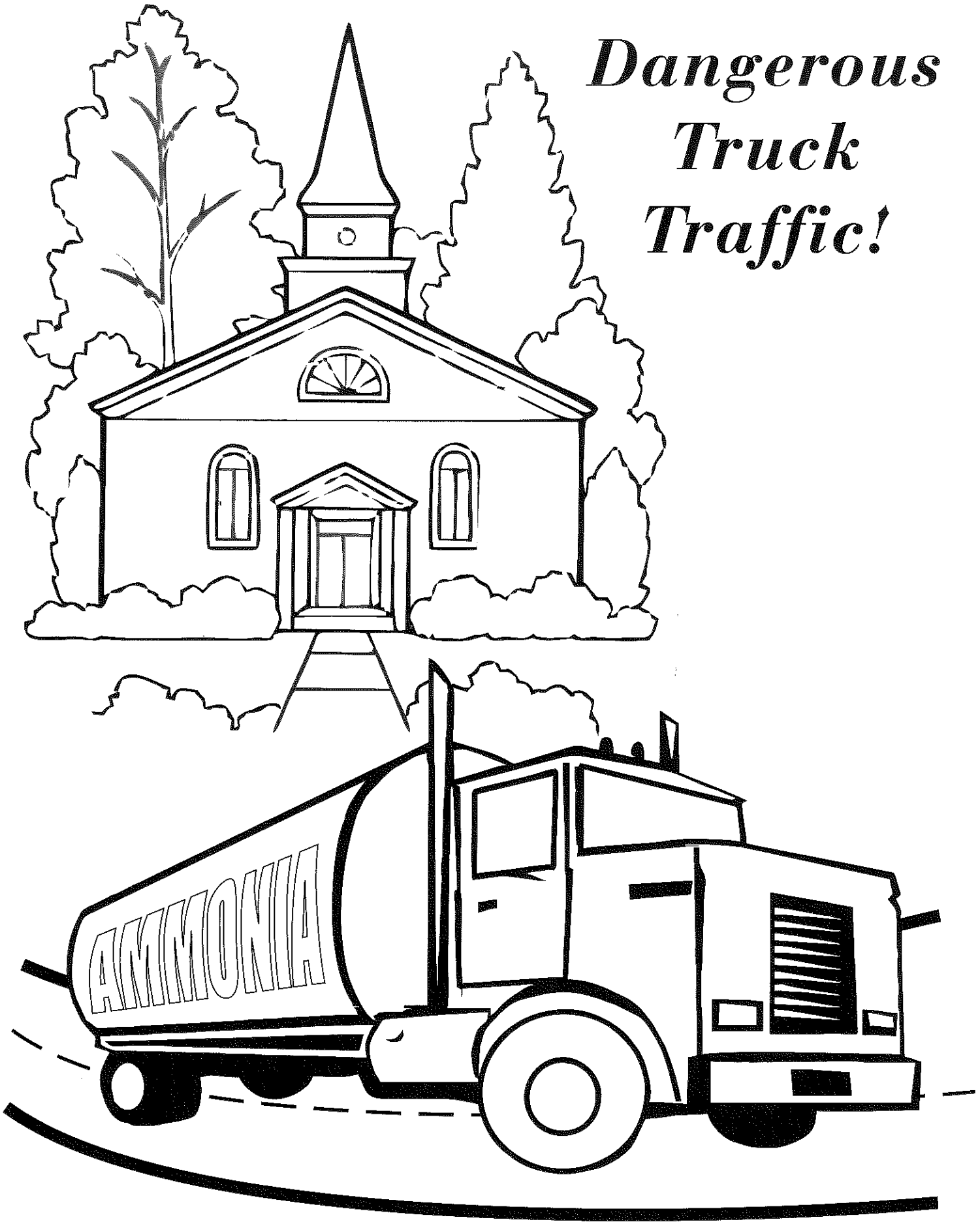
www.burrillvillelandtrust.org

NO NEW POWER PLANT NORTHERN RI ©

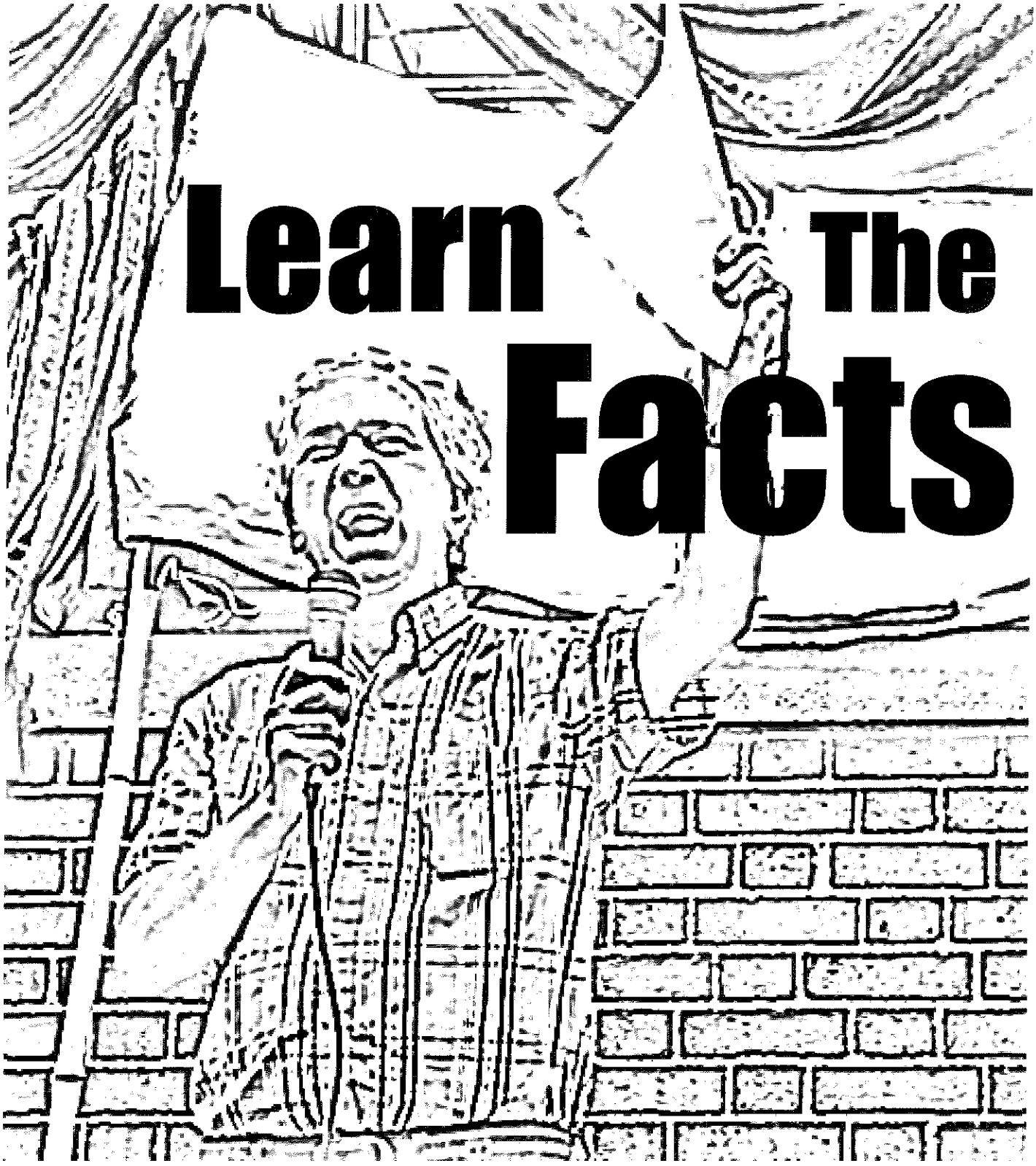


Snowmen don't like pollution!

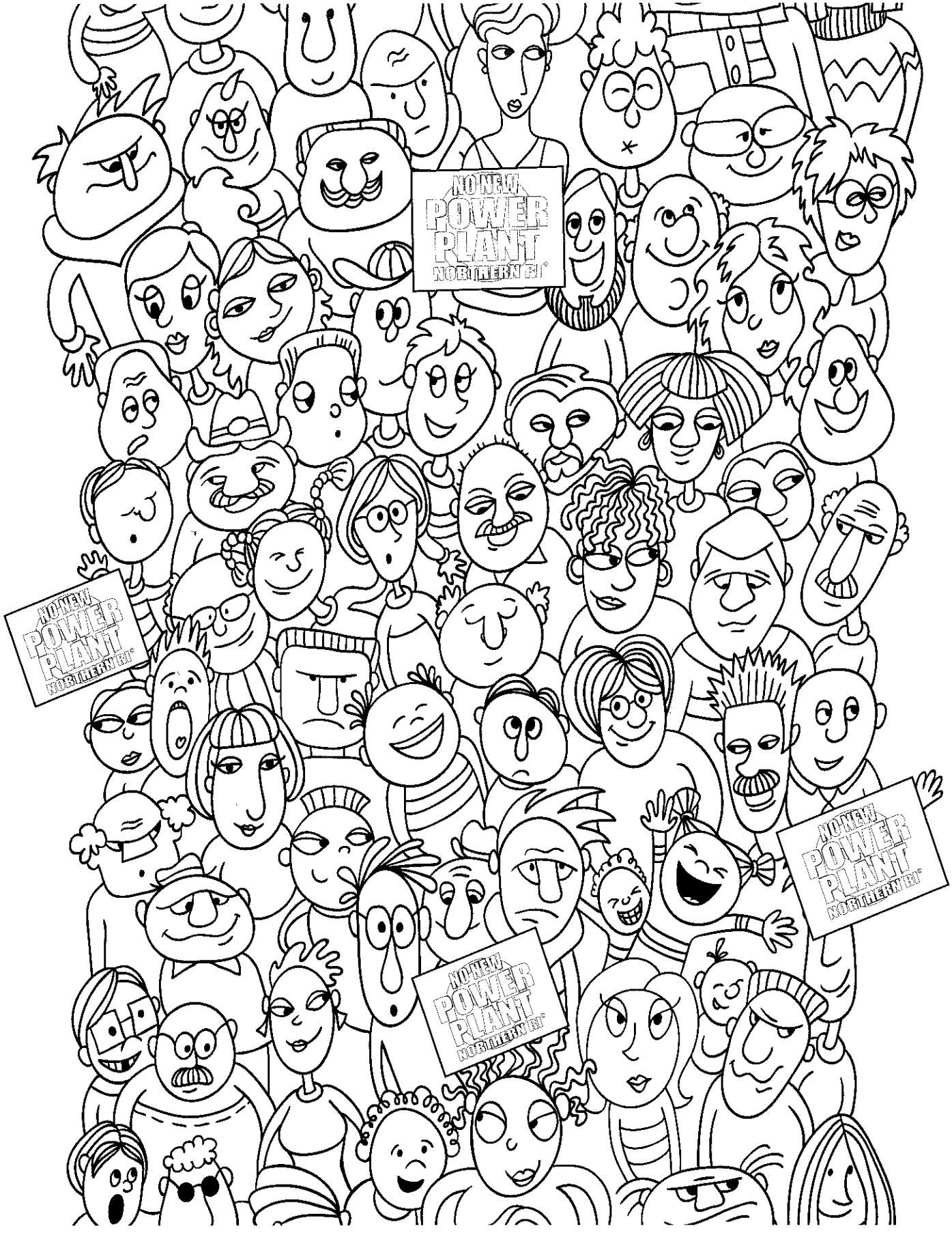
Dangerous Truck Traffic!



When A Community Comes Together,
We can Do Great Things!



BurrillvilleLandTrust.org



Everyone goes to meetings to help save Rhode Island!

Rhode Island Energy Facilities Siting Board Public Hearing
On the Proposed Invenergy Power Plant in Burrillville, RI

Comments of Matt Brown
Former Rhode Island Secretary of State
91 Williams St, Providence, RI

April 11, 2018

Members of the Energy Facilities Siting Board,

I oppose the construction of the Invenergy Clear River Energy Center (CREC) in Burrillville for the following reasons:

The proposed plant's energy is not needed. Last year, ISO-NE, our regional grid operator, determined there was no foreseeable need for the plant's power. In February, 2017, ISO's forward capacity auction -- which secures energy to meet Rhode Island's future energy demands -- demonstrated that CREC's energy will not be needed over the next three years. In addition, ISO's 2017 Capacity, Energy, Loads, and Transmission Report predicts declining peak load demand for the next ten years.

The pollutants from the plant would be harmful to human health and the environment. The plant would pump hazardous toxins and more than 3.6 million tons of carbon dioxide into the air a year, harming the health of Rhode Islanders and making it impossible to meet even our timid carbon reduction goals. It would move us backward in fighting climate change when we need to be moving forward with much greater speed and determination.

Natural gas infrastructure is not short term. The plant would likely operate for 30 years or more. Building this fossil fuel infrastructure would be a long-term anchor to the past, locking Rhode Island into the polluting, monopoly energy economy of the 19th century for at least another generation.

Building a renewable energy system would create vastly more jobs than building the plant. Invenergy projects that 300 jobs would be created to build the plant and 25 permanent jobs to maintain it. Creating a local renewable energy system in Rhode Island, on the other hand, would create thousands of new and permanent, well-paying jobs that cannot be outsourced. The Department of Energy's 2017 U.S. Energy and Employment Report showed that renewable electricity jobs are already driving the

nation's electric energy economy, outstripping the number of jobs in the fossil fuel electric industry (including coal, gas, and oil workers) by at least five to one.

Rhode Island should be a leader in the transition to a clean energy system. While many leaders in Rhode Island talk about renewable energy as if it is a part of our distant future, our neighboring states are building new energy systems powered by water, wind and sun today. ISO-NE's recent 2018 Regional Electricity Outlook revealed that in New England last year, for the first time there were more new wind power projects than new natural gas plants seeking connection to the grid. Massachusetts and New York are moving ahead with plans to bring 4 gigawatts of offshore wind power online by 2030, which represent more electricity than our state uses every year. Creating this new energy system is the biggest economic opportunity in generations.

If Rhode Island allows the Invenergy plant to go forward, we will be doomed to lag behind the economic curve once again. Rhode Islanders will be left out and left behind.

Rhode Island should scrap its plan for the Invenergy fossil fuel plant and leave it in the dustbin of history where it belongs, and instead mobilize to build the energy economy of the future. With the wind off the Rhode Island coast, our state has enough renewable resources to produce twice the energy we use. Experts say Rhode Island could be "the Saudi Arabia of wind power." Rhode Island can and should be the first state that not only produces all of its energy from local, truly clean renewable resources -- but also exports surplus renewable energy to other states.

We are at a fork in the road. We have everything we need to be a leader in the new energy economy. We have a once in a century opportunity to secure our economic future, clean our air and water, protect the health and wellbeing of our residents and leave our children a legacy we can be proud of. We cannot afford to let this opportunity pass us by. We must seize it.

Thank you for the opportunity to provide you with my comments.

Sincerely,

Matt Brown
Former Rhode Island Secretary of State

From Your Friends in Burrillville

RI Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Honorable Members of the Energy Facilities Siting Board:

My name is Dr. Peter Campellone and I own SWYPP clinic, a local business located in Pascoag, Rhode Island. I am writing to express my opposition to Invenergy's proposed Clear River Energy Center in Burrillville, RI.

Recently, many businesses in town received a letter from Invenergy offering our businesses a spot on Invenergy's 'preferred vendors list' in exchange for our support of this proposed project. Invenergy promised a 'boom' to local businesses during the construction phase of this project. I do not, however, feel that this implied short term increase in revenue for my business is worth the long term devastation this project would cause the Town of Burrillville and neighboring communities. Clearly Invenergy wishes to garner community support of the Clear River Energy Center by enticing local businesses with the promise of additional business in order to propel their case for this project forward.

In a community and state where heavy emphasis is placed on tourism, the destruction of approximately 200 acres of forests that abut Pulaski Park and George Washington Campground would ultimately drive revenue out of our state in the long term.

Invenergy promises that the Clear River Energy Center will help drive down energy costs in Rhode Island, passing along a savings of over $200 million dollars in the first four years alone. Testimony provided to the Rhode Island Public Utility Commissions revealed the savings to be between $0 and $36 million dollars for the first year, with rate payers' saving a measly 1-2%. The recent ISO-NE Annual Reconfiguration Auction proved that there was no threat to the amount of power in the grid for 2019 by allowing Invenergy to sell its' obligation of 485MW to another power supplier due to its lack of a permit at this time. Again signaling that this plant is not needed in order to meet demand, even with recent closure of Brayton Point.

I stand in opposition of this project along with thirty four other communities in the State of Rhode Island. I speak not only as a business owner in this community, but as a proud *member* of this community. The facts do not lie: the Clear River Energy Center is not needed or wanted in the Town of Burrillville.

I do not wish to see this project move forward and I urge you to deny Invenergy's application for the Clear River Energy Center.

Thank you,

_____ I authorize the use of my business' name and location to be used in any press releases regarding my business' opposition of the Clear River Energy Center proposed to be located in Burrillville, RI.

__V__ **I DO NOT** authorize the use of my business' name and location to be used in any press releases regarding my business' opposition of the Clear River Energy Center proposed to be located in Burrillville, RI.

Peter Capellupo 8/10/17.
Signature Date

PETER Capellupo.
Printed Name

SNYPP Clinic
Business Name

Dear Sir or Madam;

In case you have not yet heard of us, we are a group called "NO NEW POWER PLANT". We work in conjunction with the Burrillville Land Trust to protect, conserve and preserve green space, clean air, clean water and wildlife habitat.

We are part of a group that has been passionately fighting in opposition of a dual fracked gas and diesel power plant that has been proposed for a very special part of our state. This project would be located in the Pascoag section of Burrillville, a truly unique place indeed. The project is proposed to be set in the middle of our National Park Corridor. There you will find hiking trails, prime hunting areas, fishing, swimming camping, and scouting. This IS Rhode Island's playground loved and utilized by so many.

This project would affect the air we breathe, the water we drink and would have a very high and lasting impact on all of those recreational areas that we have grown to know and love. Recreation is one of Rhode Island's finest assets. The town of Burrillville never meant for that parcel to turn into an industrial plot. That very land has been set aside to be preserved and conserved as a haven to ALL of Rhode Island. Our children deserve to have all this in their future. For an out of state firm to come and rob us of all this is an insult.

Our mission is to educate and spread awareness of this project. We do not want to see our forest, wet lands, wildlife and that wonderful green refuge replaced by a polluting power plant to be built by a Chicago firm known as Invenergy.

So we now humbly reach out to our community members and businesses to join us in our mission. We are at this time requesting any donation you could give us to help with raising awareness and education. In a cause like this money is always needed for advertising in local papers, signs, flyers and so much more. This is a fight that we have been engaged in for nearly two years. We have 33 cities and towns from our state who have joined us with resolutions opposing this power plant. Also every environmental group in RI has come out against this. Now if we are lucky enough to have you join us in this journey with a thoughtful donation to our cause, it would be much appreciated by all who live in this great little state of Rhode Island. We look to the word on our state flag ....HOPE.....We trust that there will be hope and optimism to stop this project with your help. Please join our mission.

Anything you can do to help will be much appreciated by us and the generations to come.

Thank You,

Concerned Citizens of Burrillville

KEEP RHODE ISLAND Beautiful

NO NEW BURRILLVILLE POWER PLANT!

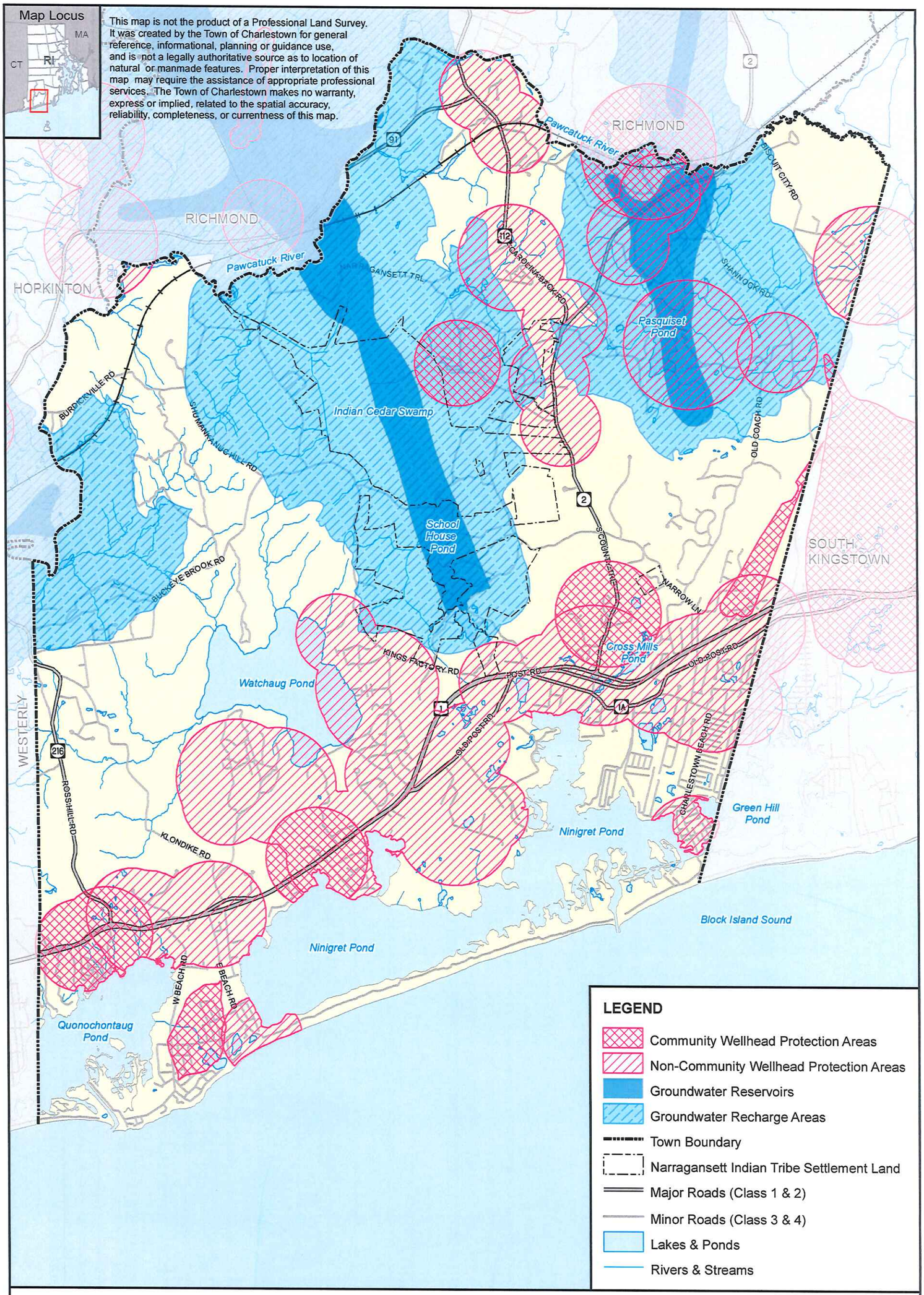
In addition to thousands of citizens who have signed the petition against the Clear River Energy Center power plant proposed for Burrillville, RI a growing number of major organizations, groups, towns, and leaders from Rhode Island and surrounding states have joined in expressing their opposition and concern through various forums. We will work to keep this running list up to date. Visit www.keeprhodeislandbeautiful.com for more info and to get the latest up to date list.

Opposition to the proposed Clear River Energy Center (as of June 26, 2017)

1. Alan Shawn Feinstein Foundation
2. Audubon Society of Rhode Island
3. BASE (Burrillville Against Spectra Energy)
4. Blackstone River Valley National Heritage Corridor
5. Blackstone Valley Tourism Council
6. Bell Street Chapel
7. Burrillville Conservation Commission
8. Burrillville Democratic Party
9. Burrillville Historical Society
10. Burrillville Land Trust
11. Burrillville Planning Board
12. Burrillville Republican Party
13. Burrillville Town Council
14. Burrillville Zoning Board
15. Cumberland Conservation Commission
16. Clean Water Action – Rhode Island
17. Conservation Law Foundation
18. Environment Council of Rhode Island
19. FANG (Fighting Against Natural Gas)
20. Food and Water Watch
21. Fossil Free RI
22. Harrisville Fire District
23. Indivisible Rhode Island
24. Interfaith Power & Light
25. Keep Rhode Island Beautiful
26. Lincoln D. Chafee, former mayor of Warwick, RI, former Rhode Island Governor, former United States Senator
27. Manville Sportsmen's Rod and Gun Club
28. Massachusetts State Senator Ryan C. Fattman
29. Metacomet Land Trust
30. Northwest Rhode Island Supporters of Open Space
31. Our Revolution –RI Chapter
32. Pascoag Utility District
33. Providence Gardner
34. Providence Mayor Jorge Elorza
35. Rhode Island Association of Conservation Commissions
36. Rhode Island Progressive Democrats
37. Rhode Island State Nurses Association
38. Rhode Island State Rep. Aaron Regunberg
39. Rhode Island State Rep. Bobby Nardolillo
40. Rhode Island State Rep. Cale Keable
41. Rhode Island State Rep. Robert B. Lancia
42. Rhode Island State Senator Jeanine Calkin
43. Rhode Island State Senator Paul Fogarty
44. Rhode Island Student Climate Coalition
45. Save the Bay
46. Sierra Club – Rhode Island Chapter
47. Sisters of Mercy RI
48. South Kingstown Conservation Commission
49. The Blackstone River Watershed Council/Friends of the Blackstone
50. The Environmental Justice League of Rhode Island
51. The Last Green Valley
52. The Mashapaug Nahaganset Tribe
53. The Nature Conservancy in Rhode Island
54. The Rhode Island Chapter of Citizens Climate Lobby
55. Thompson, CT Conservation Commission
56. Toxics Action Center
57. West Greenwich Conservation Commission

Cities & Towns

58. City of Central Falls, RI
59. City of Cranston, RI
60. City of East Providence, RI
61. City of Pawtucket, RI
62. City of Providence, RI
63. Town of Barrington, RI
64. Town of Bristol, RI
65. Town of Burrillville, RI
66. Town of Charleston, RI
67. Town of Coventry, RI
68. Town of Cumberland, RI
69. Town of Douglas, MA
70. Town of Exeter, RI
71. Town of Foster, RI
72. Town of Glocester, RI
73. Town of Hopkinton, RI
74. Town of Jamestown, RI
75. Town of Lincoln, RI
76. Town of Little Compton, RI
77. Town of Middletown, RI
78. Town of Narragansett, RI
79. Town of New Shoreham, RI
80. Town of North Kingstown, RI
81. Town of North Smithfield, RI
82. Town of Portsmouth, RI
83. Town of Richmond, RI
84. Town of Scituate, RI
85. Town of South Kingstown, RI
86. Town of Thompson, CT
87. Town of Tiverton, RI
88. Town of Webster, MA
89. Town of Westerly, RI
90. Town of Warren, RI
91. Town of West Greenwich, RI
92. Town of West Warwick, RI



Map Sources:

RIGIS

N W E S

0 0.25 0.5 1 Miles

0 0.5 1 Kilometers

TOWN OF CHARLESTOWN

RHODE ISLAND

Prepared by:
Town of Charlestown
Mason & Associates, Inc.

Town of Charlestown
Comprehensive Plan, 2016

GROUNDWATER

February 2016

GW - 1

Map Locus

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RICHMOND
HOPKINTON
WESTERLY
SOUTH KINGSTOWN
Pawcatuck River
Pasquiset Pond
Indian Cedar Swamp
School House Pond
Watchaug Pond
Cross Mills Pond
Green Hill Pond
Ninigret Pond
Quonochontaug Pond
Block Island Sound
NARRAGANSETT TRL
CAROLINA BACK RD
SHANNOCK RD
BISCUIT CITY RD
OLD COACH RD
BURDICKVILLE RD
SHUMANKANUC HILL RD
BUCKEYE BROOK RD
COUNTRY STRE
NARROW LN
KINGS FACTORY RD
POST RD
OLD POST RD
CHARLESTOWN BEACH RD
ROSS HILL RD
KLONDIKE RD
W BEACH RD
E BEACH RD
91
112
2
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216

LEGEND

- Community Wellhead Protection Areas
- Non-Community Wellhead Protection Areas
- Groundwater Reservoirs
- Groundwater Recharge Areas
- Town Boundary
- Narragansett Indian Tribe Settlement Land
- Major Roads (Class 1 & 2)
- Minor Roads (Class 3 & 4)
- Lakes & Ponds
- Rivers & Streams

Map Sources: RIGIS

N W E S

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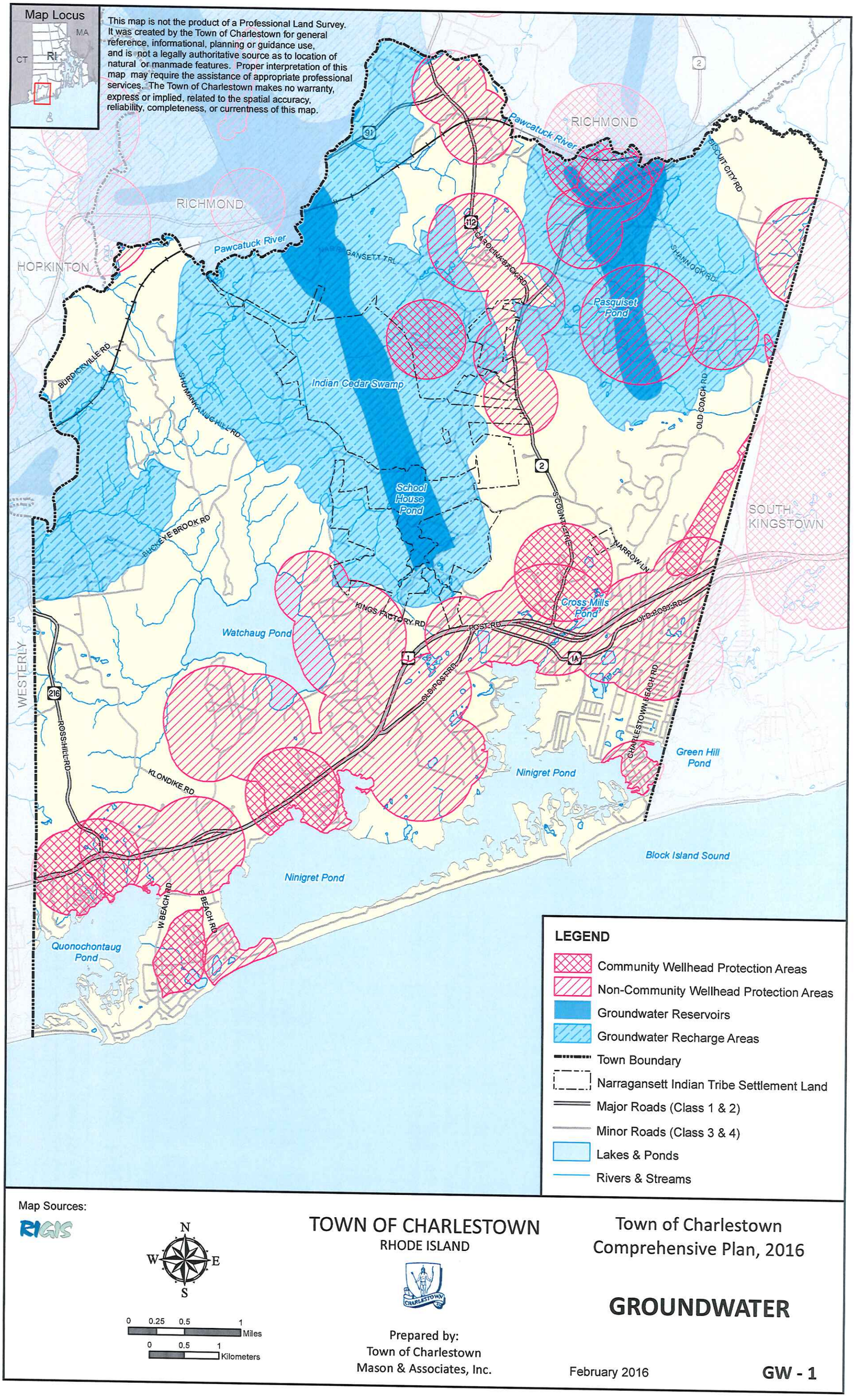
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HOPKINTON

WESTERLY

SOUTH KINGSTOWN

FOSTER COVE

ALLEN COVE

GREEN HILL POND

NINIGRET POND

QUONOCHONTAUG POND

0 700 1,400 2,800 4,200 5,600 Feet

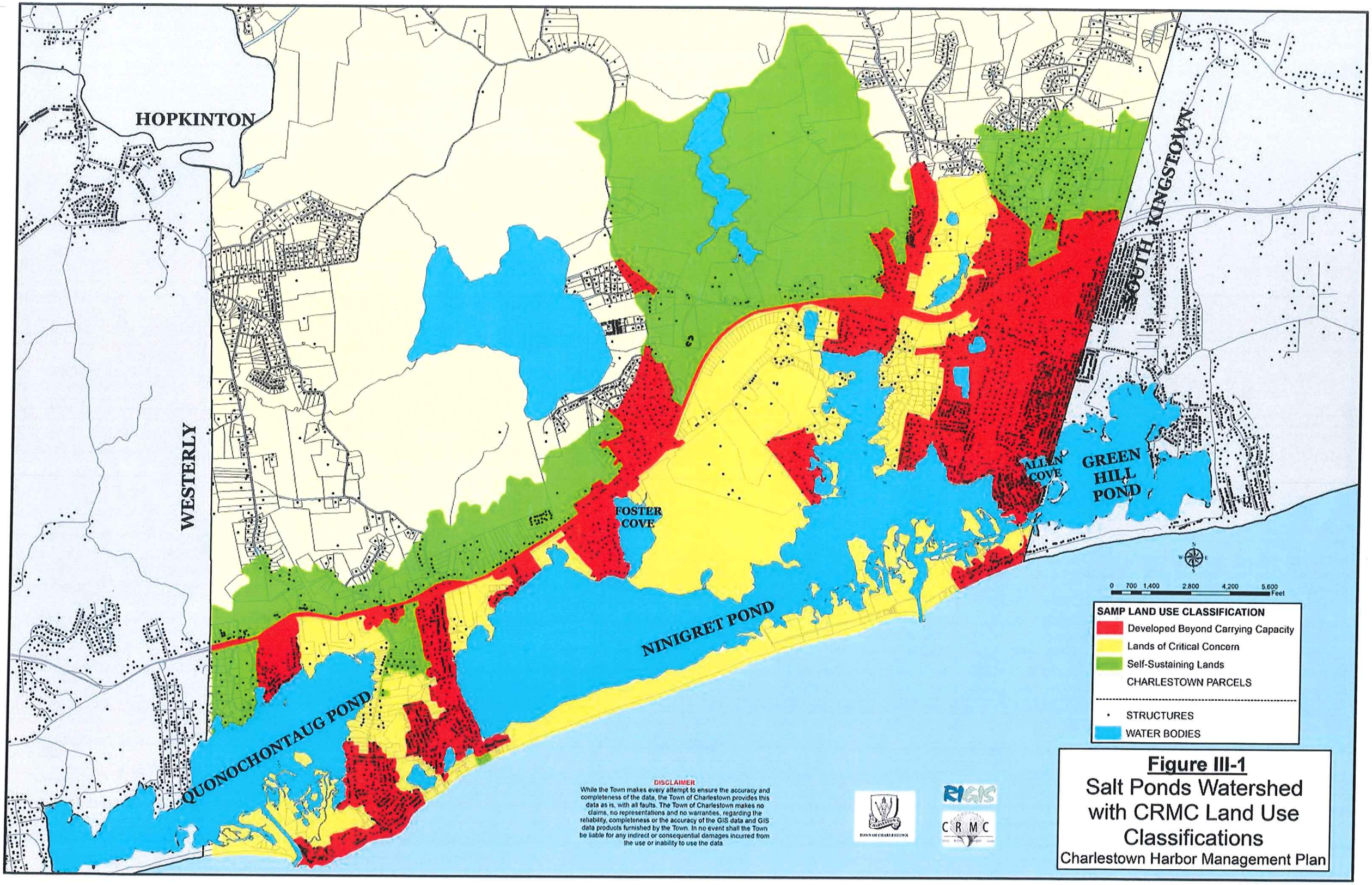
SAMP LAND USE CLASSIFICATION
- Developed Beyond Carrying Capacity
- Lands of Critical Concern
- Self-Sustaining Lands
- CHARLESTOWN PARCELS
- STRUCTURES
- WATER BODIES

TOWN OF CHARLESTOWN

RIGIS

CRMC

Figure III-1
Salt Ponds Watershed with CRMC Land Use Classifications
Charlestown Harbor Management Plan



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Salt Ponds Watershed with CRMC Land Use Classifications
Charlestown Harbor Management Plan

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SOUTH KINGSTOWN

ALLEN COVE

GREEN HILL POND

FOSTER COVE

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SAMP LAND USE CLASSIFICATION

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Figure III-1

Salt Ponds Watershed with CRMC Land Use Classifications

Charlestown Harbor Management Plan

Rhode Island Energy Facility Siting Board 10/10/2017
89 Jefferson Blvd
Warwick, RI 02888

re: SB2015-06

Dear EFSB Members,

Although the Clear River Energy Center (CREC) will be located in my backyard (I live about 1.5 miles downwind), I initially was ambivalent about it's construction. I thought perhaps any negative impacts could be offset by reductions in my property taxes, that building activity may be helpful to the local economy and, as a small business owner, I looked forward to lower electricity costs promised by the developer. My research, however, has lead me to the conclusion that any benefit CREC may promise is vastly overshadowed by it's negative impacts. It began with concerns over the amounts of particulate emissions the plant will put out. We are relatively new Burrillville residents and moved here to have room for horses and so I could plant a large vegetable garden. Having watched as my father and an uncle suffered with and died from cancer, the last thing I want to be breathing and eating is more carcinogens. When I began to learn more about the area where this plant will be built and what a critical wildlife corridor it is and the fact that we as taxpayers have made a significant investment in preserving it, the benefits paled further. When I learned that on a $15,000 annual electric bill I may save (at Invenergy's most optimistic estimate) a whopping $100 or so, I realized it was simply not worth it. When I continually see us breaking temperature records and watched the devastation caused by the freakish hurricane season of this past summer, it becomes clear that allowing this plant to go forward in light of such evidence would be criminal. This is what happens when something is proposed for your backyard: you do the research and learn the facts. Many people like to minimize citizen concerns as "NIMBYism". When something is proposed in your backyard, you become much more well informed than the average citizen. When you become more informed, it becomes clear that approval of the CREC would be a horrible mistake.

Over the past 2 years, you have been inundated with expert testimony and reams of documents. Over the coming weeks, you will no doubt be hit with much more. At the end, Invenergy's lawyers will sum things up by saying that they have crossed all their t's and dotted all their i's. That they had more lawyers and experts on their side. That they all commanded higher hourly billing rates than the opposition. Therefore, you have no choice but to approve this project. The easy thing for you to do would be to agree with them, to "go with the flow" and approve the project, maybe with a few stipulations. I challenge you to take the more difficult path but the right path. My wish and hope is that you will stop, step back, and consider the law from which you derive your authority and realize there is no way in good conscience you can approve this project.

It is clear that under State law, you must reject the proposed Clear River Energy Center since it **will cause unacceptable harm to the environment as defined in the law.**

The Board's rules, which echo 42-98-11, state the following:

(b) The board shall issue a decision granting a license only upon finding that the applicant has shown that:
.....
*(3) The proposed facility **will not cause unacceptable harm to the environment** and will enhance the social-economic fabric of the state.*

Unfortunately, this language is not clear, for it raises the question of what defines "unacceptable" harm. While other standards of the board such as necessity and cost effectiveness can be quantified, the idea of what constitutes "acceptable harm" to the environment is highly subjective. Thus, to achieve more clarity, one must dig deeper in the legislation to discover the legislative intent:

The Energy Facility Siting Act 42-98-2 Declaration of Policy states:

(3) The energy shall be produced at the least possible cost to the consumer consistent with the objective of ensuring that the construction, operation, and decommissioning of the facility ***shall produce the fewest possible adverse effects on the quality of the state's environment; most particularly, its land and its wildlife and resources, the health and safety of its citizens, the purity of its air and water, its aquatic and marine life, and its esthetic and recreational value to the public****;* (emphasis added)

When one returns to a careful reading of the legislation, the concept of what constitutes "unacceptable harm" becomes clearer. So too does the Board's obligation under law, for it is impossible to make a logical argument which arrives at the conclusion that siting the largest fracked gas fired power plant in New England in the middle of one of the only remaining wildlife corridors in the northeast would *"produce the fewest possible adverse effects on the quality of the state's environment; most particularly its land and its wildlife..."*. Likewise, it is impossible to come to the conclusion that siting an industrial facility with its impervious surfaces, its 2 million gallons of diesel fuel and its 40,000 gallons of ammonia adjacent to State recreational lands would produce the fewest possible adverse effects on the environment's "esthetic and recreational value".

In your advisory opinions, no conclusion either way can be gleaned from the State reports, partially because of the limited information presented by the applicant. For example, RIDEM, in their advisory opinion of 9/12/16, states that they do not have enough information to make a judgment on whether the proposal would create "unacceptable harm" to the environment. The DEM permits the applicant needs will not be completed before your deadline is reached. Nor do DEM permits address the over arching concern of forest fragmentation and natural resource preservation. Permits or not, one simply needs to look at a map to realize that this rural area, for decades the focus of State efforts in forest preservation is no place for an industrial facility of such size and impact. In fact, one does not need a new study, for it has already been done during the far more exhaustive Environmental Impact Study completed in1988 for the Ocean State Power Plant in which the DEM, considering the "Buck Hill Road site" stated:

(It) is not only botanically significant , but •••• highly utilized for recreational purposes including camping (Georqe Washinqton and Buck Hill Scout Reservation), hunting , fishing , and hiking among others . I would recommend that this Site No . 1 (i,e. , Buck Hill), not be considered for this power plant project , not only because of a close proximity to Dry Arm Brook , but also because potential impact of significant wildlife and plant species as well as the recreation in this area . On the basis of what I know of these sites I have listed, this seems by far the most inappropriate location for a power plant . (pg. W-132)

In the same report, the US Department of the Interior Fish and Wildlife Service states:

However, Buck Hill Road was not carried forward as a recommended site by the FERC because of environmental limitations.
....the FERC identifies the proposed power plants as objectionably intrusive in areas that have, among other features, parks and wildlife refuges. Thus neither the Sherman Farm Road or the Buck Hill Road sites are compatible with existing land uses..... (pg. W-12)

If that is not convincing enough that this proposal will cause unacceptable harm, here are samplings of comments from some of the area's leading environmental and non-governmental groups:

Blackstone Valley Heritage Corridor, Inc.
The extensive elimination of forest and impact to water sources will permanently impact the ability of the land to benefit the Town of Burrillville, the "Quiet Corner" of northeastern Connecticut, the nearby region of Massachusetts and the Blackstone River Valley National Heritage Corridor.

Blackstone Valley Tourism Council:
The Clear River Energy Center proposal is a bold contradiction to the values and beliefs held important to the Tourism Council and its work and sets the Blackstone Valley back in time.

Burrillville Conservation Commission:
A finding of No Significant Impact is invalid for this application

South Kingston Conservation Commission:
the placement of this mega facility ensures an immeasurable adverse impact on the quality of the State's environment.

Audubon Society of Rhode Island:
the proposed Invenergy power plant would undermine the integrity of one of the most intact, forested areas in not only in Rhode Island, but also in Southern New England.

Burrillville Land Trust:
The Invenergy project will destroy almost 200 acres that is surrounded by land paid for by Rhode Island tax payers

The Nature Conservancy:
Building a Power Plant in This Location Would Threaten the Ecosystem and its Biodiversity

Northwest RI Supporters of Open Space:
And it will inflict significant damage on the distinctive natural habitat that characterizes the northwestern corner of our state.

Even the applicant, in their less than thorough impact statement says: "*This alteration will reduce the quality of the habitat for some species and will render it unsuitable to forest-dependent species.*" (Application, pg. 76). Perhaps if this referred to a site surrounded by other development, it would be considered acceptable harm, but this is a site surrounded by protected land, part of a critical wildlife corridor. In this location, Invenergy's stated impact is anything but acceptable.

Consider also that the Rhode Island Building and Trades Council described the proposed power plant as follows: *"....this will be the largest construction project in the State of Rhode Island at least since the Providence Place Mall (1995) if not the Jamestown Verrazano Bridge (1989) if not ever..." (*Rhode Island Building and Construction Trades Council Objection to Town of Burrillville Motion to Dismiss *pg. 2). Consider the amount of construction traffic the potentially largest project "ever" would create on roads barely capable of handling a single trailer truck. Traffic passing through the iconic villages of Greenville, Chepachet and Pascoag. Traffic traveling to a residential neighborhood to construct this monstrosity on top of an aquifer, in the midst of woods and wetlands and tell me how this could possibly produce the "fewest possible adverse effects on the State's environment".*

All of the above statements should bring the Board to one common sense conclusion: **this project in the proposed location will cause a great deal of adverse effects** (far from the "fewest" as envisioned by the enabling legislation). The law is clear. You cannot approve this project because it **will** cause unacceptable harm to the environment as defined in the legislation.

A question one must consider is: If the Board somehow reaches the conclusion that this proposal, locating a huge industrial facility spewing toxic emissions in an area the State has spent countless time and dollars working to protect is "acceptable harm" then what, pray tell, would "unacceptable harm" look like? If dropping a 1000 megawatt power plant with its lights and noise and vast impermeable surfaces in the middle of a wildlife corridor protected by 3 states is "acceptable harm" what could possibly be "unacceptable"?
Stepping further afield, consider the amount of greenhouse gasses this facility running for the next 30 or 40 years will emit. Consider that in light of the fact that every month we break records for global mean temperatures. That we have just experienced one of the worst hurricane seasons ever with record rainfall amounts. Does one hurricane season prove climate change? Maybe not, but it is a preview of what is to come as sea temperatures and levels continue to rise. Invenergy's only defense is that CREC will replace older technology such as coal. I believe this past summer has shown as that CREC is old technology and that we continue top embrace fossil fuels at our peril. We are far beyond the time we should have switched to 100% renewables. Can you really look at these facts, consider that we live in the "Ocean State" and really tell me that allowing another 30 or 40 years of carbon emissions is "acceptable harm". Perhaps the easy thing to do would be to say this is not your responsibility, but like it or not, if you approve this project it will be your legacy that in a time of overwhelming evidence that the burning of fossil fuels is causing irreparable harm, you approved yet another plant.

I would ask the Board to carefully consider the term "unacceptable harm" in the more precise language of the legislation highlighted above. If you do that, I believe the only conclusion you can reach is that this proposal in unacceptable and should be denied.

I'd like to add a couple of side notes:

Statewide Planning

Just a brief word about another agency which should have carefully analyzed this proposal and rendered an informed answer to the question of "unacceptable harm" is Statewide Planning. In their advisory opinion of 8/3/16, however, they simply ignore any effect the proposal would have the environment. For example, on page 40, they mention Land Use 2025 Goal 4 which proposes, among other things that infrastructure should"...enhance environmental quality.." yet they fail to say anything about how this proposal would enhance the environmental quality of the State. Their supplemental opinion, seems to make an attempt to address some of the missing elements wherein they state: *"the forested lands in this region are some of the largest, least fragmented and highest quality within the State."* (p.22). This attempt, however, quickly sheds it's facade when they try to show that mitigation is an option. Once that forest is fragmented, there's no fixing it by buying open space somewhere else. They also say that preservation of forest is best left to State and municipal land use regulations. The fact is that Burrillville has such ordinances in place and the building of CREC would be in violation of them. Your decision to approve this project would make a mockery of the municipalities attempts to protect it's forestland as envisioned by Statewide Planning as the proper place for land use regulation. In a full review of their advisory opinion, it becomes abundantly clear that Statewide Planning had a conclusion in mind (put simply: power plant = good) prior to writing their report and then chose facts to fit that opinion, ignoring others that would have called it into question. Statewide Planning's report is

more biased propaganda than careful analysis and should be given little weight in the Board's final analysis.

The 1% Question

Invenergy makes much of their calculation that the proposal will reduce regional emissions by 1%, using this as an example of how the proposal will "benefit" the environment. I suggest that the board should question the validity of this number for a couple of reasons. First, the legislation was written by the Rhode Island Legislature, thus the "environment" is by definition Rhode Island and only Rhode Island. If we accept Invenergy's argument that the definition of "Environment" in the legislation should be expanded to the constructs of another agency, why not expand it further to the entire US or planet or, conversely constrict it to just the Town of Burrillville? All of these arguments are invalid. In terms of Rhode Island's emissions, this plant will increase CO2 emissions by approximately 27%, or, looked at another way, all things staying equal, this single plant will account for **over 20%** of Rhode Island's CO2 emissions. Again, one must ask: What constitutes acceptable harm?

If we accept Invernegy's argument, that the "environment" as defined by the RI Legislature is actually the region defined by ISO-NE, one must still wonder how this reduction could possibly be a positive number. I don't believe it takes a mathematician to realize that there are simply too many variables over time included in such a calculation. The answer should be listed as a possible range rather than a definite number. Such variables would include: increased reliance on renewable energy, increased efficiency and conservation efforts and changes in economic activity. Recent legislation in Massachusetts mandating increased reliance on renewables could also impact that number. Given such a small decrease as Invenergy projects, given the variables which should be included in their calculations, one can only assume that the proposed plant could actually lead to an **increase** in CO2 and other emissions for the region over time.

Again, I would ask you to please take a step back before you make your decision. Consider what the long term consequences of approving this plant will be and revisit the law from which you derive your authority and ask your selves again: "***will this cause unacceptable harm to the environment?"*.** I trust your honest answer to that question will be yes and then your answer to Invenergy can only be no.

Walter Chomka, Jr.
50 Town Farm Rd
Pascoag, RI 02859
wchomka@gmail.com

38 Radcliffe Avenue
Providence, RI 02908
9 October 2017

Mr Todd Bianco, Chair
Energy Facility Siting Board
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

RE: SB 2015-06 Clear River Energy Center Power Plant

Dear Mr Bianco:

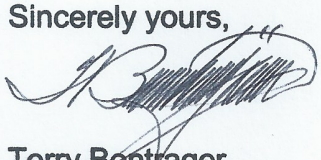
I oppose construction of the Clear River Energy Center Power Plan in Burrillville, RI for several reasons. Chief among them are the following:

1. The proposed fracked gas and oil-fired plant would provide energy that Rhode Island does not need. Projections from the US Energy Information Administration typically overestimate the need for fossil fuels each year. Yet even those predictions do not call for the energy that the Clear River Project would supply.
2. Construction of the plant and its operation would increase health-related illnesses. Prevailing winds would disperse contaminants from the plant throughout Rhode Island and Southern New England.
3. The proposed site along with space for parking would require clear-cutting approximately 200 acres of forest. It would cut off the only free passage for wildlife throughout the full north-to-south length of Rhode Island.
4. Rural roads cannot support the truck traffic required to supply the project with water from Johnston. A simple breakdown would bring gridlock to that area.
5. Investing in fossil fuels impedes our progress toward the goals that our Governor has set for transitioning to renewable energy.
6. Perpetuating the state's reliance on fossil fuels means continuing our reliance on other states where those fuels are resourced. We should instead be investing in energy sources within our state; sources that will employ and enrich our own citizens.

I acknowledge that the Clear River Energy Project would provide jobs at a time when many people and families are in great need of income. Yet the renewable energy sector has already proved to be more productive in both employment and industrial growth.

As a concerned citizen and a person of faith, I implore the Energy Facility Siting Board not to approve SB 2015-06 Clear River Energy Center Power Plant.

Sincerely yours,



Terry Bontrager
Climate Action RI
Peace and Justice Committee, Beneficent Congregational Church

PANNONE LOPES
DEVEREAUX & O'GARA LLC
counselors at law

William P. Devereaux
401 824-5106
wdevereaux@pldolaw.com

November 1, 2017

VIA HAND DELIVERY

Rhode Island Energy Facility Siting Board
Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Narragansett Indian Tribe

Dear Board Members:

Once again I find it necessary to write to you to correct representations made to you by Attorney Shannah Kurland, who is purporting to act on behalf of a group falsely identifying itself as the "Tribal Council of the Narragansett Indian Tribe." First, I respectfully direct you to my October 25, 2017 correspondence, incorporated herein by reference. That correspondence detailed the reasons why this Board should not entertain the motion to intervene filed by Attorney Kurland. I will attempt to limit my discussion here to points raised in her Reply Memorandum of Law filed on October 27, 2017.[1] Specifically, I will address (1) the existence, authority, and current status of the Tribal Court and (2) the purported "Tribal Council of the Narragansett Indian Tribe," which is not the lawfully elected Tribal Council.

1. Existence, Authority, and Current Status of the Tribal Court

The Narragansett Indian Tribe ("Tribe" or "NIT") adopted, by way of Tribal Resolution, the Unified Justice Code, which created the Tribal Court on August 29, 1992. The Tribe twice enacted revisions to the Unified Justice Code; one such revision was to change the title of the code from Unified Justice Code to the Comprehensive Codes of Justice (the "Code"). Throughout the 2000s the Tribal Court operated on an "as needed" basis. In particular, the Tribal Court was quite active between 2005 and 2008 when it was properly funded, but was not as active between 2008 and 2010. However, ever since the Tribal Council provided notice to the Tribal Court on June 28, 2014 that the Tribal Court was to take an active role in handling Tribal Election appeals, the Tribal Court has steadily and consistently heard a wide array of matters.

The purported intervenors' reliance on an isolated statement from an affidavit executed by the Chief Sachem on December 2, 2014 misses the mark. The statement of the Chief Sachem

[1] Please note that Attorney Kurland was served with a Temporary Restraining Order ("TRO") issued by the Narragansett Indian Tribal Court on October 25, 2017. Despite being served with the TRO, Attorney Kurland directly violated the TRO by choosing to file the Reply Memorandum of Law. The Tribe has since instituted contempt proceedings against Attorney Kurland for this blatant violation of a Tribal Court Order.

Northwoods Office Park
1301 Atwood Avenue, Suite 215 N Johnston, RI 02919
tel 401 824 5100 fax 401 824 5123
pldolaw.com

speaks only to the Tribal Court's action with regard to the "2014 General Election Notice." If anything, this emphasizes the independence of the Tribal Court, and Chief Sachem Thomas has consistently recognized the authority and existence of the Tribal Court for the past several years. In fact, in a December 1, 2016 story by WPRI, the Chief Sachem is quoted as saying "It is quite disheartening to see this very small group of dissident members defying their own tribal court system . . . . It **seems to me that everyone recognizes this court** except these disgruntled dissidents." (emphasis added) (attached hereto as *Exhibit A*).

Most importantly, recent decisions of the United States District Court for the District of Rhode Island recognize the current existence and authority of the Tribal Court. In *Luckerman v. Narragansett Indian Tribe*, C.A. 13-cv-185 (D.R.I. Sept. 30, 2016), Magistrate Judge Almond refused to lift a stay imposed on that Federal Court action while the companion action pending in the Tribal Court was still being adjudicated. Douglas Luckerman asserted that he was being prejudiced by the length of time that had passed for the Tribal Court to rule on a particular issue that had been remanded to the Tribal Court by United States District Court Judge William Smith. In Magistrate Judge Almond's decision, he specifically referenced decisions of the Tribal Court and referenced Chief Judge Denise Dowdell by name. By doing so, Magistrate Judge Almond undeniably recognized both the authority of the Tribal Court and the position of Denise Dowdell as the Chief Judge the Tribal Court. Furthermore, in ruling against Luckerman's argument that the stay should be lifted "because the Tribe does not have properly constituted or functioning Tribal Court," Magistrate Judge Almond declared that it was proper for the "Tribal Court [to take] the matter under advisement and [] not rush[] to judgment on the issue."[2] Similarly, Judge McConnell has also acknowledged that Tribal Court judicial orders are "the archetypal function of self-governance" and he declined to exercise jurisdiction over a matter originating from the Tribal Court and more appropriately resolved by the Tribal Court. *See Narragansett Indian Tribe Tribal Council v. Matthew Thomas*, C.A. 16-cv-622 (D.R.I. Dec. 22, 2016)

In addition to the opinions of Magistrate Judge Almond and Judge McConnell on the federal level, Rhode Island District Court Associate Judge Joseph T. Houlihan also acknowledged the authority of the Tribal Court system in April of 2017. Judge Houlihan was presiding over a criminal action brought against a Tribal member where the complainant was another Tribal member. As attorney for the defendant in that matter, I offered the testimony of Chief Judge Dowdell regarding the Tribal Court system. Judge Houlihan, in his decision, specifically found Chief Judge Dowdell's testimony credible and acknowledged the important role of the Tribal Court.

This Board needs to go no further than to take guidance from the justices of the United States District Court for the District of Rhode Island and the Rhode Island District Court. On multiple occasions they have declined to become embroiled in internal Tribal affairs, and instead have left it up to the Tribe and/or the Tribal Court to properly sort out such issues. This Board should similarly refuse to entertain a motion to intervene by the purported "Tribal Council of the Narragansett Indian Tribe," as doing so would disregard a standing Tribal Court order and bring

[2] Notably, Luckerman, in his argument that the Tribal Court was not properly constituted, submitted affidavits by two individuals of the group which, upon information and belief, Attorney Kurland now represents.

this Board squarely into the middle of an internal Tribal matter that is best, and most appropriately, resolved by the Narragansett Indian Tribe.

2. The Purported "Tribal Council of the Narragansett Indian Tribe" is not the Lawfully Elected Tribal Council

The alleged election from which the purported "Tribal Council of the Narragansett Indian Tribe" claim their authority was detailed in the Tribal Court decisions attached as exhibits to the October 25, 2017 correspondence to this Board. Of note, the July 2016 election, which the purported intervenors claim was a valid election, was deemed to be "null and void" by the Tribal Court. First, the election was not authorized by the Tribe. Second, it was held off Tribal lands at a VFW Hall, whereas all past Tribal elections have been held on Tribal lands at the Four Winds Community Center. Finally, and most notably, a mere 68 ballots were cast in this supposed election. A typical tribal election will have upwards of 350 votes cast, or more in years when a Chief Sachem is up for election. This Board should defer to the well-reasoned decisions of the Tribal Court which declared such purported "election" to be "null and void," and consequently not permit the so-called "Tribal Council of the Narragansett Indian Tribe" intervention as lawful representatives of the Tribe.

Besides the obvious and overwhelming evidence that has already been submitted to this Board, including a recent Temporary Restraining Order which Attorney Kurland and her group willfully violated, other basic evidence dictates that the group purporting to be the "Tribal Council of the Narragansett Indian Tribe" is in fact not the lawful Tribal Council. If one were to visit the NIT homepage (http://narragansettindiannation.org/), they would discover a link to "Tribal Government," which identifies Matthew Thomas as the Chief Sachem, Lloyd Wilcox as the Elder Medicineman, John Brown as the Medicineman, Cassius Spears Jr. as the First Councilman, John Pompey as the Second Councilman, and Yvonne Simonds Lamphere, Betty Johnson, Mary Brown, Walter Babcock, and Lonny Brown as Councilmen and Councilwomen. (*see* printout attached hereto as *Exhibit B*). This is the same composition of Tribal leadership that is identified in the 2017 Directory of Rhode Island City & Town Officials compiled by the State of Rhode Island Department of Revenue Division of Municipal Finance. (*see* excerpted printout attached hereto as *Exhibit C*, a complete version of the document is available for viewing at http://www.municipalfinance.ri.gov/documents/resources/2017DirectoryOfCityTownOfficials.pdf). Additionally, the Tribal Leaders Directory compiled by the Bureau of Indian Affairs identifies Anthony Dean Stanton as the contact for the NIT. (*see* printout attached hereto as *Exhibit D*).[3] Mr. Stanton is the Tribal Administrator and has affirmed that the Tribal Council and Chief Sachem are the same individuals as identified on the NIT website. (*see* Affidavit of Anthony Dean Stanton attached hereto as *Exhibit E*). Attorney Kurland does not represent any of the identified elected council people or the Chief Sachem.

[3] Other recent indications of the lawful Tribal leadership include: (1) Press Release for the 342nd Recorded Annual Meeting ("Pow Wow") held on August 12 – 13, 2017, indicating that "Chief Sachem Matthew Thomas urges all of Rhode Island to join the Tribe in celebration and share in traditional food, singing and dancing." (attached hereto as *Exhibit F*); (2) 2017 Tribal Directory (attached hereto as *Exhibit G*); and (3) Tribal Directory of the National Congress of American Indians identifying Matthew Thomas as the Chief Sachem of the NIT (attached hereto as *Exhibit H*).

The attempts by Attorney Kurland and her unnamed clients[4] to intervene as the purported "Tribal Council" are without merit. It would be akin to a group of dissident residents from any Rhode Island municipality attempting to intervene claiming they were the "City Council" or "Town Council" of that municipality. After confirming the purported "Town Council" was not actually the representative elected Town Council of that town—either by speaking with the Town's solicitor, calling the Town's offices, or even searching the Town's website—one would logically and quickly dismiss such a motion. Respectfully, this Board must do the same with respect to a filing by the falsely identified "Tribal Council of the Narragansett Indian Tribe."

Notably, if members of this dissident group are citizens of the State of Rhode Island, and/or tax payers of the Town of Burrillville, they have the same right as others to be heard at open meetings of this EFSB and, apparently, some members recently did so at an open forum in Burrillville.

In summary, the Tribal Court is a fully functioning Tribal government entity and is properly vested with authority to make orders and rulings on internal Tribal matters. The Tribal Court has declared the purported election from which Attorney Kurland's clients claim their authority to be null and void. The Tribal Court has also restrained Attorney Kurland and her group from further purporting to act on behalf of the Tribe before the EFSB. Furthermore, the overwhelming evidence presented to this Board indicates that the currently constituted Tribal leadership is not the group represented by Attorney Kurland, and thus the purported "Tribal Council of the Narragansett Indian Tribe" does not have the authority to seek intervention before this Board. It would be improper for this Board to ignore the evidence that has been presented, including orders of the Tribal Court, by acknowledging this group as being representative of the Tribe which will insert this Board in the midst of an internal Tribal matter which would spawn collateral litigation. Furthermore, this will distract the Board from performing its well-regarded statutory functions. Accordingly, the Board should dismiss the Motion to Intervene by filed by Attorney Kurland.

Please contact me with any additional questions or concerns regarding this matter.

Very truly yours,

PANNONE LOPES DEVEREAUX & O'GARA LLC

William P. Devereaux

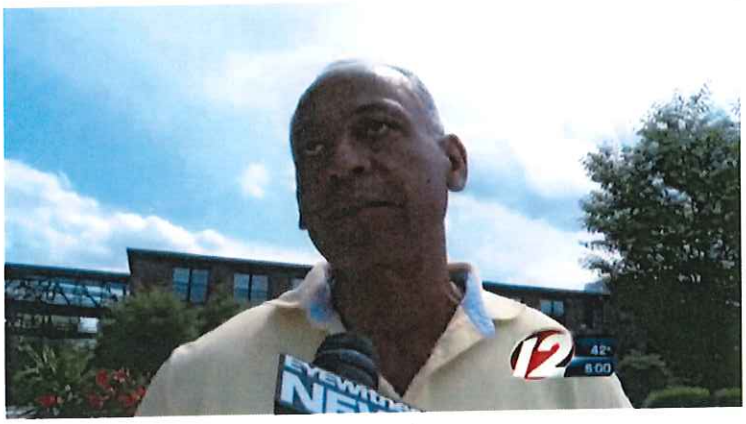
WPD
Enclosures
cc: Shannah Kurland, Esq. (skurland.esq@gmail.com)
Alan Shoer, Esq. (ashoer@apslaw.com)
Richard Beretta, Esq. (rberetta@apslaw.com)
Patricia S. Lucarelli, Esq. (patricia.lucarelli@puc.ri.gov)

[4] While Attorney Kurland did not identify any individuals by name, it is believed that the group she represents is the same faction that illegally broke into the Tribal Administration Building in December 2016, changed the locks to the Administration Building, and staged a lock out of Tribal employees and administrators, all of which caused financial and reputational harm to the Tribe.

EXHIBIT A

Narragansett Chief Sachem: 'Impostor' tribal council trying to seize power

By Nancy Krause (http://wpri.com/author/nancy-krause/) and Steph Machado (http://wpri.com/author/steph-machado/)
Published: December 1, 2016, 4:47 pm | Updated: December 27, 2016, 10:17 am



Longtime Narragansett Tribal Chief Sachem Matthew Thomas

PROVIDENCE, R.I. (WPRI) — Narragansett Chief Sachem Matthew Thomas is calling out several of the tribe's members who have filed a federal lawsuit asking the court to uphold Thomas' impeachment.

Thomas, who has been the chief of the tribe for nearly two decades, sent out a statement calling on the "Imposter [sic] tribal council to end their political charade."

"It is quite disheartening to see this very small group of dissident members defying their own tribal court system in a misguided attempt to seize power from the lawfully constituted tribal government," Thomas said in the statement. "Unfortunately these dissident members have attempted to perpetrate a fraud on their fellow tribal members, as well as the media and the general public."

The new council voted to impeach Thomas October 1 (http://wpri.com/2016/10/01/narragansett-indian-tribe-votes-to-impeach-chief-sachem/), making a number of claims against him, including that he is currently a Florida resident. Target 12 reported last December (http://wpri.com/2015/12/09/records-show-narragansetts-chief-sachem-thomas-is-a-florida-voter/) that Thomas is registered to vote in Florida. According to several tribe members, including Election Council member Darlene Monroe, tribe rules require the chief to live in the state of Rhode Island or within a 50-mile radius.

In an interview with Eyewitness News on Thursday, Chief Sachem Thomas brushed aside the residency issue, calling it "irrelevant," and adding that U.S. boundaries having nothing to do with the tribe, which is a sovereign nation.

"I live in Rhode Island, but I also live in Florida," Thomas said, confirming that he is registered to vote there. "It's one of the luxuries you have as an American citizen." Thomas said he spends more time in Rhode Island than Florida.

Thomas also brushed aside concerns from the group that impeached him.

"I mean, people didn't like Obama, they tried to impeach him. They tried to impeach Clinton. They're trying to impeach me. Everybody isn't going to like me, and that's fine," he said.

He says the impeachment was illegal because of a tribal court decision.

"It seems to me that everyone recognizes this court except these disgruntled dissidents," Thomas said.

Darlene Monroe says her faction of the tribe does not believe the tribal court exists, citing a Freedom of Information Act request she sent to the federal Bureau of Indian Affairs requesting information on the court. The FOIA request came back claiming there were "no records" pertaining to the court.

"The council impeached him on October 1," she said. "The Feds have to come in and tell him, 'the people have voted you out.'

In the federal lawsuit, the group is asking that court to order Thomas to give up his post and to declare the July election valid.

Related Posts

Tribal dispute provokes another call for state intervention in Burrillville power plant debate (http://wpri.com/2017/10/24/tribal-dispute-provokes-another-call-for-state-intervention-in-burrillville-power-plant-debate/)

Tribal leaders, Brown U. meet over Bristol land dispute (http://wpri.com/2017/08/23/tribal-leaders-brown-u-meet-over-bristol-land-dispute/)

FBI: Providence saw slight uptick in crime in 2016 (http://wpri.com/2017/09/25/fbi-providence-saw-slight-uptick-in-crime-in-2016/)

EXHIBIT B

TRIBAL GOVERNMENT

Chief Sachem: Matthew Thomas (e nada wushawunun — Seventh Hawk)

Elder Medicineman: Lloyd G. Wilcox (Running Wolf)

Medicineman: John Brown

Tribal Council

Cassius Spears, Jr., 1st Councilman

John Pompey, 2nd Councilman

Councilwoman: Yvonne Simonds Lamphere

Councilwoman: Betty Johnson

Councilwoman: Mary Brown

Councilman: Walter Babcock

Councilman: Lonny Brown

Tribal Secretary: John Mahoney

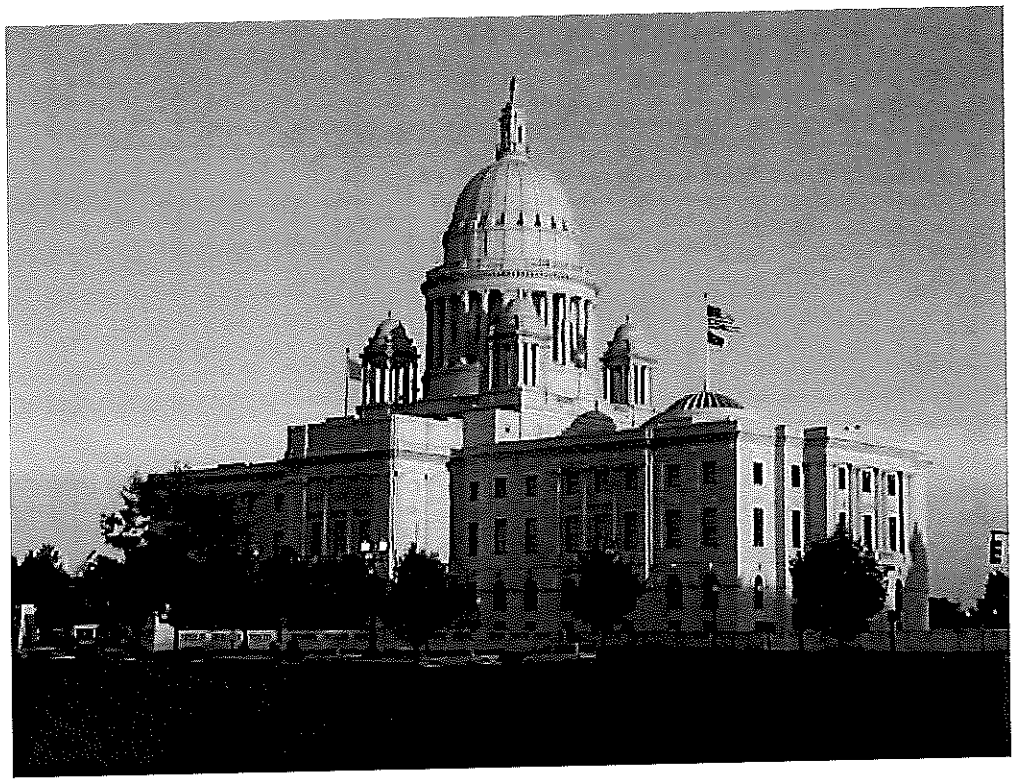
Assistant Tribal Secretary: Pending confirmation

Tribal Treasurer: Pending confirmation

Assistant Tribal Treasurer: Pending confirmation

EXHIBIT C

DIRECTORY
OF
RHODE ISLAND
CITY & TOWN OFFICIALS
2017



Gina M. Raimondo
Governor

STATE OF RHODE ISLAND
DOR
DEPARTMENT OF REVENUE

DEPARTMENT OF REVENUE
DIVISION OF MUNICIPAL FINANCE

Rhode Island Department of Revenue
Division of Municipal Finance

April 2017

Dear Municipal Official:

The Division of Municipal Finance is pleased to provide you with our *Directory of Rhode Island City & Town Officials for 2017.* The Directory is available on the Division's website at www.municipalfinance.ri.gov. The preparation of this Directory is the responsibility of Susan Moss, Fiscal Management Officer.

As with past editions, the information contained in this Directory is intended to facilitate the need for frequent communication among local officials. For your convenience, we have included information on:

- Selected State Agencies
- The Congressional Delegation
- State Associations of Local Government Officials
- Fire Districts
- Members of the Rhode Island General Assembly
- Major Water Suppliers
- The State Judiciary
- Historic Villages and Locales

Please consult our periodic updates which appear on our above referenced website on a regular basis.

I would like to thank you for providing the information contained in the directory. I hope you find this information useful. Comments and suggestions for continued improvement of this publication should be directed to the contact us link.

Sincerely,

Susanne Greschner
Chief, Division of Municipal Finance

One Capitol Hill, 1st Floor, Providence, RI 02908 | Tel. (401) 574-9900 Fax (401) 574-9912 TTY Relay via 711

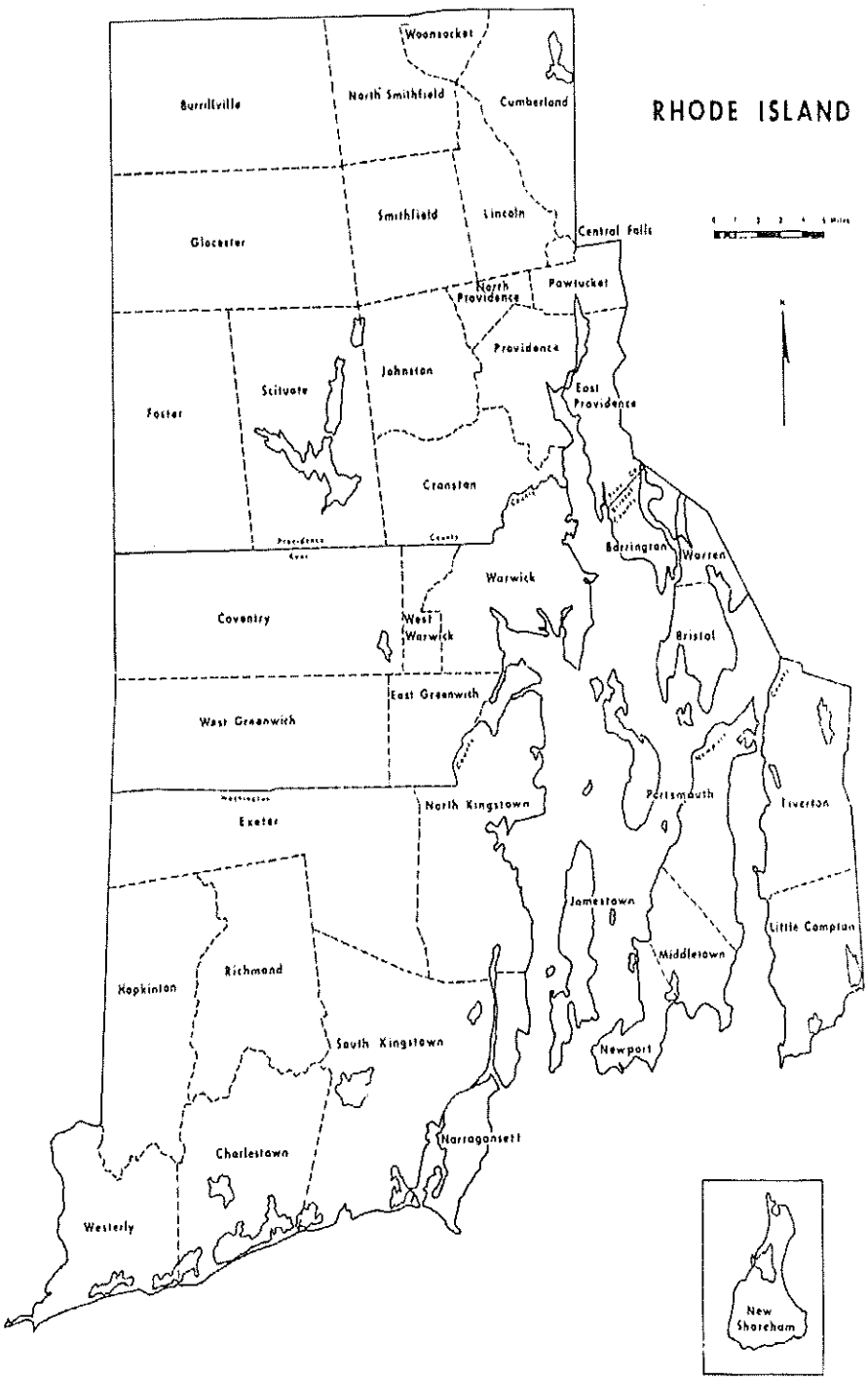

RHODE ISLAND
Woonsocket
Burrillville
North Smithfield
Cumberland
Smithfield
Lincoln
Central Falls
Glocester
North Providence
Pawtucket
Providence
Johnston
Scituate
East Providence
Foster
Cranston
Barrington
Warren
Warwick
Coventry
West Warwick
Bristol
East Greenwich
West Greenwich
Portsmouth
Tiverton
North Kingstown
Exeter
Jamestown
Little Compton
Middletown
Richmond
Hopkinton
South Kingstown
Newport
Narragansett
Charlestown
Westerly
New Shoreham

TABLE OF CONTENTS

NARRAGANSETT INDIAN TRIBE

Administration Building: 4533 South County Trail, Charlestown, RI 02813 **Fax#:** 364-1104
Mailing: P.O. Box 268, Charlestown, RI 02813

Election Date: January, Even Years **Form of Government:** Tribal Council

Council Meetings: Every Tuesday and Thursday **Fiscal Years Begins:** January 1

Administration Building Hours: 8:30 a.m. to 4:30 p.m.

364-1100
(Toll Free#: 1-800-287-4225) **Website:** www.narragansett-tribe.org

---

Chief Sachem: Matthew Thomas	364-1100, Ext. 214
Executive Assistant: Tamara Calhoun	364-1100, Ext. 214
Adult Vocational Training Director: Carla Monroe	364-1100, Ext. 204
Chief of Police: Antone Monroe	364-1100, Ext. 505
Community Planning & Natural Resources Protection Director: Dinalyn Spears	364-1100, Ext. 210
DHHS Health Director: Autumn Spears	364-1265, Ext. 127
Director of Administration: Anthony Dean Stanton	364-1100, Ext. 203
Education Director: Jacquelynne A. Stanton	364-1100, Ext. 211
Finance Director: Speedi Burrell	364-1100, Ext. 238
Housing Director: Holly Hazard	364-1100, Ext. 240
Human Resources Director: Beth A. Thomas	364-1100, Ext. 206
Indian Child Welfare Director: Wenonah Harris	364-1100, Ext. 233
Real Estate & Rights Protection Director: Lorraine Keyes	364-1100, Ext. 212
Social Service Program Coordinator: Parrish Noka	213-6880, Ext. 13

Tribal Council:
Cassius Spears, Jr., First Councilperson
John Pompey, Second Councilperson
Walter Babcock
Lonny Brown
Mary Brown
Elizabeth Johnson
Yvonne Lamphere
John Mahoney, Tribal Secretary

2017 Directory of City & Town Officials
Changes As of September 6, 2017

Date	City/Town	Position	Name	Remarks
8/10/17	Barrington	School Business Manager	Ronald Tarro	Delete
05/05/17	Central Falls	Finance Director/Tax Collector	Cynthia DeJesus	Delete
07/11/17	Central Falls	Finance Director/Tax Collector, Acting	Irina Gorman igorman@centralfallsri.onmicrosoft.com	Add
06/27/17	Coventry	Central Coventry Fire District, Fire Chief	Frank M. Brown, Jr.	Add
04/11/17	East Greenwich	Finance Director	Kristen Benoit – Tel. # 886-8609	Telephone Correction
06/19/17	East Greenwich	Town Manager	Thomas E. Coyle, III	Delete
06/19/17	East Greenwich	Town Manager, Acting	Gayle Corrigan gcorrigan@eastgreenwichri.com	Add
06/21/17	East Greenwich	Solicitor, Town	Peter A. Clarkin	Delete
06/21/17	East Greenwich	Solicitor, Town	David D'Agostino	Add
06/27/17	East Greenwich	School Business Manager	Gail Wilcox	Delete
06/27/17	East Greenwich	School Business Manager, Acting	Linda Dykeman	Add
07/05/17	East Greenwich	Finance Director	Kristen Benoit	Delete
07/05/17	East Greenwich	Finance Director/Business Manager	Linda Dykeman ldykeman@eastgreenwichri.com	Add
07/11/17	East Greenwich	Administrative Assistant	Pamela Aveyard	Delete
07/11/17	East Greenwich	Human Resources Director	Sharon L. Kitchin	Delete
07/11/17	East Greenwich	Human Resources Director	Rose Emilio	Add
07/31/17	East Greenwich	Town Manager	Gayle Corrigan	Acting to Permanent
8/22/17	East Greenwich	Chief of Staff	Michaela Antunes	Add
06/21/17	East Providence	Planning Director	Jeanne Boyle jboyle@cityofeastprov.com	Delete
07/11/17	East Providence	Planning Director, Acting	Diane Feather dfeather@cityofeastprov.com	Add
06/09/17	Glocester	Harmony Fire District: Fire Chief	Stuart D. Pearson	Delete
06/09/17	Glocester	Harmony Fire District: Fire Chief	Richard A. Waterman	Add

Date	City/Town	Position	Name	Remarks
07/31/17	Jamestown	Assessor	Kenneth S. Gray, RICA	Delete
07/31/17	Jamestown	Assessor	Christine Brochu cbrochu@jamestownri.net	Add
04/24/17	Little Compton	School Committee	Lori Ann Craffey	Delete
04/24/17	Little Compton	School Committee	Joseph M. Quinn 30 Indian Road, 02837	Add
8/28/17	Little Compton	Town Manager	Thomas Dunn	Delete
04/21/17	Narragansett	Solicitor, Town	Dawson T. Hodgson	Delete
04/21/17	Narragansett	Solicitor, Town	J. Patrick O'Neill Tel. # 848-7979	Add
04/13/17	New Shoreham	Town Manager	James L. Lathrop	Delete
04/13/17	New Shoreham	Town Manager, Interim	Shirlyne Gobern townmanager@new-shoreham.com	Add
05/30/17	North Kingstown	Finance Director/Tax Collector	Theodore J. Przybyla	Delete
05/30/17	North Kingstown	Finance Director/Tax Collector	James L. Lathrop jlathrop@northkingstown.org	Add
06/21/17	North Providence	School Superintendent	Melinda Smith	Delete
06/21/17	North Providence	School Superintendent	Bridget Morisseau	Add
05/05/17	North Smithfield	Finance Director	Cynthia DeJesus cdejesus@nsmithfieldri.org	Add
05/22/17	Pawtucket	Police Chief	Paul King	Delete
05/22/17	Pawtucket	Police Chief, Acting	Tina Goncalves	Add
05/23/17	Providence	Councilman	Luis A. Aponte	Delete President
06/09/17	Providence	Policy Director	Courtney Hawkins	Delete
06/12/17	Providence	Policy Director	Kate Sabatini	Add

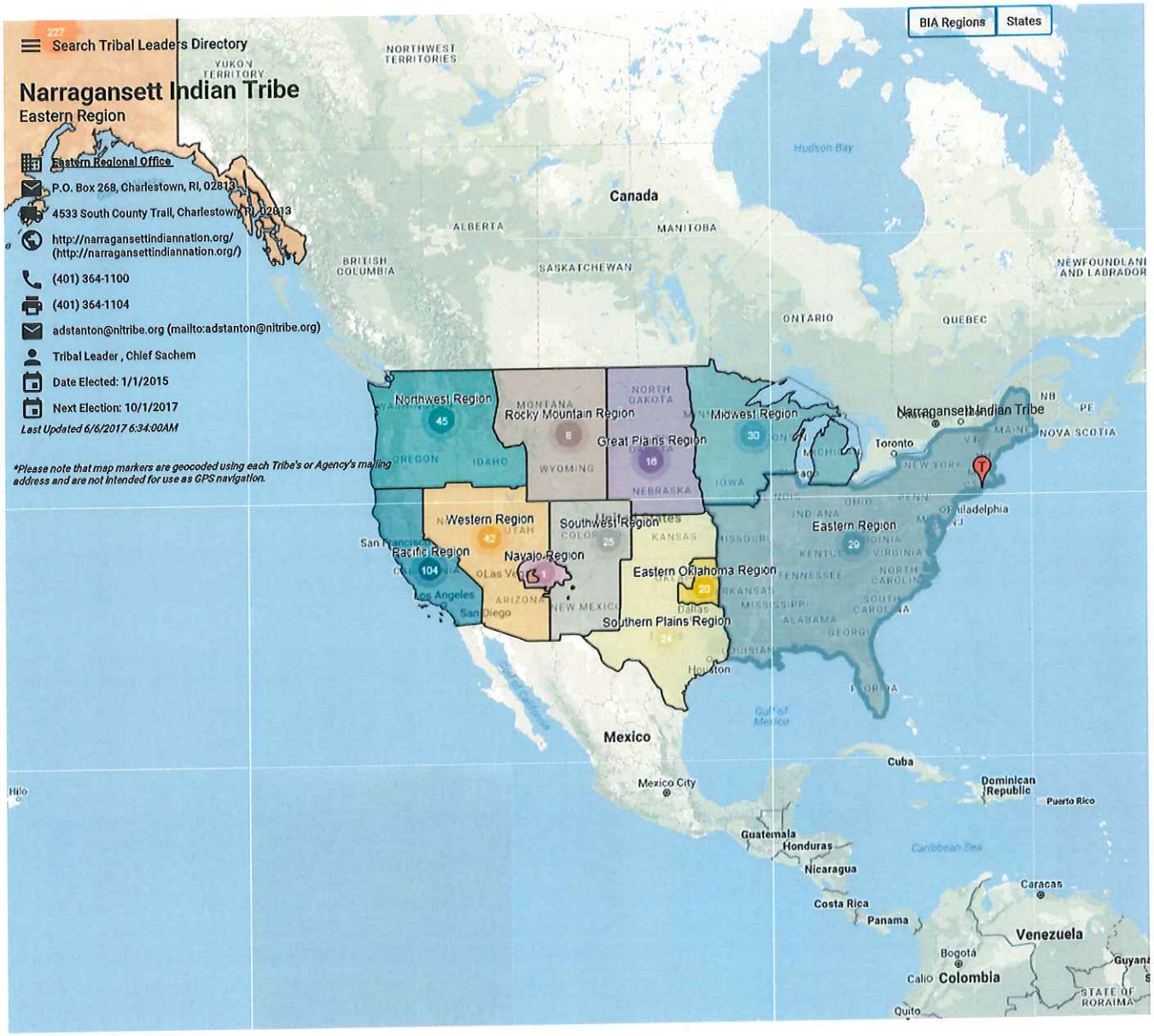
Date	City/Town	Position	Name	Remarks
8/18/17	Smithfield	Town Manager	Dennis Finlay	Delete
8/18/17	Smithfield	Town Manager	Randy R. Rossi	Add
07/31/17	South Kingstown	Police Chief	Joseph P. Geaber, Jr.	Acting to Permanent
05/03/17	Tiverton	Planner	Marc Rousseau	Delete
6/5/17	Tiverton	Town Administrator	Matthew J. Wojcik	Delete
6/5/17	Tiverton	Town Administrator	Paul McGreevy	Add
05/22/17	Warren	Finance Director/Tax Collector/Treasurer	Michael J. Abbruzzi	Delete
05/22/17	Warren	Housing Authority Executive Director	Thomas D. Gordon	Delete
05/22/17	Warren	Housing Authority Executive Director	Michael J. Abbruzzi	Add
06/05/17	Warren	Finance Director/Tax Collector/Treasurer	Elizabeth LeBlanc eleblanc@townofwarren-ri.gov	Add
07/31/17	Warwick	Chief of Staff, Acting	David Picozzi	Delete
05/22/17	West Warwick	Town Manager	Fred Presley	Delete
05/23/17	West Warwick	Town Manager, Interim	Mark Carruolo mcarruolo@westwarwickri.org	Add
07/31/17	West Warwick	Assessor	Christine Brochu	Delete
07/31/17	West Warwick	Assessor, Acting	Ann Coutu acoutu@westwarwickri.org	Add
05/15/17	Westerly	Zoning Official	Nathan Reichert	Add
06/21/17	Westerly	Finance Director	Debra Bridgham, Tel. #: 315-1534	Telephone Change
07/31/17	Westerly	School Superintendent	Dr. Roy Seitsinger	Delete
07/31/17	Westerly	School Superintendent	Mark Garceau	Add
07/31/17	Westerly	Finance Director	Debra Bridgham	Delete
07/31/17	Westerly	School Business Manager	Debra Bridgham, Tel#: 315-1534	Add
Executive Offices and Departments				
05/22/17	Dept. of Behavioral Healthcare, Developmental Disabilities and Hospitals	Director	Rebecca Boss	Change from Acting to Permanent
06/01/17	Executive Office of Health and Human Services	Secretary of the Executive Office of Health & Human Services, Acting	Anya Rader Wallack	Delete

Date	Dept.	Position	Name	Remarks
06/01/17	Executive Office of Health and Human Services	Secretary of the Executive Office of Health & Human Services	Eric J. Beane	Add
06/01/17	Dept. of Human Services	Director, Acting	Eric J. Beane	Delete
06/12/17	Dept. of Human Services	Director	Courtney Hawkins	Add

Subject Listing of Selected State Agencies

06/29/17	Resource Recovery Corp.	Executive Director	Michael OConnell	Delete
06/29/17	Resource Recovery Corp.	Executive Director	Joseph Reposa	Add
07/31/17	Fire Marshal's Office (Public Safety)	State Fire Marshal	John E. Chartier	Delete
07/31/17	Fire Marshal's Office (Public Safety)	State Fire Marshal, Acting	James Gumbley	Add
07/31/17	Health Insurance (Business Regulation)	Health Insurance Commissioner	Dr. Kathleen C. Hittner	Delete
07/31/17	Health Insurance (Business Regulation)	Health Insurance Commissioner	Marie L. Ganim, PhD	Add
08/01/17	Archives (Secretary of State)	Archivist & Public Records Adm.	R. Gwenn Stearn	Delete
08/01/17	Archives (Secretary of State)	Archivist & Public Records Adm.	Ashley Selima	Add
08/01/17	Historical Preservation & Heritage Commission	Executive Director	Edward F. Sanderson	Delete
08/01/17	Historical Preservation & Heritage Commission	Executive Director, Acting	Jeffrey Emidy	Add

EXHIBIT D



(https://maps.google.com/maps?ll=41.390946,-71.679201&z=4&t=m&hl=en-US&gl=US&mapclient=apiv3)

EXHIBIT E

AFFIDAVIT OF ANTHONY DEAN STANTON

Now comes Anthony Dean Stanton and after being sworn, hereby states:

1. I am a member of the Narragansett Indian Tribe of Rhode Island.

2. That I am the Tribal Administrator of the Narragansett Indian Tribe and make this affidavit in good faith and except as otherwise indicated, on the basis of personal knowledge of the facts set forth herein.

3. The Narragansett Indian Tribe is a federally acknowledged and recognized tribe of Indians with inherent privileges and immunities. (48 Fed. Reg. 6177-78).

4. I have been the Tribal Administrator of the Narragansett Indian Tribe since January 24, 1999.

5. That prior to my role as Tribal Administrator I served on the Narragansett Indian Tribal Council from January 7, 1984 to January 26, 1996 and as First Councilman from January 5, 1990 to January 12, 1994.

6. That in my duties and responsibilities as Tribal Administrator, I direct Tribal staff and Departments including Tribal Human Resources, Health, Finance, Education, Housing, Natural Resources and Planning, Law Enforcement, and Office of Social Services, amongst others.

7. The Narragansett Indian Tribe has approximately 2,400 to 2,600 hundred eligible members.

8. The Tribal Administration Office is currently located at 4375 South County Trail, Charlestown, Rhode Island.

9. The Tribal Administration Office includes offices for many of the Narragansett Indian Tribe's Departments and programs. It also includes the office of the Chief Sachem Matthew Thomas and the Tribal Council chambers where Tribal Council meeting are held weekly on Tuesday and Thursday evenings.

10. That I report to and take direction from the Chief Sachem Matthew Thomas and the Tribal Council which currently consists of First Councilman Cassius Spears, Jr., Second Councilman John Pompey, Councilman Walter Babcock, Councilman Lonny Brown, Councilwoman Mary Brown, Councilwoman Betty Johnson and Councilwoman Yvonne Lamphere.

11. Attorney Shannah Kurland does not represent the Chief Sachem, the Tribal Council, or the Narragansett Indian Tribe.

12. The Narragansett Indian Tribe has a Tribal Judiciary known as the Narragansett Indian Tribal Court.

13. The Chief Judge of the Narragansett Indian Tribal Court is Denise Dowdell.

ANTHONY DEAN STANTON

Anthony Dean Stanton

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

SUBSCRIBED and sworn before me this 1st day of November 2017.

Geraldine Riccio

NOTARY PUBLIC
COMM. EXPIRES

GERALDINE A. RICCIO, NOTARY PUBLIC
MY COMMISSION EXPIRES 7-20-2018

EXHIBIT F

Narragansett Indian Tribe
1-401-364-1100 1-800-287-4223
Fax (401) 364-1104

PRESS RELEASE

FOR IMMEDIATE RELEASE

The Narragansett Indian Tribe will be celebrating our 342nd Recorded Annual Meeting on Saturday, August 12th and Sunday. August 13th, 2017.

Chief Sachem Matthew Thomas urges all of Rhode Island to join the Tribe in celebration and share in the traditional food, singing and dancing.

Grand Entry will begin at 1:00PM.

The Church Board invites all to share in services at the Tribe's Historic Church. Sunday services will be held at 9:30AM and 11:00 AM.

All activities are held on the Narragansett Indian Reservation off Route 2 and Old Mill Road in Charlestown, RI. The gates will be open at 10:00am both days.

Admission: $6.00/Adults
$2.00/Children

P.O. Box 268 • 1533 South County Trail • Charlestown • Rhode Island 02813

POW WOW

Public is Invited

ME ENISKEETOMPAUOG WUNNEGIN"

ALL ARE WELCOME

OM NORTH: Take 95 South to
oute 4 South (exit 9). Route 4 to
oute 2. Stay on Route 2, you will
me to a red light (Rt.2 and 138)
ay on Rt.2 this will bring you to Old
ill Road on your right. There will be
gns posted on Rt.2 to bring you to
e Indian Church Grounds.

ROM SOUTH: Take 95 North to
oute 2 East. Right onto Route 78
ast. Left onto Route 1 North.
ake exit for URI off Route 1
orth. This will put you on Route 2
orth. Signs will be posted to
ring you to Old Mill Road to the
ndian Church Grounds.

17 Baby Regalia Celebration to be held on
turday - 10:00AM to 11:30AM . Contact
wanis Spears @ (401) 379-0958 or email:
byregalia@gmail.com

CHURCH BOARD MEMBERS
Alberta Wilcox
Mary S. Brown
Ellsworth D. Stanton
Eleanor S. Dove
Barbara Hamilton
Wendi Star Brown
Nancy Padron
Marnell Cash

POW-WOW COMMITTEE
Hiawatha J. Brown - Chairman

TREASURER OF THE CHURCH BOARD
Mary S. Brown

FOOD COORDINATORS
Mary S. Brown
Alberta Wilcox

TRIBAL NURSE
Alberta Wilcox

GATE KEEPERS
Nita Christy
Shella Christy

COUNCIL OF ELDERS
Mary S. Brown/Chairperson

TRIBAL SCOUTS
Philip Stanton - "Wolverine"
Earl Stanton - "Fighting Horse"

TRIBAL POLICE
Chief of Police, Antone Monroe

Food & Craft Booths
Both Booths - $150.00 per day

ADMISSION
Adults: $6.00 / Children: $2.00

Narragansett Indian Tribe's
342ND Annual August Meeting

Saturday, August 12TH
And
Sunday, August 13TH

Narragansett Indian
Church Grounds

(Off Route 2)
Charlestown, RI 02813

NO DOGS ALLOWED
NO DRUGS ALLOWED
NO ALCOHOL ALLOWED

Bring lawn chairs for additional seating

Camping permits are required contact
Natural Resource Dept. @ 401-364-1100 x205

Saturday, August 12th
Grand Entry at 1:00PM

Traditional Ceremonies are held under the auspices of Kawtantawitt, The Great Spirit, Chief Sachem, Medicine Man and Tribal Council.
A Cleansing of the circle is performed each day.

SCHEDULE OF EVENTS

1:00PM - Grand Entry; Opening Ceremony; Opening Dances (Calumet, Welcome, etc)...

2:00PM - Full Round Inter-Tribal's

CONTEST BEGINS
Tiny Tots
Elder Men/Women (50+)
Golden Age Men/Women (70+)
Inter-Tribal Dance (All)
Jr. Boys/Girls
Inter-Tribal Dance (All)
Teen Boys / Teen Girls
Inter-Tribal Dance (All)

Adult Women's
Eastern Blanket
Traditional
Fancy
Jingle
Inter-Tribal (All)

Adult Men's
Eastern War
Traditional
Fancy/Grass

INTERMISSION/5-7:00PM
Cody Blackbird/Flute
Narragansett Indian Women Singers

Speaker/Narragansett Tribal Historian
Wendy Star Brown

DANCE SPECIALS
Women's Eastern Blanket
Women's Smoke
Women's Jingle
Men's Eastern War
Men's Smoke

Retire Colors
Closing Song
Inter-Tribal(All)

Chief Sachem "Seventh Hawk"
Matthew Thomas welcomes you to our

342ND RECORDED ANNUAL
AUGUST MEETING

ORAL HISTORY RELATES ON THE 6TH MOON
SINCE TIME IMMEMORIAL

NARRAGANSETT INDIAN CHURCH

HOST DRUM
YOUNGBLOOD SINGERS

TRADITIONAL SONG
STRONG HORSE, KENNETH SMITH

MASTER OF CEREMONIES
HIAWATHA J. BROWN
John Eleazer, Shinnecock

ADMISSION
ADULTS: $6.00 and CHILDREN: $2.00

For More Information call
401-364-1100 or 401-364-7750

Limited Parking On The Grounds

Camping permits required
Contact Natural Resources Department @
401-364-1100 ext. 205

Limited Shuttle Service Available

NO DOGS, NO ALCOHOLIC BEVERAGES
AND NO DRUGS
are allowed on the reservation throughout the weekend

Sunday, August 13th
Grand Entry at 1:00PM

Church Services
9:30AM and 11:00AM
Reverend Wallace Hazard

Continuation of Events
12:30 to 2:00 PM

Cody Blackbird/Flute
Narragansett Indian Women Singers
Honoring Ceremony

2:00PM - Grand Entry
Opening Remarks
Round of Inter-Tribal's

2nd Round of Contests

Tiny Tots
Elder Men/Women(50+)
Golden Age Men/Women(70+)
Inter-Tribal Dance (All)
Teen Boys / Teen Girls
Inter-Tribals
Adult Women Traditional
Eastern Blanket
Jingle

INTERMISSION
Speaker, Wendi Star-Brown
Dinner Break

CONCLUSION
Adult Men Traditional
Eastern War
Grass/Fancy

Inter-Tribal (All)
Retire Flags
Awards Distributed

"Keeping Our Culture Alive"

Narragansett Indian Tribe
342st Annual August Meeting
"Powwow"
August 12th & 13th, 2017

Narragansett Indian Church Grounds
Indian Church Road, Off Route 2, Charlestown, RI 02813

Featuring: Native American drumming, singing dancing & storytelling
Native American Arts & Crafts
Native American Traditional/Contemporary Foods

"OPEN TO THE PUBLIC" – 10:00AM

Grand Entry: Saturday & Sunday @ 1:00PM

General Admission
Adults - $6.00 Children - $2.00

NO DRUGS, NO PETS OR ALCOHOL ALLOWED

For more information, visit www.Narragansett-Tribe.org – Call: (401) 364-1100 x203 or call the Church Board @ (401) 364-7750

AUGUST MEETING 2017 DANCE CATEGROY TOTALS

ADULTS 18-49

3 PLACES IN EACH CATEGORY	FIRST	SECOND	THIRD
Adult Men's Traditional	$200.00	$150.00	$120.00
Adult Men's Fancy/Grass	$200.00	$150.00	$120.00
Adult Men's Eastern War	$200.00	$150.00	$120.00
Adult Women's Traditional	$200.00	$150.00	$120.00
Adult Women's Fancy	$200.00	$150.00	$120.00
Adult Women's Eastern Blanket	$200.00	$150.00	$120.00
Woman's Jingle Dress Dance	$200.00	$150.00	$120.00

Combined Total for Adult Categories $3,290.00

TEENS 13-17

3 PLACES IN EACH CATEGORY	FIRST	SECOND	THIRD
Teen Men Traditional	$150.00	$120.00	$100.00
Teen Men Fancy/Grass	$150.00	$120.00	$100.00
Teen Women Traditional	$150.00	$120.00	$100.00
Teen Women Fancy/Jingle	$150.00	$120.00	$100.00

Combined Total for Teen Categories $1,480.00

BOYS/GIRLS 6-12

3 PLACES IN EACH CATEGORY	FIRST	SECOND	THIRD
Boy's Traditional	$110.00	$90.00	$85.00
Boy's Fancy/Grass	$110.00	$90.00	$85.00
Girl's Traditional	$110.00	$90.00	$85.00
Girl's Fancy/Jingle	$110.00	$90.00	$85.00

Combined Total for Boys/Girls Categories $1140.00

TINY TOTS 5 AND UNDER

DAY MONEY $20.00 @ 30 T.T'S. = $600.00

TOTAL FOR TINY TOT'S FOR THE WEEKEND $600.00

GOLDEN AGE 70 AND OVER

3 PLACES IN EACH CATEGORY	FIRST	SECOND	THIRD
Golden Men Traditional	$200.00	$150.00	$120.00
Golden Women Traditional	$200.00	$150.00	$120.00

ELDER'S 50 AND OVER

3 PLACES IN EACH CATEGORY	FIRST	SECOND	THIRD
Elder Men Traditional	$200.00	$150.00	$120.00
Elder Women Traditional	$200.00	$150.00	$120.00

TOTAL FOR ELDER'S CATEGORIES $1,880.00

SPECIALS ALL AGES

3 PLACES IN EACH CATEGORY	FIRST	SECOND	THIRD
Men's Smoke	$200.00	$150.00	$120.00
Women's Smoke	$200.00	$150.00	$120.00

3 PLACES IN EACH CATEGORY	FIRST	SECOND	THIRD
Woman's Jingle Dress Dance	$200.00	$150.00	$120.00

3 PLACES IN EACH CATEGORY	FIRST	SECOND	THIRD
Men's Eastern War	$300.00	$200.00	$100.00
Women's Eastern Blanket	$300.00	$200.00	$100.00

Narragansett Indian Tribe's 342nd Annual August Meeting

Narragansett Indian Church

Public Invited

Camping Permits Required
(401-364-1100 ext.205)

Limited parking on grounds

Shuttle Service Available

ADMISSION
ADULTS: $6.00
CHILDREN: $2.00

MASTER OF CEREMONY
HIAWATHA J. BROWN
John Eleazer, Shinnecock
HOST DRUM
YOUNG BLOOD

FOOD & CRAFT BOOTHS

Bring Lawn Chairs for Additional Seating

Gate Opens at 10:00AM/ Both Days

Saturday, August 12th & Sunday August 13th, 2017
Indian Church Grounds (Off Route 2)
Charlestown, RI 02813

For More Information Call: 401-364-1100 ext. 203
TRIBAL POLICE: 401-364-1100 ext. 236

NO DOGS....NO DRUGS...NO ALCOHOLIC BEVERAGES
ARE ALLOWED ON THE RESERVATION THROUGHOUT THE WEEKEND

EXHIBIT G

NARRAGANSETT INDIAN TRIBAL ADMINISTRATION DIRECTORY

Administration Building (800) 287-4225 (401) 364-1100 FAX: (401) 364-1104

4533 South County Trail, Charlestown R.I. 02813

ADMINISTRATION DEPARTMENT

CONTACT	TITLE	PHONE EXTENSION
Matthew Thomas	Chief Sachem	Ext. 214
Tamara Calhoun	Executive Assistant to the Chief Sachem	Ext. 214
Anthony Dean Stanton	Director of Administration	Ext. 203
Tribal Council	Tribal Council Room	Ext. 201
	Tribal Receptionist	Ext. 202
Beth Thomas	Human Resources Director	Ext. 206
	Administration Conference Room	Ext. 261

CHILD & FAMILY SERVICES DEPARTMENT

Wenonah Harris	Director of Child & Family Services	Ext. 233

ADULT VOCATIONAL TRAINING DEPARTMENT

Carla Monroe	Director of Adult Vocational Training	Ext. 204

EDUCATION DEPARTMENT

Jacquelynne A. Stanton	Education Department Director	Ext. 200
Norma Thomas	Administrative Assistant	Ext. 239

FINANCE DEPARTMENT

Speedi Burrell	Director of Finance Department	Ext. 238
Jeff Roe	Staff Accountant	Ext. 234

REAL ESTATE & RIGHTS PROTECTION DEPARTMENT

4375B South County Trail, Charlestown R.I

		Fax: (401) 364-9181
Lorraine Keyes	Director of Real Estate & Rights	Ext. 212

NARRAGANSETT INDIAN TRIBAL POLICE DEPARTMENT

DIRECT NUMBER (401) 364-1107 FAX: (401)213-6020 (401) 364-1100

Antone Monroe	Chief of Police	Ext. 236
Edward McQuaide	Police Sergeant	Ext. 236
Sam Fry	Investigator	Ext. 236
Nelson Hazard	Police Officer	Ext. 236

NARRAGANSETT PLANNING & NATURAL RESOURCES DEPARTMENT

		FAX: (401) 364-6432
Dinalyn Spears	Director of Planning & Natural Resources	Ext. 210
Steven Smith	Administrative Assistant	Ext. 205
Stanley Bailey	Environmental Assistant	Ext. 227
Michael Bliss	Laborer	Ext. 228
Ralph Stanton	Laborer	Ext. 229
Matthew J. Thomas	Laborer	Ext. 226
	Conferencece Room	Ext. 286

ENVIRONMENTAL POLICE DEPARTMENT

LT. Robin Spears JR	Environmental Police	Ext. 217
	N.I.T. HISTORIC PRESERVANTION OFFICE	
	4425 South County Trail Charlestown, RI 02813	
	John Brown	
	Doug Harris	
	HOUSING DEPARTMENT	
	4375B South County Trail Charlestown, RI 02813	Fax: (401) 552-7778
Holly Hazard	Director of Housing	Phone: (401) 552-7776
	HEALTH & HUMAN SERVICES DEPARTMENT	
	51 Old Mill RD Charlestown, RI 02813	
Phone(401) 364-1265	Director's Fax:(401) 364-1030	OFFICE SUPPORT FAX: (401) 364-6427
Autumn Leaf Spears	NIHC Director	Ext. 225
Jo-Ann Benson	Administrative Assistant	Ext.225
Chrystal Baker	Office Support	Ext. 127
Hayley Harris	CHS Administrator	Ext. 153
Amber Rico	CHS Assistant	Ext. 152
Sharon E. Alexander	Community Health	Ext. 223
Susan Bradanini	Community Health	Ext. 123
Sandra Parenteau	Patient Registration	Ext. 107
Laurie Anderson	Nurse Practitioner	Ext. 107
Mary Lyster	Medical Director	Ext. 107
Suzanne Piturro	Nursing Station	Ext. 143
Diane Nadeau	Nursing Station	Ext. 243
Marge Brouillette	Nursing Area	Ext. 146
Jennifer Bradley	Pharmacy	Ext. 109
	Medical Records	Ext. 251
Valerie Tsohantaridis	Behavioral Health	Ext. 122
Debbie Stanton	Transportation	
	SOCIAL SERVICES DEPARTMENT	
	P.O. BOX 969 Charlestown, RI 02813	
(401) 213-6880		FAX: (401) 213-6721
Parrish Noka	Director of Social Services	Ext. 13
Cynthia Stanton	Case Worker	Ext. 11
Dawn Tobin	Administrative Assistant & Respite Worker	Ext. 14
	FOUR WINDS COMMUNITY CENTER	
	4477 South County Trail Charlestown, RI 02813	
	NARRAGANSETT TRIBAL MEAL-SITE	
Pearl Brown	Supervisor/ Head Cook	(401) 364-6050
Sierra Spears	Assistant/ Prep Cook	
(401) 364-3514	**SENIOR CENTER (SLIVER CLOUDS)**	Fax: (401) 364-7114
Alberta Wilcox	Senior Coordinator	401-364-7750
(401) 364-0279	**HAND IN HAND DAYCARE CENTER**	Fax: (401) 364-3145
Nicki VanHorn	Head Teacher/ Director	

EXHIBIT H

Tribes (/tribal-directory)

Associate Organizations (/tribal-directory/associate-organizations)

Tribal Organizations (/tribal-directory/tribal-organizations)

Alaska Native Corporations (/tribal-directory/alaska-native-corporations)

Tribes

List by Area:

Search NCAI SEARCH

List by tribe name:

A (/tribal-directory?letter=A) | B (/tribal-directory?letter=B) | C (/tribal-directory?letter=C) | D (/tribal-directory?letter=D) | E (/tribal-directory?letter=E) | F (/tribal-directory?letter=F) | G (/tribal-directory?letter=G) | H (/tribal-directory?letter=H) | I (/tribal-directory?letter=I) | J (/tribal-directory?letter=J) | K (/tribal-directory?letter=K) | L (/tribal-directory?letter=L) | M (/tribal-directory?letter=M) | N (/tribal-directory?letter=N) | O (/tribal-directory?letter=O) | P (/tribal-directory?letter=P) | Q (/tribal-directory?letter=Q) | R (/tribal-directory?letter=R) | S (/tribal-directory?letter=S) | T (/tribal-directory?letter=T) | U (/tribal-directory?letter=U) | V (/tribal-directory?letter=V) | W (/tribal-directory?letter=W) | X (/tribal-directory?letter=X) | Y (/tribal-directory?letter=Y) | Z (/tribal-directory?letter=Z)

Search by Keyword:

SEARCH

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Naknek Native Village
[Alaska]

Linda Halverson (President)
Tel: (907) 246-4210
Fax: (907) 246-3563
Recognition Status: Federal

PO Box 210
Naknek, AK99633-0106
Website: ()

Nanticoke Indian Association, Inc.
[Northeast]

Natosha Norwood Carmine (Chief)
Tel: (302) 945-3400
Fax: (302) 947-9411
Recognition Status: State

27073 John J Williams Hwy
Millsboro, DE19966-4642
Website:

http://www.nanticokeindians.org/
(http://www.nanticokeindians.org/)

Nanticoke-Lenni Lenape Tribal Nation
[Northeast]

Mark Gould (Chairman)
Tel: (856) 455-6910
Fax: (856) 455-5338
Recognition Status: State

18 E Commerce St
Bridgeton, NJ08302-2649
Website: http://nanticoke-lenapetribalnation.org/ (http://nanticoke-lenapetribalnation.org/)

Narragansett Indian Tribe
[Northeast]

Matthew Thomas (Chief Sachem)
Tel: (401) 364-1100
Fax: (401) 364-1104
Recognition Status: Federal

PO Box 268
Charlestown, RI02813-0268
Website: http://www.narragansett-tribe.org (http://www.narragansett-tribe.org)

Native Village of Afognak
[Alaska]

Loretta Nelson (Chairperson)
Tel: (907) 486-6357
Fax: (907) 486-6529
Recognition Status: Federal

323 Carolyn Street
Kodiak, AK99615
Website: http://www.afognak.org (http://www.afognak.org)

Native Village of Akhiok
[Alaska]

David Eluska (President)
Tel: (907) 836-2312
Fax: (907) 836-2345
Recognition Status: Federal

PO Box 5030
Akhiok, AK99615-5030
Website: ()

Native Village of Akutan
[Alaska]

Joe Bereskin, Sr.(President)
Tel: (907) 698-2300
Fax: (907) 698-2301
Recognition Status: Federal

PO Box 89
Akutan, AK99553-0089
Website: ()

Native Village of Aleknagik
[Alaska]

Margie Aloysiu (President)
Tel: (907) 842-2080
Fax: (907) 842-2081
Recognition Status: Federal

PO Box 115
Aleknagik, AK99555-0115
Website: http://www.bbna.com (http://www.bbna.com)

Native Village of Ambler
[Alaska]

Shield Downey, Jr. (First Chief)
Tel: (907) 445-2238
Fax: (907) 445-2257
Recognition Status: Federal

PO Box 47
Ambler, AK99786-0047
Website: ()

Native Village of Atka
[Alaska]

Tel: (907) 839-2229
Fax: (907) 839-2269
Recognition Status: Federal

PO Box 47030
Atka, AK99547-0030
Website: ()

Native Village of Barrow Inupiat Traditional Government
[Alaska]

Thomas Olemaun (President)
Tel: (907) 852-4411
Fax: (907) 852-8844
Recognition Status: Federal

PO Box 1130
Barrow, AK99723-1130
Website: http://www.nvbarrow.com/ (http://www.nvbarrow.com/)

Native Village of Belkofski
[Alaska]

James Kenezuross (President)
Tel: (907) 497-3122
Fax: (907) 497-3123
Recognition Status: Federal

PO Box 57
King Cove, AK99612-0057
Website: ()

Native Village of Bill Moore's Slough
[Alaska]

Stella Fancyboy (President)
Tel: (907) 899-4232
Fax: (907) 899-4461
Recognition Status: Federal

PO Box 20288
Kotlik, AK99620-0288
Website: ()

Native Village of Brevig Mission
[Alaska]

Gilbert Tocktoo (President)
Tel: (907) 642-4301
Fax: (907) 642-2099
Recognition Status: Federal

PO Box 85039
Brevig Mission, AK99785-0039
Website: ()

Native Village of Buckland (IRA)
[Alaska]

Percy Ballot, Sr. (President)
Tel: (907) 494-2171
Fax: (907) 494-2192
Recognition Status: Federal

PO Box 67
Buckland, AK99727-0067
Website: ()

Native Village of Cantwell
[Alaska]

Rene Nicklie (President)
Tel: (907) 768-2591
Fax: (907) 768-1111
Recognition Status: Federal

PO Box 94
Cantwell, AK99729-0094
Website: ()

Native Village of Chenega aka Chanega
[Alaska]

Larry Evanoff (Chairman)
Tel: (907) 569-5688
Fax: (907) 573-5120
Recognition Status: Federal

PO Box 8079
Chenega Bay, AK99574-8079
Website: ()

Native Village of Chignik Lagoon
[Alaska]

Jeremy Anderson (President)
Tel: (907) 840-2281
Fax: (907) 840-2217
Recognition Status: Federal

PO Box 09
Chignik Lagoon, AK99565
Website:
http://www.chigniklagoon.net/index.html
(http://www.chigniklagoon.net/index.html)

Native Village of Chignik Lagoon Council
[Alaska]

Clemens Grunrt (President)
Tel: (970) 840-2281
Fax: (970) 840-2217
Recognition Status: Federal

PO Box 09
Chignik Lagoon, AK99565
Website: http://www.chigniklagoon.net/
(http://www.chigniklagoon.net/)

Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
[Alaska]

Jerry Peterson (Chairman)
Tel: (907) 467-4313
Fax: (907) 467-4113
Recognition Status: Federal

PO Box CHU
Chuathbaluk, AK99557-8999
Website: ()

Native Village of Council
[Alaska]

Chase Gray (Chairman)
Tel: (907) 443-7649
Fax: (907) 443-5965
Recognition Status: Federal

PO Box 2050
Nome, AK99762-2050
Website: http://www.kawerak.org
(http://www.kawerak.org)

Native Village of Crooked Creek
[Alaska]

Julia Zaukar (President)
Tel: (907) 432-2200
Fax: (907) 432-2201
Recognition Status: Federal

PO Box 69
Crooked Creek, AK99575-0069
Website: ()

Native Village of Deering
[Alaska]

Kevin Moto (President)
Tel: (907) 363-2138
Fax: (907) 363-2195
Recognition Status: Federal

PO Box 36089
Deering, AK99736-0089
Website: ()

Native Village of Diomede (IRA) (aka Inalik)
[Alaska]

Robert F. Soolook (President)
Tel: (907) 686-2175
Fax: (907) 686-2203
Recognition Status: Federal

PO Box 7079
Diomede, AK99762-7079
Website: ()

Native Village of Eagle
[Alaska]

Freddie Stevens (First Chief)
Tel: (907) 547-2281

PO Box 19

Recognition Status: Federal Website: ()

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4 (?letter=N&page=4) 5 (?letter=N&page=5) Next → (?letter=N&page=2)

National Congress of American Indians (NCAI)
Embassy of Tribal Nations
1516 P Street NW, Washington, DC 20005
Phone: (202) 466-7767, Fax: (202) 466-7797

PANNONE LOPES
DEVEREAUX & O'GARA LLC
counselors at law

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PUBLIC UTILITIES COMMISSION

William P. Devereaux
401 824-5106
wdevereaux@pldolaw.com

October 25, 2017

VIA HAND DELIVERY

Rhode Island Energy Facility Siting Board
Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Narragansett Indian Tribe

Dear Board Members:

I write regarding issues recently brought to the attention of the duly constituted Narragansett Indian Tribal government through the filing of a "Motion for Intervention of the Tribal Council of the Narragansett Indian Tribe" by attorney Shannah Kurland. Please be advised that this filing was not authorized by the Narragansett Indian Tribe Tribal Council or the Tribe's Chief Sachem, and Attorney Kurland does not represent the properly constituted Tribal Council of the Narragansett Indian Tribe. Since Attorney Kurland elected not to identify her clients by name, it is believed that Attorney Kurland represents a dissident group of Tribal members, or former members, that have challenged the authority of the properly constituted Tribal leadership in the past. In fact, the Tribal Court of the Narragansett Indian Tribe has dealt with these individuals as recently as December 22, 2016, and ordered that they cease from holding themselves out as representing or having authority to represent the Tribe. Despite this strong directive from the Tribal Court, it appears as though these same members have once again taken it upon themselves to falsely represent that they hold lawful representative capacity by filing this Motion to Intervene through Attorney Kurland.

By way of background, a recent decision by Mr. Justice McConnell of the U.S. District Court for the District of Rhode Island entitled ***Narragansett Indian Tribe Tribal Council v. Matthew Thomas, C.A. 16-cv-622-M (D.R.I. Dec. 22, 2016)*** (attached as **Exhibit A)** determined that there was no Federal jurisdiction to consider internal Tribal Court decisions regarding Tribal governance disputes. In particular, Judge McConnell noted the 1st Circuit's decision in ***Narragansett Indian Tribe v. Rhode Island, 449 F. 3d 16, 26 (1st Cir. 2006)***, wherein the Court stated, "We recognize that the Tribe may continue to possess some degree of autonomy 'in matters of local governance', including . . . the regulation of domestic relations." ***Id.*** Noting this decision as precedent, Judge McConnell then stated, "This Court finds elections and related judicial orders the archetypal function of self-governance." ***Id. at 2.*** Consequently, the U.S. District Court for the District of Rhode Island has recognized the autonomy of the Narragansett Tribal Court to render decisions regarding internal tribal government matters.

The Tribal Court's jurisdiction over this matter is also clear from the Tribe's Comprehensive Code of Justice. The Code provides for the establishment and maintenance of a Tribal Judiciary, including a Chief Judge. See Excerpted Portions of Comprehensive Code of Justice, attached as **Exhibit B**. Presently, the Chief Judge of the Tribal Court is Denise Dowdell, a graduate of Catholic University and the University of Wisconsin School of Law. Judge Dowdell has rendered decisions for nearly a decade on a number of Tribal matters, including issues related to Tribal elections, and has analyzed, at length, the jurisdiction of the Tribal Court to adjudicate such disputes.

Of equal importance, the United States District Court for the District of Rhode Island has also recognized, on more than one occasion, the authority of the Tribal Court to make determinations related to internal Tribal disputes. See ***Luckerman v. Narragansett Indian Tribe, C.A. No. 13-185S (D.R.I. Sept. 30, 2016)***, attached as **Exhibit C** (analyzing and ultimately approving the authority of the Tribal Court to determine tribal jurisdiction over breach of contract claim); ***Narragansett Indian Tribe Tribal Council, C.A. No. 16-cv-622-M***, previously cited and attached as **Exhibit A** (concluding that "elections and related judicial orders [are] the archetypal function of self-governance and declining to exercise jurisdiction where "underlying governance dispute culminat[ed] from a tribal judge's order"). Consequently, the decisions and orders of the Tribal Court constitute lawful and effective Tribal government decisions.

With this in mind, the relevant Tribal Court decisions on the issue referred to in the Motion as "internal disputes" has actually been adjudicated by the Tribal Court. The Tribal Court has unequivocally ruled that the dissident group of Tribal members (which the Tribal Court refered to as "the TEC Members") were restrained and enjoined on July 21st, 2016 from:

- Conducting any business, meeting, rally, election, or any other gathering on tribal property that concerns election matters or interferes through collective or individual conduct by the enjoined persons with same.

- Communicating or publishing any information or entering any contract in the name of the Narragansett Tribal Election Committee.

- Any further action or communications in any form, or use of any governmental resources, to represent themselves, singly or jointly, directly or indirectly as conducting official or lawful action on behalf of the Narragansett Tribal Government or the Narragansett Tribe (see ***Narragansett Indian Tribal Court decision and order dated July 21, 2016***, attached as **Exhibit D).**

No appeal was taken from this order and therefore the so-called Tribal election that took place on July 30, 2016 at a local VFW hall in Charlestown (in which it is alleged that 68 ballots were cast out of a Tribe of at least 2400 recognized members) was in direct contravention of the Tribal Court's July 16th decision. On December 22nd, 2016, the Tribal Court entered a **permanent injunction** enjoining those individuals from the same conduct and activities the Court specifically noted in its July 16th, 2016 order. (see ***Narragansett Indian Tribal Court***

decision, dated December 22nd, 2016, attached as **Exhibit E**). Furthermore, the December 22, 2016 opinion states that the "purported 2016 election is null and void for noncompliance with and misrepresentation of tribal law and policy." Lastly, the TEC Members were "permanently enjoined from any further action or communications in any form, or use of any governmental resources, to represent themselves, singly or jointly, directly or indirectly, as conducting official or lawful action on behalf of the Narragansett Tribal Government or the Narragansett Tribe."

The group that filed the Motion to Intervene before the EFSB is simply not the properly constituted Tribal Council, as they purport to be in the filing. Rather, upon information and belief, it is made up of either the same TEC Members that were enjoined by Chief Judge Dowdell, or the members that were purportedly "elected" in the 2016 election which Chief Judge Dowdell determined was null and void. Certainly, the lawful Tribal Council, headed by First Councilman Cassius Spears, did not take any action or vote on authorizing the filing of any such Motion to Intervene, and in fact, specifically oppose such a Motion from being filed.

In order to adequately protect the interests of the properly constituted Tribal leadership and government, a temporary restraining order was obtained from the Tribal Court on October 25, 2017 (attached as **Exhibit F**). This restraining order specifically ordered that:

> "1. Defendant, and its named counsel Shannah Kurland, Esq., are temporarily and immediately enjoined from (a) identiftying itself and therefore themselves as the "Tribal Council of the Narragansett Indian Tribe" and (b) pursing a Motion to Intervene before the Rhode Island Energy Facility Siting Board and
> 2. The Rhode Island Energy Facility Siting Board is hereby advised that the so-called "Tribal Council of the Narragansett Indian Tribe" cited in the filed EFSB Motion is not the lawful representative of the Narragansett Indian Tribe and was not elected by a duly authorized Tribal Election."

This order went into effect at 11:00 AM on October 25th and remains in effect until November 6th, or until further order of the Tribal Court. Based on the above, I ask that you disregard and/or dismiss the motion filed by Attorney Kurland, as she does not represent the duly elected Tribal Council of the Narragansett Indian Tribe, and the Tribal Council of the Narragansett Indian Tribe has not authorized such a filing. To recognize this particular group, in any representative capacity, will in my opinion, thrust the EFSB unnecessarily into issues related to Tribal sovereignty.

While the Tribe, is ordinarily reluctant to discuss internal Tribal government matters, the actions of Attorney Kurland and whatever group she represents, require some clarification regarding the authority of the Narragansett Indian Tribal government to enter into a secondary water supply contract with Clear River Energy, LLC ("CRE"). In this regard, the Narragansett Indian Tribe, at tribal assemblies in 1998, 2005 and 2006, passed resolutions relating to the development of its water infrastructure and sources on the trust lands and other property that it owns in fee simple. Specifically the Narragansett Indian Tribal Historic Preservation Office and

the Land and Water Resources Committee of the Tribe were mandated to work on the development of water sources. As you are aware, the contract with CRE simply provides that the Narragansett Indian Tribe will serve as a *secondary* water source for the project in Burrillville. The signatories to that contract—the Chief Sachem and the Tribal Historic Preservation Officer—are authorized to enter into this contract.

As I am sure you are aware the Tribe is a federally recognized Indian Tribe and therefore a recognized "Indian Tribe" within 54 U.S.C. §300309. The Tribe's constitution and by-laws ("Tribal Constitution") provide that the Chief Executive of the Tribe is the Chief Sachem. Section One of the Tribal Constitution provides that the Chief Sachem is the proper party to sign all documents on behalf of the Tribe, and accordingly, the Chief Sachem has the authority to sign any agreement regarding natural resources on tribal land. Furthermore, the NITHPO has the authority to determine if any such agreement would involve construction that could disturb Indian burial grounds or Indian historical artifacts.

Importantly, the Rhode Island Indian Claims Settlement Act, 25 U.S.C. § 1701 *et seq.* (the "Act"), specifically recognized that the transfer of lands pursuant to the Act included "water and water rights." Pursuant to the Act, the State of Rhode Island was to arrange for the transfer of certain "land and natural resources" which constituted the settlement lands. The Act defines "land and natural resources" as "any real property or natural resources, or any interest in or right involving any real property or natural resource, including but not limited to . . . **water and water rights** . . . ." (emphasis added). Accordingly, it is without a doubt that the Tribe has the authority to exercise rights over water located within Tribal lands.

An important and inherent power of any sovereign is the ability to make and enforce its own laws. United States v. Wheeler, 435 U.S. 313, 324 (1978) (enforcing laws is an exercise of retained tribal sovereignty); Williams v. Lee, 358 US 217, 220 (1959) (a state may not infringe on a tribe's rights to "make their own laws and be ruled by them.") The Indian Tribal Justice Act, 25 U.S.C. §3601(5)(200) indicates that "tribal justice systems are an essential part of tribal governments and serve as important forums for insuring public health and safety and the political integrity of tribal governments." See also Montana v. Gilham, 133 F.3rd 1133, 1140 (9th Cir. 1998) ("development of tribal court systems is a critical component of tribal self-government, one which courts have encouraged"). Indian tribes are free to set up their courts however they feel appropriate, save for the restrictions found in the ICRA. See Stephen L. Pevar, The Rights of Indians and Tribes: The Authoritative ACLU Guide to Indian and Tribal Rights 103 (3rd ed. 2004). Subsequent congressional legislation has also affirmed the position that tribal customs are an important tool for tribal courts. See Indian Tribal Justice Act, 25 U.S.C. §3601-02, 3611-14, 3621, 3631 (2000) ("the congress finds and declares that . . . traditional tribal justice practices are essential to the maintenance of the culture and identity of Indian tribes. . .) Id. §3601(7).

Closely related to self-determination is the doctrine of inherent sovereignty. See Burrell v Armijo, 456 F.3d 1159 (10th Cir. 2006) (the role of comity in Federal Court review of tribal court judgments). Thus, while the federal government can divest tribes of some of their

authority, that which remains is not delegated, it is inherent. United States v. Wheeler 435 U.S. at 322-23. A tribe's right to self-determination does not exist because of a federal policy of self-determination; rather, a tribe's right to self-determination exists because it has always existed. Federal policy, then, can be seen as recognition, not a delegation of this authority.

In summary, the Narragansett Indian Tribe is a sovereign government. It objects to any characterization by the petitioners that they are the "Tribal Council of the Narragansett Indian Tribe" or are representative of any lawful Narragansett Indian Tribal government entity. On behalf of the Tribe, I sincerely hope that the EFSB will recognize the doctrine of tribal sovereignty and the inherent right of Indian Tribes to self-governance and therefore this petition to intervene should either be disregarded or dismissed.

Please contact me with any additional questions or concerns regarding this matter.

Very truly yours,

PANNONE LOPES DEVEREAUX & O'GARA LLC

William P. Devereaux

WPD

cc: Shannah Kurland, Esq. (skurland.esq@gmail.com)
Alan Shoer, Esq. (ashoer@apslaw.com)
Patricia S. Lucarelli, Esq. (patricia.lucarelli@puc.ri.gov)

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

NARRAGANSETT INDIAN TRIBE TRIBAL COUNCIL
Plaintiff,

v.

MATTHEW THOMAS,
Defendant.

C.A. No. 16-cv-622-M

ORDER DENYING REQUESTS FOR TEMPORARY RESTRAINING ORDERS

The principals of tribal sovereignty and right to self-determination guide this Court.

As a federal district court, this court is a court of limited jurisdiction, and it has a sua sponte duty to ensure the existence of jurisdiction. *United States v. Univ. of Massachusetts, Worcester*, 812 F.3d 35, 44 (1st Cir. 2016). Now, "[t]ribal sovereign immunity 'predates the birth of the Republic.'" *Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth.*, 207 F.3d 21, 29 (1st Cir. 2000) (quoting *Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685, 694 (1st Cir. 1994)). "[This] immunity rests on the status of Indian tribes as autonomous political entities, retaining their original natural rights with regard to self-governance." *Id.* "An Indian tribe's sovereign immunity may be limited by either tribal conduct (i.e., waiver or consent) or congressional enactment (i.e., abrogation)." *Narragansett Indian Tribe v. Rhode Island*, 449 F.3d 16, 25 (1st Cir. 2006).

The Narragansett Indian Tribe cites the Rhode Island Indian Claims Settlement Act as the jurisdictional hook for the instant action. Section 1708(a) of the Rhode Island Indian Claims Settlement Act subjects the settlement lands to the criminal and civil laws of Rhode Island and bestows jurisdiction to the State of Rhode Island. 25 U.S.C. § 1708(a). Section 1711 confers

jurisdiction to the District Court for the District of Rhode Island for constitutional challenges to the Act. Neither of these provisions is relevant to the underlying governance dispute culminating from a tribal judge's order. Furthermore, the First Circuit, in interpreting the jurisdictional scope of the Rhode Island Indian Claims Settlement Act, stated, "We recognize that the Tribe may continue to possess some degree of autonomy 'in matters of local governance,' including . . . the regulation of domestic relations." *Narragansett Indian Tribe*, 449 F.3d at 26. This Court finds elections and related judicial orders the archetypal function of self-governance.

Consequently, the Court lacks jurisdiction and, therefore, DENIES both requests for Temporary Restraining Orders (ECF Nos. 2 and 8). The parties shall show cause why this matter should not be dismissed for lack of subject matter jurisdiction on or before January 13, 2017.

IT IS SO ORDERED.

John J. McConnell, Jr.
United States District Judge
December 22, 2016

Exhibit B

Narragansett Indian Tribal Resolution

No. TA 92-082992 Unified Justice Code

WHEREAS: The Narragansett Indian Tribe is a federally Recognized and Acknowledged Indian Tribe; and

WHEREAS: The Narragansett Indian Tribal Council is the governing body of the Tribe; and

WHEREAS: The Tribal Assembly recognizes and acknowledges the need of protecting the Narragansett Community from unlawful acts, lawlessness and harm, and

WHEREAS: The Tribal Council is sworn to uphold the rights of the Tribal people and community, in the areas of general health, education, welfare, and is also sworn to keep the peace and maintain harmony within the tribe.

NOW THEREFORE BE IT RESOLVED, By the Narragansett Indian Tribal Assembly hereby create, establish and enact the Narragansett Indian Unified Code of Justice Titles I through VII of Title 2, (see attached codes)

BE IT FURTHER RESOLVED, That said Code of Justice is hereby by enacted on a provisional basis, subject to further review, from the pertinent committees and commissions of the Tribe, but shall have the full force and effect of law.

BE IT FURTHER RESOLVED, that these laws in no way shall be construed or meant to be construed to infract upon and/or abrogate the Oral and Traditional Organic Laws of the Narragansett Indian Tribe.

CERTIFICATION

I, the Undersigned hereby certify that the above resolution was officially adopted by the Tribal Assembly and is a true and accurate account of the happenings at the duly called Tribal Monthly meeting of August 29th, 1992

Attest:

Tribal Secretary

Chief-Sachem/First Councilman

TITLE I of TITLE 2

CHAPTER 1. UPGRADE OF OPERATION OF NARRAGANSETT TRIBAL COURT

Sect 101. Upgrade of Operations of Narragansett Tribal Court

This Law hereby upgrades, replaces and supersedes those non-traditional organic Tribal Laws relating to Tribal Court, as a Court of Record.

Sect 102. Composition of the Courts.

There shall be a Tribal Court consisting of a Chief Judge, and several other justices, who shall be appointed by the Tribal Council. In the event the Chief Judge is unable for any reason to preform his duties as a Chief Justice the Tribal Council shall appoint a Special Judge to serve in his or her stead

Sect 103. Records of the Court.

The Court shall keep a record of all proceedings of the Court, showing the title of the case, the names and addresses of the parties, attorneys, lay counselors and witnesses; the substance of the complaint; the dates of all hearings or trials; the name of the judge; the findings of the the Court or the verdict of the jury and judgement; the preservation of testimony for perpetual memory by electronic recording, or otherwise; together with any other facts circumstances deemed of importance to the case. A record of all proceedings leading to incarceration will be submitted, when necessary to the Eastern Area Director, to be made part of the records of the Eastern Area Office in keeping with 25 U.S.C. Sec. 300***. Unless specifically excepted by this Code, the records of the Court shall be public.

Sect 104. Rules of Court

The Chief Judge may prescribe written rules of court, consistent with the provisions of this Code, including rules establishing the time and place of court sessions. The rules shall be approved by the Tribal Council before coming effective.

Sect 105. Services to Court by tribal or federal employees.

The Court may request and utilize social service, health, education or other professional services of tribal employees as requested, and or federal employees as authorized by the Secretary of the Interior or his authorized representative.

Sect 106. Criminal jurisdiction of the Court.

The Court shall have jurisdiction over all offenses by an Indian committed within the boundaries of the Narragansett Indian Reservation against the law of the Tribe as established by duly enacted ordnances of the Tribal Council.

Sect 107. Civil jurisdiction of the Court.

The Court shall have jurisdiction over any action where one party to the action shall be an Indian, or a corporation or entity owned in whole or in substantial part by an Indian or the Tribe or a corporation or entity chartered by the Tribe; an:

(a) The cause of action arises under the Constitution or laws of the Tribe; or

(b) An Indian party to the action resides on the Narragansett Reservation.

Sect 108. Jurisdiction over persons outside Reservation.

In a case where it otherwise has jurisdiction, the Court may exercise personal jurisdiction over any person who does not reside on the Narragansett Reservation if such person, personally or through an agent:

(a) Transacts any business on the Reservation, or contracts or agrees anywhere to supply goods or services to persons or corporations on the Reservation; or

(b) Commits an act on the Reservation that causes injury.

Sect 109. Jurisdiction over suits commenced by Tribe.

Notwithstanding any other provision of this Code, the

Tribal Court shall have jurisdiction of all civil actions commenced by the Narragansett Tribe, or by any agency or officer thereof expressly authorized to file suit by the Tribal Council.

Sect 110. Tribe immune from suit.

The Tribe shall be immune form suit. Nothing in the Code shall be construed as consent of the Tribe to be sued.

CHAPTER 2. ESTABLISHMENT AND OPERATION OF COURT OF APPEALS

Section 201. Upgrade of Court of Appeals.

This Law hereby upgrades, supercedes and replaces those non-traditional laws relating to the Tribal Court of Appeals.

Section 202 Jurisdiction of Court of Appeals.

The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court. The Court of Appeals shall review de nova all determinations of the Tribal Court on matters of law, but shall not set aside any factual determination of the Tribal Court if such determinations are supported by substantial evidence.

Section 203 Composition of Court of Appeals.

From time to time as the need arises the Tribal Council shall appoint a Chief Judge and two Associate Judges, none of whom shall be Judges of the Tribal Court. Appointment shall be a two-thirds vote, of those members present at a meeting of the Tribal Council at which a quorum is present. The Council shall set the term of each appointment and the composition of each Judge, which shall not be valid unless affirmed and ratified by the Tribal Assembly.

Section 204 Records of Court of Appeals.

The Court of Appeals shall keep a record of all proceedings of the Court, showing the title of the case, the name and addresses of all parties and attorneys, the briefs, the date of any oral agreement, the names of the Judges who

Exhibit C

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

DOUGLAS J. LUCKERMAN	:	
v.	:	C.A. No. 13-185S
NARRAGANSETT INDIAN TRIBE	:	

MEMORANDUM AND ORDER

Plaintiff Douglas Luckerman is an attorney who previously represented Defendant Narragansett Indian Tribe. In 2013, Plaintiff sued the Tribe in State Court for breach of contract, alleging that the Tribe failed to fully compensate him for his legal services. The Tribe removed the case to this Court and moved to dismiss arguing that (1) it is immune from suit under the doctrine of Tribal Sovereign Immunity; (2) the dispute is within the exclusive jurisdiction of its Tribal Court; and (3) Plaintiff failed to exhaust Tribal Court remedies. (Document No. 8-1 at pp. 2-3). On August 29, 2013, Chief Judge Smith denied the Tribe's Motion to Dismiss. (Document No. 16). He held that the Tribe had expressly waived its sovereign immunity in its 2003 and 2007 agreements with Plaintiff. Id. at p. 5. However, he also concluded that the Tribal Court had "at least a colorable claim" of Tribal jurisdiction over this suit and deferred to it to conduct the jurisdictional analysis "in the first instance" "subject to review by this Court." Id. at pp. 11-13. Accordingly, he exercised his discretion to stay this action pending Tribal exhaustion.[1] Id. at pp. 13-14.

[1] Chief Judge Smith made clear in his decision that "[s]hould the tribal court assert jurisdiction and adjudicate the merits of the case, Plaintiff may return to this Court for review of the jurisdictional issues." (Document No. 16 at p. 14).

Discussion

Plaintiff now moves to vacate the stay. (Document No. 45). He argues that "[i]t has now become clear that the Tribe does not have a properly constituted and functioning tribal court, and that its representations to the contrary were made in bad faith." Id. at p. 1. He asks that this Court vacate the stay and, after appropriate briefing and argument, address the Tribe's contention that Plaintiff's claims are within the exclusive jurisdiction of the Tribal Court. Id. The Tribe objects and points to the activities of the Tribal Court as evidence that it is properly constituted and functioning. (Document No. 49).

While the stay was entered over three years ago, some of the delay in this matter is attributable to the Tribe's unsuccessful interlocutory appeal to the First Circuit Court of Appeals. The Tribe filed its Notice of Appeal on January 17, 2014. (Document No. 24). The Appeal was dismissed for lack of jurisdiction on May 29, 2015. (Document No. 38). On February 28, 2014, Judge Dowdell of the Tribal Court granted, in a five-page Memorandum, the Tribe's request to stay Tribal Court proceedings pending outcome of the appeal. (Document No. 46-8 at pp. 3-7). On June 25, 2015, Judge Dowdell issued a one-page Order granting Plaintiff's Motion to Vacate the stay due to the dismissal of the Tribe's appeal. (Document No. 46-10 at p. 2). She also called for suggested dates from the parties to hold a conference.[2] Id. Ultimately, a briefing schedule was established and, in October of 2015, the parties submitted briefs to Judge Dowdell on the issue of Tribal Court jurisdiction. (Document No. 46 at p. 8). Judge Dowdell acknowledged receipt on October 30, 2015. Id. On December 2, 2015, Plaintiff submitted a supplemental filing to bring a recent Seventh Circuit

[2] On April 4, 2014, Judge Dowdell held an initial conference with counsel to discuss "housekeeping and procedural matters." (Document No. 46 at p. 7).

decision to Judge Dowdell's attention. Id. at p. 9. On January 26, 2016, Plaintiff's counsel wrote to Judge Dowdell on the status of the matter. (Document No. 46-11). The Tribal Court did not respond to the writing and, to date, has not held any further proceedings or issued any rulings on this matter. However, on July 21, 2016, the Tribal Court issued a Preliminary Injunction in an unrelated case and scheduled a court hearing for August 17, 2016. (Document No. 49-6).

In Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians, 471 U.S. 845, 857 n.21 (1985), the Supreme Court enumerated three exceptions to the so-called tribal exhaustion doctrine. It recognized, inter alia, that tribal exhaustion is not required "where exhaustion would be futile because of the lack of an adequate opportunity to challenge the court's jurisdiction." Id.

Plaintiff here contends that it should be excused from exhaustion as futile because the Tribe does not have a properly constituted or functioning Tribal Court.[3] Plaintiff has not presently made a sufficient showing of futility to warrant vacating the stay. As noted by Judge Smith in his 2013 ruling, the Tribal exhaustion doctrine is rooted in principles of tribal autonomy and comity. (Document No. 16 at pp. 7-8). When boiled down, Plaintiff's argument is primarily based on the Tribal Court's several-month delay in ruling on the issue of tribal jurisdiction. However, it has been held that "[d]elay alone is not ordinarily sufficient to show that pursuing tribal remedies is futile." Johnson v. Gila River Indian Cmty., 174 F.3d 1032, 1036 (9th Cir. 1999). See also Basil Cook Enter., Inc. v. St. Regis Mohawk Tribe, 26 F. Supp. 2d 446, (N.D.N.Y. 1998) (rejecting attempt to

[3] Plaintiff relies in part on an Affidavit of the Tribe's Chief Sachem Matthew Thomas dated December 2, 2014. (Document No. 46-15 at p. 5-6). Plaintiff contends that Chief Thomas "advised the appellate arm of the Bureau of Indian Affairs...that the Tribe's court had been 'suspended.'" (Document No. 46 at p. 5). Plaintiff neglects to point out that the indication of suspension was qualified by the statement "except for a singular and unrelated issue" which presumably refers to this pending matter.

divest Tribal Court of jurisdiction as a non-functioning entity in part because the Tribal Court had rendered decisions in two separate matters within the last six months).

While an extreme and inordinate delay in adjudication may ultimately support a futility argument, we are not there yet. The issue of tribal jurisdiction is complex and likely not frequently litigated in a Tribal Court. Further, the Supreme Court in Nat'l Farmers held that the Tribal Court must determine the scope of its jurisdiction in light of federal law and must conduct "a careful examination of tribal sovereignty, the extent to which that sovereignty has been altered, divested, or diminished, as well as a detailed study of relevant statutes, Executive Branch policy as embodied in treaties and elsewhere, and administrative or judicial decisions." 471 U.S. at 855-856. Moreover, Chief Judge Smith cautioned that "[t]he care with which the tribal court conducts its jurisdictional analysis as well as the conclusions reached are, of course, subject to [his] review." (Document No. 16 at p. 13) (emphasis added).[4] Thus, it is not surprising that the Tribal Court took the matter under advisement and has not rushed to judgment on the issue.

Conclusion

For the foregoing reasons, Plaintiff's Motion to Vacate Stay (Document No. 45) is DENIED without prejudice.

SO ORDERED

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
September 30, 2016

[4] When the issue of tribal exhaustion was litigated before Chief Judge Smith in 2013, it does not appear that Plaintiff claimed that the Tribe did not have a properly constituted and functioning Tribal Court or sought discovery on that issue.

Original decision by Chief Justice William Smith in Luckerman v. Narragansett Indian Tribe, C.A. No. 13-185 S

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DOUGLAS J. LUCKERMAN, Plaintiff, v. NARRAGANSETT INDIAN TRIBE, Defendant.	C.A. No. 13-185 S

OPINION AND ORDER

WILLIAM E. SMITH, United States District Judge.

Plaintiff Douglas Luckerman, an attorney who formerly represented Defendant Narragansett Indian Tribe ("Tribe"), brought suit against the Tribe in state court for breach of contract, alleging that the Tribe failed to fully compensate him for his services. The Tribe removed the case to federal court and filed the instant motion to dismiss, arguing, among other things, that the case falls within the jurisdiction of its tribal court. (ECF No. 8.) Luckerman filed an opposition to the Tribe's motion (ECF No. 10), as well as his own motion to remand the matter to state court (ECF No. 11). For the reasons set forth below, both motions are DENIED, and the case shall be stayed pending adjudication in the tribal court.

I. Facts

Luckerman, a Massachusetts attorney and non-member of the Tribe, began representing the Tribe in 2002. In March 2003, Luckerman prepared and directed to the Tribe's Chief Sachem Matthew Thomas, a letter memorializing the terms of the engagement ("2003 agreement"). The 2003 agreement provides, in pertinent part: "The Tribe agrees to waive any defense of sovereign immunity solely for claims or actions arising from this Agreement that are brought in state or federal courts." (Ex. to Stipulation 8, ECF No. 4-1.) While the agreement is not signed by any representative of the Tribe, the complaint alleges that the Tribe accepted its terms. A note at the end of document states: **"THIS IS YOUR AGREEMENT. . . . IF YOU DO NOT UNDERSTAND IT OR IF IT DOES NOT CONTAIN ALL THE AGREEMENTS WE DISCUSSED, PLEASE NOTIFY ME."** (Id. at 9.)

In February 2007, Luckerman was again engaged by the Tribe to act as counsel to one of its offices, the Narragansett Indian Tribal Historic Preservation Office ("NITHPO"). Luckerman and NITHPO entered into an agreement setting forth the terms of the engagement ("2007 agreement"). The agreement provides, in pertinent part: "The NITHPO agrees to a limited waiver of Tribal sovereign immunity in Tribal, federal and state courts, solely for claims arising under this Agreement." (Id. at 11.) The 2007 agreement is signed by John Brown, the Narragansett

Indian Tribal Historic Preservation Officer. Like the 2003 agreement, it directs the recipient to notify Luckerman if there is any problem with the terms.[1]

The Tribe made some payments to Luckerman, but those payments allegedly were not sufficient to meet the Tribe's obligations under the 2003 and 2007 agreements. Luckerman claims that the Tribe is currently indebted to him in an amount of over $1.1 million.

II. Discussion

"The question whether an Indian tribe retains the power to compel a non-Indian . . . to submit to the civil jurisdiction of a tribal court is one that must be answered by reference to federal law . . . ." Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth., 207 F.3d 21, 27-28 (1st Cir. 2000) (quoting Nat'l Farmers Union Ins. Cos. v. Crow Tribe, 471 U.S. 845, 852 (1985)). Thus, in the present case, this Court has federal question jurisdiction to determine "(1) the extent of the tribal court's jurisdiction over the plaintiff's claims, and (2) the defendant's assertion that, as an arm of a federally recognized Indian tribe, the impervious shield of tribal

[1] Both the 2003 and 2007 agreements were attached to Luckerman's state court complaint. In any event, the Court may consider matters outside the pleadings in ruling on Defendant's Rule 12(b)(1) argument. See 5B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1350 (3d ed. 2004).

sovereign immunity protected it from suit."[2] Id. at 25. The First Circuit has indicated that the latter issue should be addressed first. See id. at 28.

A. Sovereign Immunity

"Generally speaking, the doctrine of tribal sovereign immunity precludes a suit against an Indian tribe except in instances in which Congress has abrogated that immunity or the tribe has foregone it." Id. at 29. Here, the Tribe argues that the complaint must be dismissed on sovereign immunity grounds pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. Luckerman counters that the Tribe waived its immunity in the 2003 and 2007 agreements.

With regard to the 2003 agreement, the Tribe responds that the document was not signed by any of its representatives. However, the complaint alleges that Luckerman sent the agreement to Chief Thomas and that the Tribe accepted the terms of the agreement through its conduct. Indeed, the Tribe does not dispute the fact that it received the letter and continued to accept Luckerman's legal services. While it is true that "a waiver of sovereign immunity cannot be implied," Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978) (internal citation and quotation marks omitted), the Tribe's conduct here cannot

[2] The Tribe's other arguments for dismissal must be addressed, in the first instance, by the tribal court if it decides to exercise jurisdiction over this case.

fairly be characterized as an implied waiver. By receiving a proposed agreement that unequivocally purported to waive the Tribe's sovereign immunity, and treating that agreement as valid, the Tribe expressly waived its immunity. The cases cited by the Tribe are not to the contrary. See id. at 58-59 (holding that a statute making habeas corpus available to individuals detained by Indian tribes did not constitute a general waiver of sovereign immunity); Bottomly v. Passamaquoddy Tribe, 599 F.2d 1061, 1066 (1st Cir. 1979) ("[T]he Tribe's mere acceptance of benefits conferred upon it by the state cannot be considered a voluntary abandonment of its sovereignty and its attendant immunity from suit."); Federico v. Capital Gaming Int'l, Inc., 888 F. Supp. 354, 356 (D.R.I. 1995) (holding that "a waiver of sovereign immunity cannot be inferred from [an Indian] Nation's engagement in commercial activity" (internal citation and quotation marks omitted) (alteration in original)).

The 2007 agreement, unlike the 2003 agreement, is signed by a representative of NITHPO. The Tribe, however, contends that this organization is "an entity of the Tribe," which lacked the authority to waive the Tribe's sovereign immunity. (Def. Narragansett Indian Tribe's Mem. in Supp. of its Mot. to Dismiss 6, ECF No. 8-1.) However, three federal courts of appeals, including the First Circuit, have reached the opposite conclusion on similar facts. See Ninigret, 207 F.3d at 29-31

(holding that the Narragansett Indian Wetuomuck Housing Authority, which the court characterized as "an arm of the Tribe," acting pursuant to a tribal ordinance, waived sovereign immunity by contract); Confederated Tribes of the Colville Reservation Tribal Court v. White, (In re White), 139 F.3d 1268, 1269, 1271 (9th Cir. 1998) (holding that Colville Tribal Credit, "an agency of the Confederated Tribes of the Colville Reservation," waived sovereign immunity by participating in a Chapter 11 bankruptcy proceeding); Altheimer & Gray v. Sioux Mfg. Corp., 983 F.2d 803, 806, 812 (7th Cir. 1993) (holding that "a wholly-owned tribal corporation and governmental subdivision" waived sovereign immunity in a letter of intent).

Further, the fact that the Tribe, not NITHPO, is named as the sole defendant is immaterial. The Tribe has presented no evidence that NITHPO has any independent legal existence. In fact, to the contrary, the Tribe acknowledges that NITHPO is an office of the Tribe. Indeed, in 2002, the Tribe filed a complaint in this Court, listing as the single plaintiff, "Narragansett Indian Tribe of Rhode Island, by and through the Narragansett Indian Tribe Historic Preservation Office." (Attach. 2 to Pl. Douglas J. Luckerman's Objection to Def. Narragansett Indian Tribe's Mot. to Dismiss 12, ECF No. 10-2.) Because NITHPO lacks an independent legal existence, its sovereign immunity and the Tribe's sovereign immunity are one

and the same. See Ninigret, 207 F.3d at 29 ("[W]e shall not distinguish between the Tribe and the Authority in discussing concepts such as tribal immunity and tribal exhaustion.").

B. Tribal Exhaustion

The Tribe's second argument in support of dismissal is predicated upon the tribal exhaustion doctrine. Under this doctrine, "when a colorable claim of tribal court jurisdiction has been asserted, a federal court may (and ordinarily should) give the tribal court precedence and afford it a full and fair opportunity to determine the extent of its own jurisdiction over a particular claim or set of claims." Id. at 31; see also Rincon Mushroom Corp. v. Mazzetti, 490 F. App'x 11, 13 (9th Cir. 2012) (holding that "[t]ribal jurisdiction need only be 'colorable' or 'plausible'" for exhaustion to apply). Unlike sovereign immunity, "[t]he tribal exhaustion doctrine is not jurisdictional in nature, but, rather, is a product of comity and related considerations." Ninigret, 207 F.3d at 31. Therefore, while the Tribe waived its sovereign immunity in the 2003 and 2007 agreements, this holding has no bearing on the question of whether this Court should defer to the tribal court and require exhaustion. In the present case, the parties disagree on the existence of a colorable claim of tribal court jurisdiction.

As a preliminary matter, "the determination of the existence and extent of tribal court jurisdiction must be made with reference to federal law, not with reference to forum-selection provisions that may be contained within the four corners of an underlying contract." Id. at 33. For this reason, Luckerman's argument that the Tribe waived the exhaustion requirement in the 2003 and 2007 agreements is meritless.

The Supreme Court has made clear that "the sovereignty that the Indian tribes retain is of a unique and limited character. It centers on the land held by the tribe and on tribal members within the reservation." Plains Commerce Bank v. Long Family Land & Cattle Co., 554 U.S. 316, 327 (2008) (internal citation and quotation marks omitted). Moreover, "a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction." Id. at 330 (internal citation and quotation marks omitted). Consistent with these limitations, "tribes do not, as a general matter, possess authority over non-Indians who come within their borders." Id. at 328. The Supreme Court has, however, recognized two exceptions to this principle, which allow tribes to:

> exercise civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands.[3] First, [a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. Second, a tribe may exercise civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

Id. at 329-30 (quoting Montana v. United States, 450 U.S. 544, 565-66 (1981)) (internal quotation marks and citations omitted) (second alteration in original).

Luckerman argues that the first of these so-called "Montana exceptions" does not apply here because his activities pursuant to the contracts were largely conducted off the reservation. However, he concedes that some of these activities occurred on tribal land. Moreover, both the 2003 and 2007 agreements are addressed to tribal officials and were presumably accepted at the Tribe's offices. See F.T.C. v. Payday Fin., LLC, No. CIV 11-3017-RAL, 2013 WL 1309437, at *10 (D.S.D. Mar. 28, 2013) ("The test of the place of a contract is the place where the last act is done by either of the parties which is necessary to complete the contract and give it validity." (internal citation and quotation marks omitted)). In these circumstances,

[3] The Supreme Court has defined "non-Indian fee land" as "land owned in fee simple by non-Indians." Plains Commerce Bank v. Long Family Land & Cattle Co., 554 U.S. 316, 328 (2008).

"treating the nonmember's physical presence as determinative ignores the realities of our modern world that a [non-member], through the internet or phone, can conduct business on the reservation and can affect the Tribe and tribal members without physically entering the reservation." Id. at *11.

Moreover, the First Circuit has suggested, albeit before the Supreme Court's decision in Plains Commerce Bank, that a tribal court may, in some circumstances, have jurisdiction over activities occurring off the reservation. In assessing tribal jurisdiction over an off-reservation dispute, "an inquiring court must make a particularized examination of the facts and circumstances attendant to the dispute in order to determine whether comity suggests a need for exhaustion of tribal remedies as a precursor to federal court adjudication." Ninigret, 207 F.3d at 32 (requiring exhaustion of a claim arising from an agreement for the construction of a housing development "on land purchased by the Tribe but situated outside the reservation"). First, the court must ask whether the claim "impact[s] directly upon tribal affairs." Id. This initial requirement appears satisfied in the present case. See id. ("Courts regularly have held that a contract dispute between a tribe and an entity doing business with it, concerning the disposition of tribal resources, is a tribal affair for purposes of the exhaustion doctrine."). The next step in the analysis is to "measure the

case against the tribal exhaustion doctrine's overarching purposes." Id. These purposes include "supporting tribal self-government," "foster[ing] administrative efficiency," and "provid[ing] other decisionmakers with the benefit of tribal courts' expertise." Id. at 31. Here, the Tribe's act of securing legal representation regarding issues of tribal land and sovereignty constitutes an exercise of the Tribe's governmental functions. Moreover, deferring to the tribal court, which regularly deals with issues of tribal jurisdiction, will foster efficiency and produce a record that will assist other decisionmakers.

In sum, Luckerman reached out to the reservation by entering into a consensual relationship with the Tribe, and, accordingly, the tribal court has at least a colorable claim of jurisdiction over suits arising from that relationship.

In a last ditch effort to avoid the exhaustion requirement, Luckerman points to "a joint memorandum of understanding" executed by the Tribe and the State of Rhode Island in 1978, pursuant to which the Tribe gained control of certain lands. See Narragansett Indian Tribe v. Rhode Island, 449 F.3d 16, 19 (1st Cir. 2006). In exchange, the Tribe agreed that, except for state hunting and fishing regulations, "all laws of the State of Rhode Island shall be in full force and effect on the settlement lands." Id. Congress subsequently passed the Settlement Act,

which stated that "the settlement lands shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island." Id. (quoting 25 U.S.C. § 1708(a)). The First Circuit has held that this provision "largely abrogates the Tribe's sovereign immunity," and that, in light of this abrogation, the state could enforce its criminal laws on settlement lands by executing a search warrant against the Tribe. Id. at 26.

The first problem with Luckerman's argument on this point is that Narragansett was a sovereign immunity case, in which the First Circuit had no occasion to discuss the doctrine of tribal exhaustion. Additionally, the Narragansett court expressly distinguished its prior decision in Maynard v. Narragansett Indian Tribe, 984 F.2d 14 (1st Cir. 1993), which involved "civil suits premised on activities occurring outside the settlement lands." Id. at 29. Because the instant case is civil in nature and involves the tribal exhaustion doctrine, a separate and distinct issue from sovereign immunity as explained above, the implications, if any, of Narragansett are far from clear. Accordingly, an assessment of tribal jurisdiction over this case "will require a careful examination of tribal sovereignty, the extent to which that sovereignty has been altered, divested, or diminished, as well as a detailed study of relevant statutes, Executive Branch policy as embodied in treaties and elsewhere, and administrative or judicial decisions." Nat'l Farmers, 471

U.S. at 855-56 (footnote omitted). This examination "should be conducted in the first instance in the Tribal Court itself." Id. at 856. The care with which the tribal court conducts its jurisdictional analysis as well as the conclusions reached are, of course, subject to review by this Court.

Where, as here, the doctrine of tribal exhaustion applies, whether to dismiss the complaint or merely stay the proceedings pending exhaustion is a decision left to the discretion of the trial court. See Ninigret, 207 F.3d at 35. However, a stay is preferable where dismissal may cause problems under the applicable statute of limitations. See, e.g., Rincon, 490 F. App'x 13-14. Here, some of the allegations in the complaint date back to 2002. Rhode Island has a ten-year statute of limitations for contract actions. See Martin v. Law Offices Howard Lee Schiff, P.C., C.A. No. 11-484S, 2012 WL 7037743, at *1 (D.R.I. Dec. 10, 2012) (citing R.I. Gen. Laws § 9-1-13(a)), report and recommendation adopted, No. CA 11-484 S, 2013 WL 489655 (D.R.I. Feb. 7, 2013). Thus, if Luckerman was forced to re-file, more of his claims would become time-barred with each passing day. For this reason, the Court finds that a stay is appropriate.

III. Conclusion

For the foregoing reasons, Defendant's motion to dismiss is DENIED, and Plaintiff's motion to remand is DENIED as moot. The

case is stayed pending tribal exhaustion. Should the tribal court assert jurisdiction and adjudicate the merits of the case, Plaintiff may return to this Court for review of the jurisdictional issues.

IT IS SO ORDERED.

/s/ William E. Smith
William E. Smith
United States District Judge
Date: August 29, 2013

Exhibit D

Dear Public Utilities Commission,

After following news stories about Invenergy's plans to build a power plant in Burriville and having not been given a chance to voice my opposition to the plant and use of Johnston water at the Johnston hearing, I attended the hearing October 10th, signed up as 29a. For four hours, I listened and watched residents, business owners, and environmentalists give detailed reasons why they opposed the plant, including health and environmental impact.

I work in a town that does not have a significant forest (East Providence), but it does have a solar field (Forbes Street Solar Project) built over a closed landfill. I live in Johnston where the 2 acres of field and forest nearby is frequently polluted by illegal dumping, teens parking, and people walking their dogs through the field. However, the nearby Cricket Field Park has been renovated and the Woonasquatucket river is undergoing a slow clean-up process of pollution going back to the Industrial Revolution. A few years ago, exploring the area, there was little wildlife to be found. Last year, the river was opened to kayaking and I saw red wing blackbirds and a nesting Canadian goose. I also monitor frog and toad species in a man-made pond about a mile west of there. Three years ago, I recorded only one species. This year, I recorded four. Slow, often costly, work continues.

My point is, one town found a way to get power without cutting into habitat and another is trying to bring habitat back. The George Washington Wildlife Management Area and surrounding forests do not require any of this, only its protection.

I teach art and environmental education to over 400 public school children in a quasi-suburban setting. We have a high percentage of students with learning disorders and mental health issues, including anxiety. There are many studies showing how immersion in nature reduces stress and improves mental health. My proof was seeing the boy who kicks and bites people and hides under the table smiling holding a magnifying glass while he examined a caterpillar on a leaf. We have several oak and maple trees on the property, but it's no forest. We also have a 24'x30' school garden. My students have learned about life cycles, food webs, plant parts, host plants, pollinators, stewardship, and more while doing life studies and models in art.

Each year, I write several grants trying to get a few more native plants in the garden. We are also trying to rebuild the habitat along Annawamscutt brook, with the help of ASRI, the Barrington Land Conservation Trust, and other teachers and volunteers. We do this work to preserve and increase biodiversity

and create a better world for our children. The George Washington forest is already diverse with native plants.

Rhode Islanders can and do learn a lot from the George Washington Wildlife Preserve, but it is much more than that! It is the largest forest of its kind in this part of the Northeast (before Canada) and provides passage to many migrating birds and animals that need unfragmented forest to survive. In California, people are losing their minds over the fragmented habitat of the mountain lion. One male lion (P22) that has been killing alpacas and other farmed animals is also heavily sought for his ability to add genetic diversity to an inbred population walled off by numerous freeways (National Wildlife Federation). People are even trying to raise funds for a wildlife bridge there, which will cost millions of dollars. G.W. Forest is already intact. Cutting down 200 acres would be a significant "fracture".

It's not just the ecosystem's health, but our own. We know the physical benefits of hiking and the mental health benefits of being outdoors and experiencing nature. We know trees create oxygen. A power plant would adversely affect air quality while destroying the very thing that would abate it. Conditions like asthma would get worse.

Having family members with asthma and COPD, I know the necessity of an air conditioner during increasingly more frequent hot and humid days to prevent more severe medical attention. This increase in temperature is attributed to Global Warming, which is attributed to man-made power generation and use. Needing A/C more often means more power, which means we are going in a self-destructive circle. I am a member of People's Power and Light and have signed up for greater use of solar and wind power. Building a power plant is going in the wrong direction.

The George Washington Wildlife Preserve is a major organ in the body of not just Rhode Island, but New England. It will not function properly if cut. There are many sources of energy emerging in our state. The Invenergy power plant would be a drug we are already too addicted to. Let us get stronger from within, strengthening the power sources we already have. We don't need this power plant.

Melissa Guillet

45 Dean Avenue, Johnston, RI 02919
15minutefieldtrips.blogspot.com

Testimony submitted to the Rhode Island Energy Facility Siting Board at their public hearing on Tuesday, October 10, 2017 at the Burrillville High School Auditorium, 425 East Avenue, Harrisville, Rhode Island by Ruth Platner, Chair, Charlestown Rhode Island Planning Commission.

The Energy Facilities Siting Board should not allow the developers of the Invenergy power plant to use an agreement to withdraw groundwater from within the Town of Charlestown to satisfy any requirement for a backup water supply because of **insufficient notice** to the Town of Charlestown, **insufficient information** provided to the Town, and a need for the Siting Board to seek **additional legal advice.**

Insufficient Notice
Narragansett Settlement Land and other parcels owned by the Narragansett are entirely within the municipal boundaries of the Town of Charlestown.

On the date Invenergy signed a contract with the Narragansett government to supply water to Invenergy's power plant, the Town of Charlestown became an affected town.

Despite being affected, Charlestown has not yet received any notice from Invenergy or from the Siting Board that they have an interest in these proceedings.

The first opportunity for all the members of the Charlestown Town Council to learn the details of this proposal, receive legal advice, and discuss this issue with each other is tonight at their Town Council meeting where the issue of Invenergy's plan to use water from Charlestown is on their agenda for discussion and possible action.

The short time frame between news of this issue and tonight's meeting, have worked to exclude the Town of Charlestown from participating in any official way.

As an affected community, the Siting Board is required to hold a public hearing in Charlestown before you close your hearings and make a decision. *Pursuant to R.I. Gen. Laws § 42-98-9.1(b), the Board is required to "have at least one public hearing in each town or city affected prior to holding its own hearings and prior to taking final action on the application.*

When the Board holds that hearing in Charlestown you will learn in detail the importance of our aquifers, ground, and surface waters. Narragansett land in Charlestown is in both the Coastal Ponds watershed and in the watershed of the Pawcatuck River.

The Pawcatuck River is nominated by Congress as a Wild and Scenic River. The EPA has designated the river's watershed a sole source aquifer, as it is the only source of drinking water for all private and public wells in Charlestown and all other towns in the watershed.

The Coastal Ponds are a Critical Resource Area, considered to have global significance, and are home to a National Wildlife Refuge.

Wherever water is withdrawn in Charlestown it has the potential to impact natural resources of national significance. These are resources important to wildlife, recreation, and Rhode Island's tourism economy.

Charlestown has objected in the past to any transfer of water out of town or from one basin to another. We have added language to our Comprehensive Plan that water withdrawn from our aquifers must be returned to the same watershed and not transferred out of Charlestown. CRMC rules also do not allow the transfer of water out of a coastal pond's watershed.

Charlestown, RIDEM, US Fish and Wildlife Service, The Nature Conservancy and others have spent millions of dollars to permanently protect thousands of acres of land in Charlestown. Much of the basis for that protection has been to protect ground and surface waters.

Water is very important in Charlestown. Before withdrawing water from Charlestown you need to hear from our Town Council, Planning and Conservation Commissions, CRMC, other federal, state and local organizations, the pubic, and certainly from the members of the Narragansett. But without notice and proper engagement all of those stakeholders have been excluded from this process.

Insufficient Information

The document that was prepared for Invenergy and is titled *"Water Supply Plan: Supplement"* is so heavily redacted that it is not possible to estimate the impacts of the water withdrawal or possible tanker truck traffic.

There are no maps and no data. It does not identify where the water will be withdrawn in Charlestown except that it is from Narragansett land. The route that the tanker trucks will take is redacted. We can't know what roads might be impacted.

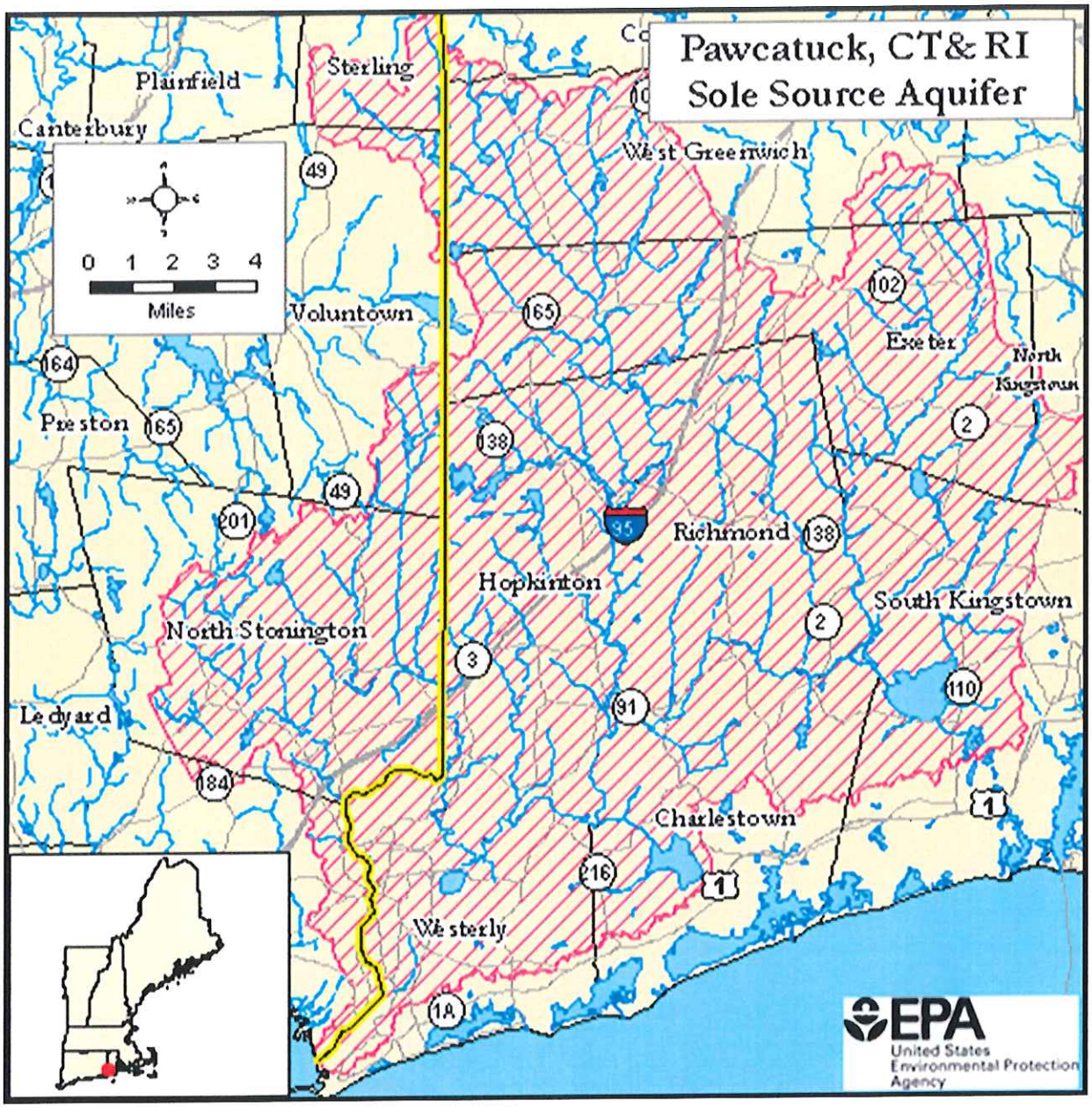
The agreement with the Narragansett government is missing in its entirety. It is impossible to know if there is any upper limit on the quantity of water to be withdrawn. Without knowing the maximum withdrawal, we can't estimate the impact.

Legal Complexities

When Invenergy signed a contract with the Narragansett government, it brought a new legal dimension to this process. In reviewing that contract, and in dealing with all the issues that may be raised by Charlestown and by objecting members of the Narragansett, the Siting Board will need expert advice in American Indian Law, the Rhode Island Indian Claims Settlement Act, and perhaps more.

Narragansett land will introduce jurisdictional questions, but the Siting Board remains fully under State law. Rhode Island has 39 cities and towns of which Charlestown is one. The Energy Facilities Siting Board has the same obligation to the residents and government of Charlestown that it does to any other town.

Contact information for Ruth:
Ruth Platner, 59 Maize Dr., Charlestown, RI 02813, ruthplatner@gmail.com, (401) 364-3832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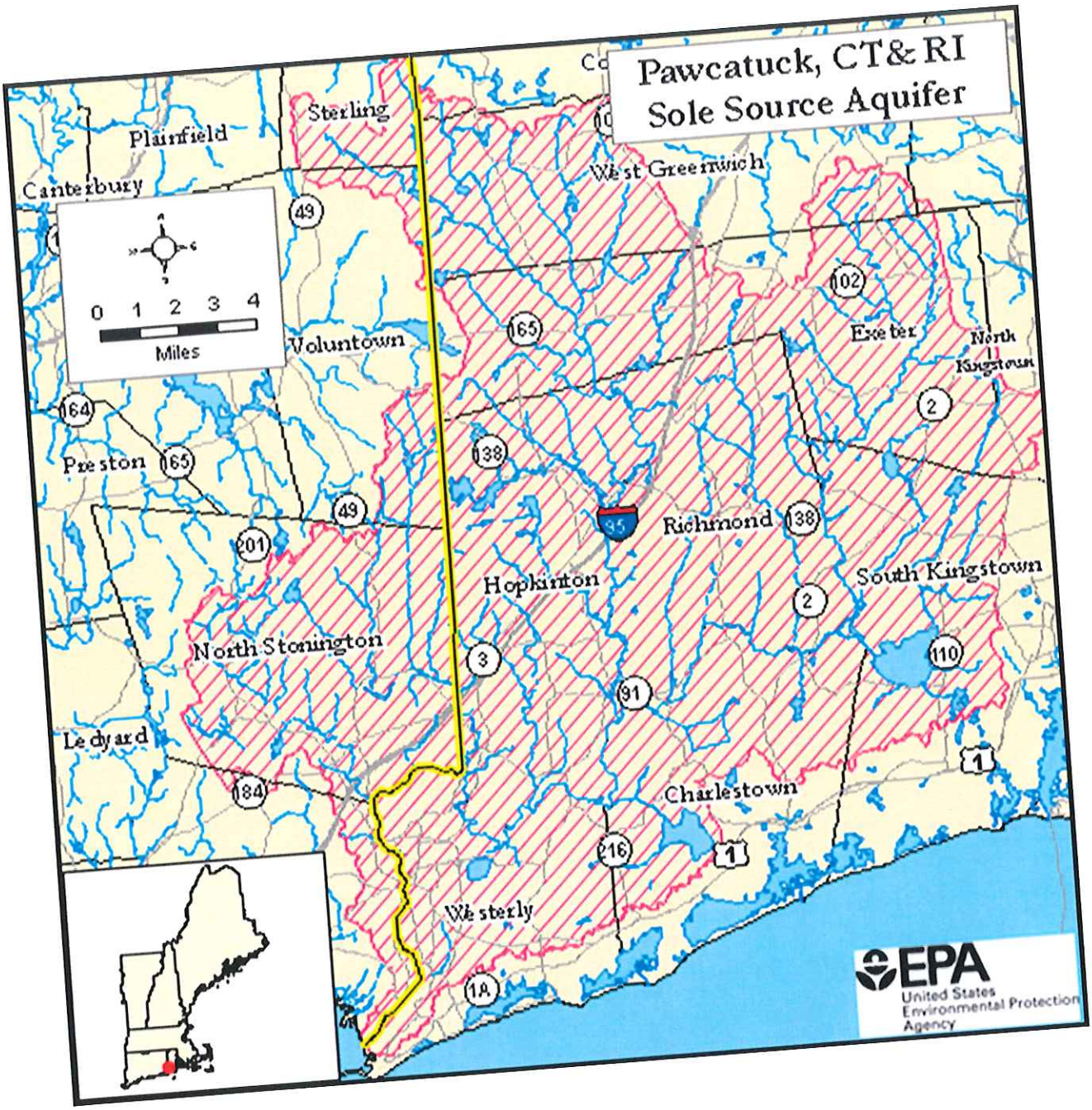
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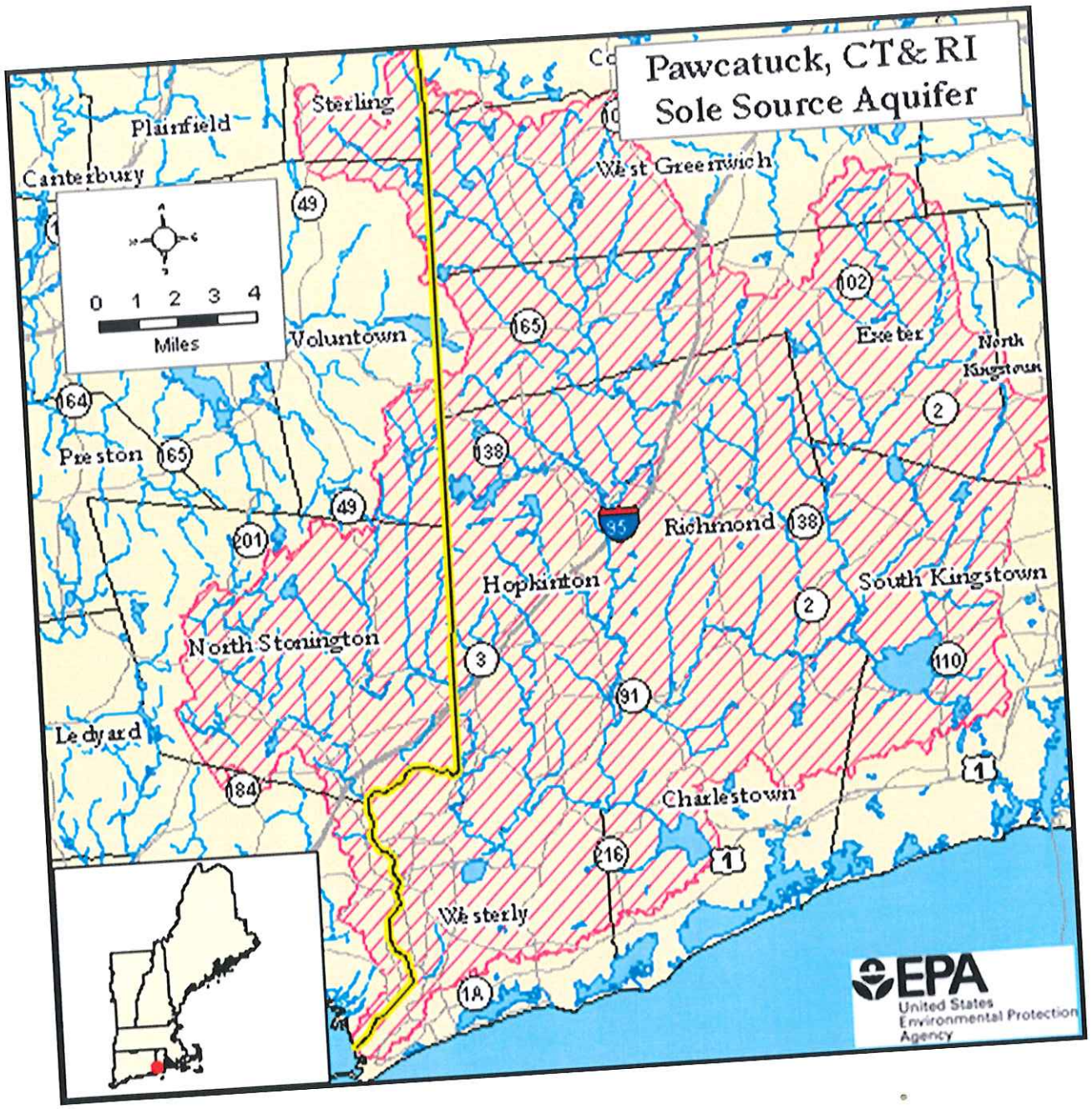
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October 11, 2017

Dear EFSB Board,

This letter is letting you know how furious and disappointed we were at the hearing with the EFSB last week at 89 Jefferson Boulevard location.

We are furious because the EFSB board decided to go along with Invenergy and not allow the opposition letters of 32 towns in the state Rhode Island and 3 neighboring states. But instead considered the letters as irrelevant and a waste of time. And to be considered in comments later at some hearing..... this is not acceptable.

A lot of time and work went into getting these towns to consider the information about the proposed power plant to be located in Burrillville. These 32 towns and Burrillville have sent written opposition letters to the EFSB and said NO!!

Just think of that..... the people on the town councils of each town took the information that was provided to each town by hearing statements from people and also took written statements and decided that this humungous power plant would affect the people, plants and animals drastically in Burrillville but ultimately the whole state of Rhode Island.

The EFSB board should have considered the quality of life that this power plant will have on us because of the **massive amount of pollution**, even according to Invenergy's own application. The adverse affect it will have on the forests, wetlands, drinking water, wells, lakes, our State Parks, Zambarano Hospital and patients, highways, and **most of all..... human life in RI.**

THIS IS ABSOLUTELY WRONG!!!

Please .....think of the people of RI and STOP Invenergy from building a monstrous power plant in Burrillville.

We are begging you in your position.....speak up now!! **JUST SAY NO!!!**

It's not needed, and it's not wanted!!

Sincerely,

Kenneth & Madelyn Putnam Jr

Kenneth & Madelyn Putnam

January 23, 2018

26 Alice Avenue
Oakland, RI 02858

Coordinator, Energy Facility Siting Board
89 Jefferson Boulevard
Warwick, RI 02888

Dear Board Members,

Regarding the debate on whether to allow siting of the Clear River Energy Center (CREC), I would like to make you aware of a similar proposal to allow siting of a major power generating facility in a place most of us are familiar with. I refer to past consideration in the 1970's to permit and develop a 1800 megawatt nuclear generating facility along our bay and coastline.

According to a news article from December 7, 1973 (enclosed), the Providence Journal had learned of a proposal to develop the site for the plant on the shores of Ninigret Pond, at the site of the former Naval Air Station. The site had been chosen, among other things, because of its proximity to the vast cooling capacity of the ocean. The once-through cooling water piping would run under the pond and barrier beach and out into the ocean. Also, a related URI study concluded that siting the proposed plant at Rome Point, on Narragansett Bay had the fewest drawbacks (ProJo article from February 3, 1974, enclosed). In a subsequent article, other well known locations, all of which I am sure you are familiar with, are mentioned.

I bring this to your attention for the following reason. Just because a proposed site has access to one of the main components necessary for power generation, such as cooling water in this case or a natural gas pipeline as is the case with CREC, it may not be the most practical. Just suppose the powers that be at that time went forward with that plan. We would be faced with limited access to one of the premier recreational locations along our coast. How would that fit in with present day access to our shoreline? I believe most of us would agree it would have been a bad decision. If this proposal had gone forward, we would be faced with decommissioning an old nuclear plant. The iconic vista of the Charlestown Breachway, Ninegret Pond and East Beach would look very different to what is there today.

Admittedly, the vast woodlands and parks of the northwest corner of our state don't get the draw that our beautiful bay and coastline get. But just the same, shouldn't we have the foresight to protect such places for the generations of Rhode Islanders to come for their enjoyment? Please don't make a decision we will regret in the future. Although others have listed numerous reasons why this plant doesn't fit in with the future plans for our state, I have always contended before this board during public comment that irreparable harm to our forest and ground water will be done by allowing the CREC application.

Sincerely,

Thomas F. Trimble

Thomas F. Trimble

Tonight: Mostly Sunny, Continued Cool Tomorrow
National Weather Service
Expected Temperatures
Low Tonight ..... 25°
High Tomorrow ..... 46°
Details on Page 46

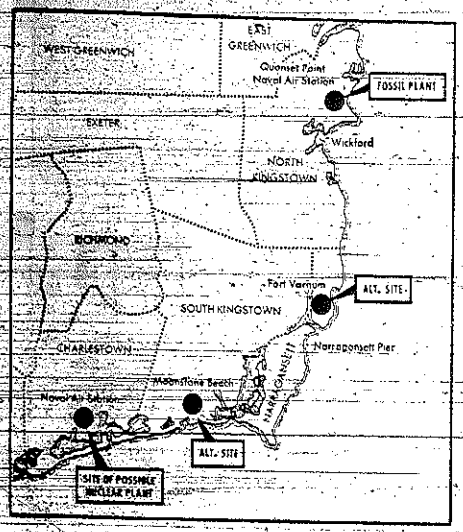
The Evening Bulletin

City Edition

VOLUME 182 - 81st YR. 48 PAGES PROVIDENCE, RHODE ISLAND, FRIDAY, DECEMBER 7, 1973 90 Cents Per Week Delivered Price PRICE FIFTEEN CENTS

R.I. A-Power Plant Studied

Charlestown Air Station Site Eyed by Firm



Journal-Bulletin Map by ERNEST A. ROBERT

By ROBERT C. FREDERIKSEN
Journal-Bulletin Conservation Writer

Governor Noel is weighing separate proposals for a nuclear power plant at Charlestown Auxiliary Naval Air Station and for a fossil power plant at Quonset Naval Air Station when these bases become surplus, the Journal-Bulletin has learned.

One of Mr. Noel's top aides confirmed yesterday receipt of both proposals, but declined to comment on the Charlestown site and referred questions on the Quonset site to another aide, who could not be reached.

New England Power Service Co. of Westboro, Mass., suggested the Charlestown base as an alternate site for the 500-million-dollar, 1,000,000-kilowatt nuclear power plant that environmental restrictions have prevented Narragansett Electric Co. from building at Rome Point, North Kingstown.

New England Power Service is a power facility planning, engineering and construction arm of New England Electric System, also of Westboro, of which Narragansett Electric is the local retail outlet.

New England Power Service also suggested Moonstone Beach in South Kingstown and Fort Varnum in Narragansett as alternatives to the Charlestown site after a survey of 18 other possible sites in the state.

Northeast Public Power Association, which consists of municipally-owned power plants competing with so-called "investor-owned" utilities like New England Electric System, proposed a 100-million-dollar, 400,000-kilowatt fossil power plant for Quonset.

A state official who took association representatives on a tour of Quonset last Oct. 11 has suggested the Tucker Farm in the Slocum section of North Kingstown as a possible alternative to the proposed Quonset site.

The proposals, heretofore withheld by all parties concerned, came to light in a check of public records at the state house earlier this week.

Talks yesterday with those concerned indicated that Narragansett Electric and its parent firm knew of the Northeast Public Power Association's Quonset proposal, but that the association did not know of Narragansett Electric's plans for Charlestown until a reporter called.

Glenn Kumekawa, the governor's policy planning and program review chief, confirmed receipt of both proposals at the state house earlier in the fall, but denied telling Narragansett Electric of Northeast Public Power Association's proposal.

He declined to comment on the Charlestown proposal at all, indicating he wanted to check with Mr. Noel first.

That proposal is outlined in a 15-page paper by Robert O. Bigelow, planning and power supply director for New England Power Service. His secretary in Westboro said he had left the office because of sickness at home and probably would not be back until Monday. No one else was available to discuss the paper.

Mr. Bigelow discussed the reasons for locating a nuclear power plant in Rhode Island in a talk before the Providence Rotary Club last Sept. 11, but did not mention the Charlestown, Moonstone or Varnum sites, according to a story in the next day's Journal.

He said a coastal nuclear power plant site was being sought because it would allow use of a once-through cooling water system that would be cheaper and more reliable

Turn to Page 16, Col. 1

Plants

Electric Plant Oil Shortage 'Most Serious'

By JAMES T. KAULL

The "most serious" problem under immediate study by Governor Noel's newly-created Task Force on Energy is a possible midwinter shortage of the heavy No. 6 oil needed by electric generating plants and industry, a state spokesman said today.

Because the heavy residual oil, which melts 70 per cent of New England's electric generating baseload, is largely an imported item, "we're facing a product that can't be replaced by the domestic refining capacity," according to William Harsch, the governor's energy adviser.

The 8-member task force, which will be further enlarged tomorrow, held its organizational meeting yesterday that Rhode Island has the capability, at least at this time, to plan for the expected 15 per cent shortage in home heating oil.

In his opinion, Rhode Island is "well along" in steps to cope with a supply crunch in this middle-weight oil and in preparations for contingencies that may beset the regulated public utility companies.

Some home heating oil dealers already report a marked reduction in demand — as much as 30 per cent — partly because of recent moderate weather but additionally because of apparent public cooperation in conservation, Mr. Harsch said.

But New England's most serious present burden from the international petroleum

Intelligence Net Shifting To N.E. Police

By DAVID F. DONNELLY JR.

New England's state police superintendents have taken the first steps to rejuvenate a fairly dormant inter-state intelligence network because of the planned shutdown of a similar system in operation for the last 2½ years.

Spearheaded by Col. Walter E. Stone, state police superintendent in Rhode Island, the superintendents are considering setting up an organization similar in many respects to the one being disbanded. The major difference would be that the new group would be limited strictly to the police; the present organization is a cooperative venture between the state police and the attorneys general.

Maj. Glenn E. Davis, executive officer of the Vermont State Police, said the superintendents already have asked the federal government for

State Weighs A-Power Plant

Plants

Continued from Page One

than the closed type of system now required by the federal Environmental Protection Agency on Narragansett and Mount Hope Bays.

EPA opposes once-through systems because of the damage to marine life drawn through cooling systems with water at the rates of a million gallons a minute and more. Closed systems pose less of a threat to marine life because they recirculate the same water over and over.

Mr. Bigelow said 21 possible sites were considered by the University of Rhode Island's ocean and mechanical engineering department, Narragansett Electric and the Yankee Atomic Electric Co.

The 21, including the top Charlestown, Moonstone and Varnum sites, were:

Arnold Point in Portsmouth, Jamestown, Quonset Point, Rome Point, Warren in Point in Little Compton, Sachuest Point Middletown, Point Judith in Narragansett, Green Hill in South Kingstown, Block Island, Weekapaug, Haversaham and Dunn's Corners, the Westerly Industrial Park and Quonchontaug, all in Westerly, Fort Greene in Narragansett and even an artifical island offshore.

All but the three top sites were rejected for such reasons as being on the bay, population density, too remote, availability of land and access to water, salt for cooling and fresh for steam, Mr. Bigelow's paper said. But, it added "some of these sites may become suitable at a future time."

Awthough not so labeled, it appeared from the paper that the utility regards the Charlestown site as the top one. Its advatanges were listed as:

"1. It includes a large land area of 607 acres at a desirable elevation of 32 feet (presumably against hurricane and floods). 2. the site has close proximity to deep water on Block Island Sound (to supply cooling water and dissipate the heated discharge). 3. The site is in an area of relatively low population density (now required by the federal Atomic Energy Commission). 4. A suitable fresh water supply is available at this site from present wells (to make steam).

The only disadvantage cited is that "access for condenser cooling water would have to be made across Ninigret Pond and East Beach area," the paper said.

Ninigret Pond is a rich spawning ground of a variety of marine life. East Beach was taken by the state for preservation in its natural condition at a cost of about $800,000 in 1967. The two-mile strip of sand and dunes is now called Ninigret Conservation Area.

As for Moonstone Beach, which South Kingstown and the Audubon Society of Rhode Island jointly operate as a public beach in summer, Mr. Bigelow said only:

"Approximately 250 acres could be available at this site. Cooling water access to the open ocean is readily available via two separate routes (not identified). A disadvantage of this site is the fact that the beach area draws a high summer population."

Fort Varnum, a state National Guard property, was described as having about 225 acres. However, the paper said, "Acquisition of adjoining properties has been investigated with very little success."

The site's principal advantages were given as: "1. Fifty-foot water depths are available close to the shoreline. 2. Population density is moderate and no beach area exists at this location.

"On the negative side are the following disadvantages: 1. Area is building up rapidly with year-round homes. 2. The site is mostly on rock and ledge (which presumably would increase construction costs). 3. Transmission (of power) away from the plant will present substantial problems."

PRINCE IN CRASH

London — (UPI) — A car driven by Prince Charles yesterday collided with two other autos, a Buckingham Palace spokesman said. No one was hurt.

Jupiter's Heat

Dr. Guido Munch of the California Institute of Technology shows newsmen a photographic on the planet Jupiter. It was compiled from information transmitted to earth by the Pionee

Fossil Fuel Plant Sought At Quonset

The Northeast Public Power Association proposal for Quonset is outlined in an Oct. 12 memorandum from Joseph Lombardo of the state Economic Recovery Coordinating Committee to Glenn Kumekawa, one of the governor's principal aides.

The memo says four association representatives toured Quonset the day before and expressed interest in 50 to 100 acres of land with rail connections in the so-called "Blue Beach" area on the south side of the base.

The memo goes on to say the association requested test boring, soil condition and tidal data, that some investigations already have been made on operating requirements that "financing the venture seems to be no problem" and that the association wants to talk with someone in the state administration about any necessary legislation.

"They intimated that it would be to the state's advantage for this corporation to wholesale power to a state development in the Quonset area and then have the state organization sell it to industrial interests," Mr. Lombardo wrote.

He added that the group's primary desire is for salt water for cooling purposes and that thermal pollution would be a problem requiring study.

"Their other alternative would be an inland operation which fresh water would be used for cooling in a completely enclosed system. This system is costly to operate and less desirable."

Mr. Lombardo could not be reached at his office for comment yesterday.

He suggested an alternative site in Rhode Island in the Pawcatuck area in North Kingstown, suitable "[illegible]

conflict between the association's proposal for Quonset and the fact that Narragansett Electric already supplies the base with power with the aid of a small, Navy-owned fossil power plant used during peak load times.

"Investor-owned" utilities such as Narragansett Electric and "consumer-owned" utilities such as make up the association have been at each other's throats competitively for years, he acknowledged.

However, this has been eased by a series of court decisions granting the "consumer-owned" utilities the right to participate in the larger generating capacity of the "investor-owned" ones and even to build joint plants, Mr. Payne said.

"It took a lot of doing, but we're in now," he said.

He added that the association has hired R.W. Beck and Associates of New York City to design an environmentally safe model plant at Quonset by 1978, if the state approves the proposal.

Mr. Payne said he was not aware of the Charlestown proposal until a reporter called him. "You let the cat out of the bag," he said with obvious delight, adding that he recognizes the sites advantages.

However, he said he sees no conflict there, either, with the association's Quonset proposal because of the need for more power generating capacity in Rhode Island to meet future state and New England needs.

A Time of History an

Ford

Continued from Page One

House member present, was not enthusiastic.

After Ford took the oath he promised to do "the very best I can for America."

"I am a Ford, not a Lincoln," the new vice president said to laughter, declaring "my address will never be as eloquent as Lincoln's. But I will do my best to equal his brevity and plain speaking."

Expressing gratitude to Nixon for the nomination and "the trust and the confidence" it implies, Ford declared, "I will try to set a high example of respect for the crushing and lonely burdens which the nation lays upon the president of the United States.

"Mr. President," he added, "you have my support and loyalty."

During his 15 minutes in the chamber, the President spoke only to exchange private greetings with Speaker Carl Albert and others on the platform. As Chief Justice Burger administered the oath at 6:10 p.m. and Mrs. Ford stood beside her husband holding a Bible, Nixon stood behind Ford like best man at a wedding.

After Ford delivered his speech the President left alone and Ford remained briefly for another round of long applause and then led the senators back to the Senate chamber and took up his duties as its presiding officer.

Missing from the swearing-in ceremony were all but one of the black members of the House, who with one exception voted against Ford for what they considered his anti-civil rights record.

The 17th vacancy in the vice presidential office occurred on Oct. 10, when Spiro T. Agnew resigned and was fined for income tax evasion. Two days later Nixon nominated Ford, who has been Republican leader of the House for nine years. The Senate approved the nomination by a vote of 92 to 3.

Even the few members who voted against Ford as too conservative or not qualified to be President praised him as an "honest and decent man."

Ford's goal had been to become speaker of the House. Instead at 6:33 p.m. he first took up the gavel as presiding officer of the Senate. In this role he will never be able to speak or vote except to say yea or nay to break a tie.

"A funny thing happened to me on the way to becoming speaker," Ford told the Senate after he was given five minutes to address the body.

"To the distinguished senators who examined my fitness to be your presiding officer I pledged my conviction that truth is the glue that holds government together. In the subsequent hearings before the Committee on the Judiciary of the House I added that compromise is the oil that makes governments go," Ford said.

When Speaker Albert announced the vote in the House, Ford entered for the first time during the six-hour debate. To a standing ovation, he made his way to the speaker's desk to shake hands with Albert. They faced the crowded chamber, an arm around each waved, sta the last ti leagues of nine as pa

About th the debat nouncemen Rodino, D-I mittee ch won't vote the annou Andrew Yo 15 black would vote

"Through hearings, no indicati not support he came to ago. Rodin largely bla ark.

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Continued from Page One

say they agreed with him that the Ford confirmation did give them a new element to think about.

"Javits spoke for an awful lot of senators, and not just liberal senators either," one fellow Republican senator said. "Nobody's giving him a hard time for saying it today. And it cuts across ideological lines."

"There are those, like Republican National Chairman [illegible] that Ford in the vice presidency lends stability to the whole situation, as a few and

removal, the presence of Ford in the vice presidency would make pressure on Nixon easier to apply.

Some influential Republican senators already have been taking those soundings and are chagrined at what they bode for their party and for themselves in 1974.

Sen. Robert J. Dole, R-Kans, was candid in his assessment of what the President's Watergate and related problems are doing to Republican candidates around the country.

"If it ever bottoms out we might be all right," he says, "but coconuts keep dropping. You have to wear a steel helmet around here." Dole, who is up for reelection next year, says he has been block

"You've go that much he says.

Dole an the view on Nixon as the 19 proach an their own show the in great t

"If the involved in tergate) some seat says, "we But if some of some of acters (in gate), tha take."

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N.E. State Police Network Shift Planned

e Providence Journal
CITY EDITION—SECTION B
Wednesday, December 11, 1974

Mayor-elect Cianci jumps gun and woos PACE

See MAYOR-ELECT, Page B-2

Council to name unit to probe A-plant plan

By KAREN ELLSWORTH
Journal-Bulletin Staff Writer

CHARLESTOWN — As the first step toward a townwide referendum on the proposed nuclear power plant, the town Council has announced that a committee will be appointed to investigate the pros and cons of the proposal.

The committee will consist of both opponents and proponents of the nuclear plant and would provide information for public hearings, Gilbert K. Mook, new council president, said at Monday night's council meeting.

"We have to have townspeople knowledgeable enough so a town ballot could be held on the question," Mook said yesterday. The Republicans, who control the council, 4 to 1, promised before the election that the townspeople would have the final decision on the nuclear plant.

Mook said the council has not yet decided how the committee will be chosen. The committee, as well as other town appointments, will be made next month to give the new council time to consider candidates, he said.

This was the new council's first formal meeting. After W. Slater Allen, assistant attorney general, administered the oath of office, Mook told the audience of about 60 persons that the council would like to make Charlestown a good place to live," and that it would "do what the people want us to do in spite of our personal feelings."

Mook was elected president in a split vote. He had the support of the two new members, Douglas Randall and Jean W. Brodeur, while incumbent Arthur D. Azzamarski was supported by lone Democrat Harry A. Wicklund. Randall was elected vice president after Azzamarski declined the nomination.

A former town council member told the council he's getting the runaround from the Department of Natural Resources on preservation of Ninigret Pond, and the council said it would investigate the matter.

Harvey C. Safford, a council member from 1951 to 1957, asked the council if it would be possible to get a court injunction to prohibit dumping of metal wastes into the pond. Mook said he was not aware any were being dumped into the pond.

Safford then showed copies of correspondence with Sen. Claiborne Pell, and a letter to Pell from Dennis Murphy, natural resources director, referring to the "degradation" of the pond by "sewage disposal, the use of pesticides, runoff from shoreline development, and the heavy metals discharged from industrial development."

Safford said he had written to Pell to protest the negligence of the pond by "the Department of Natural Resources, the state engineers, and the politicians," and that Murphy had provided Pell with false information.

He showed copies of a letter he wrote Nov. 14 to Murphy asking where the sewage and metals wastes were coming from, and has not received a reply.

Calling the pond "seven miles of beautiful waterway," Safford said its downfall began 25 years ago when the [illegible] that the walls of the channel are caving in, carrying sand and loam into the ocean, affecting shellfish production and tidal flow.

He said a nuclear power plant near the pond would be "the final blow" and warned of thermal pollution he said would result.

hopping

nters spend more time over the
rutinizing merchandise such as
fall below.

ulletin Photos by J. DAVID LAMONTAGNE

Building trades unit endorses A-plant

By LINDA HERSKOWITZ
Journal-Bulletin Staff Writer

EAST PROVIDENCE — The Rhode Island Building Trades Council yesterday announced its support for a nuclear power plant in Charlestown and began what one official said will be "an all-out effort to show there are more people in favor than opposed."

The council, which is composed of 19 unions with almost 20,000 members, issued a statement that said: "If this plant is not constructed in Rhode Island, there would be a loss of close to 3,000 construction jobs, and an additional 300 permanent jobs at the plant upon its completion."

Martin T. Byrne Jr., a council spokesman, said the figures were obtained from a study of a similar nuclear facility built elsewhere in the country and from officials of New England Electric Co., which wants to build the plant.

The job loss, the statement continued "does not take into account the new jobs that will be stimulated in the state of Rhode Island that are related to power plant construction, basically suppliers, concrete, truck drivers, lumber, steel, pumps, compressors, etc. It is fairly evident to see the detrimental effect this would have upon an already staggering economy in the state of Rhode Island."

Byrne said the construction of the nuclear plant in itself would take close to 3,000 workers, not counting workers in supporting service trades.

"The council is concerned that Rhode Islanders are being deprived of an extremely less expensive source of power which can be generated entirely in the state of Rhode Island without recourse to purchasing power from outside sources," the statement said.

The building trades council also said it would not allow workers to work on a site deemed to be unsafe, safety being one of the prime concerns of the building trades unions."

The council said the United States should follow the example of Europe, which will have built 100 nuclear power plants by 1985.

Byrne said the construction of the nuclear plant would take about eight years.

Now, topless hypnotist eyed

By JAYSON STARK
Journal-Bulletin Staff Writer

TIVERTON — Tiverton has not seen the last of topless entertainment if William Crausman has anything to do with it.

Crausman, owner of the hightspot that presented a topless rock band in October, filed suit against the town in Superior Court, Newport, yesterday in connection with his plan to present a topless hypnotist next month.

The suit seeks to prevent the town from implementing regulations banning nude entertainment at licensed liquor establishments. The town council, acting as a board of license commissioners, passed the regulations last month. A hearing on the suit will be held at 9 a.m. Friday.

Crausman, owner of Billy's Button Room on Main Road, contended the restrictions violated his civil rights and his right of freedom of expression guaranteed him under the First and Fourteenth Amendments.

He also claimed the regulations damaged his ability to make a living by prohibiting him from presenting the hypnotist, whom he said he already has under contract.

IMH will install extra phone

By DON ABOOD
Journal-Bulletin Staff Writer

CRANSTON — A second telephone line will be installed in the ward for the criminally insane at the Pinel Building at the state Institute for Mental Health so patients won't have to use a basement telephone while handcuffed to an attendant.

he has alibi n was slain

[illegible] and Dec. 1. Farm to his sister's home in [illegible] Journal-Bulletin staff

Town planning board, by 5 to 2, asks voter okay of track

By WILLIAM E. COLLINS
Journal-Bulletin Staff Writer

DOUGLAS, Mass. — The [illegible] Chairman Joel Smith and Miss Grace Dudley voted no.

[illegible] taxes than have someone's weakness lower my taxes," Smith said he felt bound by [illegible] she said. "I think we're playing with temptation."

11 DEC

The Providence Sunday Journal

METROPOLITAN

VOLUME LXXIX NO. 32 (Copyright 1974, Providence Journal Company) PROVIDENCE, RHODE ISLAND, FEBRUARY 3, 1974 216 PAG

A shopping journey turns into a bout against the snow for a couple in downtown Providence. —Journal-Bulletin Photo

Citizen law pr

© New York Times News Service

Washington — In the first administration action to implement President Nixon's newly announced "major initiative" toward protecting individuals' rights of privacy, the Justice Department proposed yesterday new legislation that would restrict the dissemination of arrest records and other information held in law enforcement data banks.

The proposal would permit individuals to review their records and to correct inaccurate information and allow them to bring lawsuits against anyone who disclosed their records improperly.

It would also require the "sealing" of records after specified times, forbid the disclosure of information for employment and credit checks unless specifically authorized by statute or executive order and impose one-year prison terms on persons who gave out or used the information in an unauthorized manner.

The draft legislation does not answer all the complaints that critics have made about the misuse of criminal justice information systems. At a news briefing Friday, in fact, Justice Department officials conceded that some segments of the administration felt that the proposal "doesn't go far enough."

They conceded, too, that the proposed leg... strict acces... the informa... nal justice s... and federal... proposal.

A stricter... subject will... Tuesday by... ervin, Jr., D... the Senate... tee's subcor... tutional righ...

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U.S. officials ask crackdown on trucking disruptions

Washington (AP) — Energy chief William E. Simon and three Cabinet members termed the shutdown by independent truckers "a serious threat to the nation's economic well-being and safety" last night.

They appealed by telegram to the nation's 50 governors for their "personal assistance to restoring order and commerce."

The action came amid rising reports of economic disruption and physical violence resulting from an effort by independent drivers to shut down the trucking industry.

The telegram was signed by Simon, Commerce Secretary Frederick B. Dent, Labor Secretary Peter J. Brennan, and Transportation Secretary Claude S. Brinegar.

It was issued at the end of an afternoon meeting at the Labor Department among Under Secretary of Labor Richard Schubert and officials from the White House, the Federal Energy Office, the Federal Mediation and Conciliation Service, the Department of Transportation and the Interstate Commerce Commission, regarding the truckers situation.

Deploring the violence associated with the shutdown, the four federal officials appealed to the governors for their "full assistance in assuring safety to all, those who utilize the nation's highways by the full exercise of all appropriate police powers to maintain order."

The telegram went on to summarize federal actions taken to relieve truckers' grievances and actions the federal government will not take.

Reports of scattered violence increased last night, and scores of truck stops reportedly closed in the shutdown that will have idled more than 10,000 workers by tomorrow.

Food became a major worry as shippers of produce reported sharp drops in truck movements, and at least a dozen meat-packing plants and slaughterhouses reported they had closed or curtailed operations.

Simon and the other officials promised to encourage truck stops to sell diesel fuel on Sundays, to set up a toll-free "hot line" to deal with

Continued on Page A-3

Snow ends 'spring' in R.I.

Rhode Island's springlike appearance ended abruptly yesterday when a slow but insistent snowstorm blanketed the state.

The National Weather Service predicted accumulations might reach between eight and 12 inches, but the storm was not living up to that forecast billing late last night.

The storm did just the opposite. At 12:30 a.m., it stopped snowing. By that time the Weather Service at Green Airport had registered 2.2 inches of snow.

A weather observer at the airport said it was highly unlikely any more snow would accumulate. There should be flurries throughout today and into tomorrow morning, according to weather forecasters.

The storm hit much harder in central and western Massachusetts. There the snow reached blizzard-like proportions. Boston had more than 10 inches late last night; some suburbs registered more than a foot, and Worcester was reporting 10 inches.

Streets in Lexington, Mass. were mostly unplowed after most of the town's drivers reported sick or unavailable in an apparent labor dispute. Only four pieces of equipment were on the streets, compared to the usual 30.

And, ironically, there was

Continued on Page A-3

Rome Pt. has fewest drawbacks of power plant sites studied

By ROBERT G. FREDERIKSEN
Journal-Bulletin Conservation Writer

Rome Point raises fewer environmental questions than any other potential power-plant site in Rhode Island, including the Charlestown Auxiliary Naval Air Station.

This is the perhaps unintentional, but ironic, highlight of a partial report on a preliminary $20,000 survey by the University of Rhode Island of 17 possible power plant sites on Narragansett Bay and the coast.

Other highlights were:

Rhode Island has no ideal nuclear or fossil-fuel power plant sites. Use of any of the 17 would involve "trade-offs," or exchanges of environmental, economic and social values.

Questionable power plant sites such as Melville in Portsmouth, Prudence Island and Jamestown should be considered for other "energy-related industries" such as refineries and tank farms.

The state should consider granting a small electric-rate increase and using the money to finance more detailed studies of future power needs instead of leaving this to the industry.

The state soon must make up its mind whether to increase its electric generating capacity, or become more dependent on the rest of New England.

These are the views of two engineers, Drs. George A. Brown, and Vincent A. Rose, of URI's steam and nuclear engineering faculties, in a 42-page report entitled "Power Plant Site Considerations at Charlestown, Rhode Island."

Their report will become part of a longer "Electrical Energy and Power Plant Siting Study for the State of Rhode Island" that URI is preparing with $20,000 from the New England Regional Commission.

This is intended to answer questions listed in the Charlestown report and others in greater detail and at far greater cost, it was said.

The study began with 33 possible sites. These later were down to 11, including Rome Point in North Kingstown and the Charlestown base.

Charlestown was reported on first because of the Narragansett Electric Co.'s interest in building two, 1,200,000-kilowatt nuclear power plants

Continued on Page A-5

RISD asking $3.9-million in drive

The Rhode Island School of Design is launching a $3.9-million fund-raising drive to finance a number of projects, the most ambitious being an arts complex adjoining the Museum of Art.

The drive, called the Centennial Program, will span the three years leading up to RISD's 100th anniversary in 1977. It is the first capital fund drive undertaken by the school since the community was asked to help build the College Hill dormitory-refectory complex in 1958.

The new fund drive will also raise money for a museum climate-control system needed to preserve art works, and for renovation or expansion of several college buildings.

The arts complex is planned for the RISD-owned North Main Street parking lot directly behind the Museum of Art. The complex will incorporate a plaza providing access to adjacent buildings, the museum, the Metcalf

Continued on Page A-4

Rome Pt. has fewest drawbacks of power plant sites studied

February 2, 1974

Continued from Page One

there, when it becomes surplus instead of at Rome Point.

The survey excluded to Charlestown because of the possibility of using a relatively cheap once through cooling water system there after the Environmental Protection Agency ruled that an expensive closed system would be required at Rome Point to protect bay fisheries life from heat, dissolved and physical damage from the discharge.

The EPA ruling was based on only one of two questions concerning Rome Point. The other was the scarcity of water for the closed cooling system required by EPA and for boiler water there.

In contrast, the two engineers listed five questions concerning the suitability of Charlestown. They were:

Availability of land for transmission lines, availability of fresh water for cooling by the closed system method, possible effect on marine and land ecology and general considerations.

These last were listed as inadequate transportation, a high water table, uncertainty over bedrock geology and the danger of hurricane flooding. Radiation dangers and population densities were among other matters discussed.

Similar questions were raised about the 12 other sites to be studied with the sites area number of questions concerning each being listed as:

Arnold Point, Portsmouth; 2, Jamestown; 3, Camp Varnum, Narragansett; 4, Warren Point, Little Compton; 5, Point Judith, Narragansett; 6, Green Hill, South Kingstown; 7, Block Island; 8, an offshore site consisting of a plant on a barge floating inside a breakwater; 9, Quonset Point, Davisville; 10, Melville, Portsmouth; 11, Hope Island, Portsmouth; 12, Prudence Island; 13, Melville; 14, Arnold Point; 15, Gould Island; 16, north end of Jamestown; 17, Beavertail; 18, Saltonstall Point; 19, Warren Point; 20, Block Island.

Nuclear plant sites mentioned in the URI survey were: A, Charlestown air station; B, Green Hill; C, Point Judith; D, Camp Varnum; E, Rome Point; F, Quonset Point; G, Hope Island; H, Prudence Island; I, Melville; J, Arnold Point; K, Gould Island; L, north end of Jamestown; M, Beavertail; N, Saltonstall Point; O, Warren Point; P, an offshore barge; Q, Block Island.

Journal-Bulletin Map

Elaine Hinton
Lynne Lane
Mapleville/Harrisville

We built our home here 20 years ago for the calm and clean environment.
We were living the dream….

We leave our windows open at night….no trucks no sirens…just nature. It's so quiet that sounds travel through the trees….

I hear a low rumble/hum in the evening if I am in a front room…and wonder how much louder it is to residents in the location its coming from. Being selfish, I let it pass and just live with it.
After all I can still sit out and watch wild life…. hear the owl in my yard hooting. Watch the bats at dusk.

Well…. I have since woken up…you see I read at night and one magazine is Rolling Stone.

That magazine is what woke me up.

They have published three articles that opened my eyes and caused much worry….

Again I was thinking…. that's there not here…HA

Please google Rolling Stone-Fracking and learn about the Monster that we might be supporting …….and yes, I am also saying that you…Mr Niland are also a Monster.

Most here probably don't know all the story behind fracking and what was and is being done to people…

The last story that I read was…the eye opener, was

Rolling stone…." What's Killing The babies of Vernal Utah?" June 22 2015

Well after looking into a bit of this Invenergy proposal…. past the mistruths, and seeing the words "FRACKED GAS" …. I again woke up…Holy Crap! What the hell is happening here in little Rhode Island???

Fracking is what killed the babies in Vernal Utah! Still births… "at least 10 in 2013" in a town of only 10K

Article January 23, 2013…. Fracking's Real Life Victims….PA, their water tested positive for Arsenic, and methane.

September 19, 2013…Flooding and Fracking in Colorado Double Disaster…….

Are we going to stand by and become supporters of this devastation?
This power plant build reaches out way further than we in Rhode Island think…. this is the partner to Fracking and ruining lives, our Country and its land.

Yes, sound travels in this area……we often hear the cars racing in Thompson…but that ends when the race ends.
You can hear Music in town when there is a festival…. but it ends when the day is done…

This noise and pollution and traffic and all else that comes with this Power Plant will never end.

It will ruin our Air, Water, Roads, Town, Homes, Wildlife, and our reputation!

WTH is wrong with this picture??

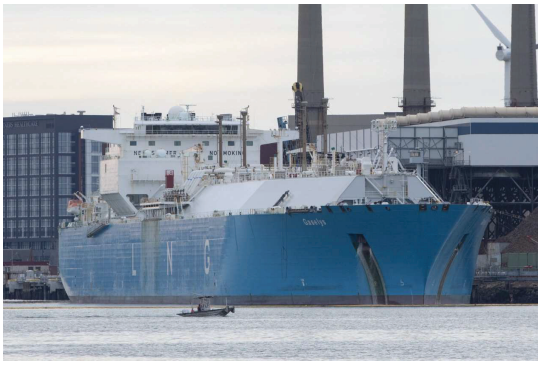
No other State would permit this with the knowledge we have now!

Are we going to be Rhode Island…? The Stupid State?

U.S.

New England Has a Power Problem

The region is struggling to meet electricity needs and ambitious green power goals



A tanker containing liquefied natural gas, including some sourced from Russia, arrived at a terminal in Massachusetts in January. During a two-week winter cold snap, New England turned to burning oil for electricity, using about 2 million barrels and creating an acute strain. PHOTO: SCOTT EISEN/BLOOMBERG NEWS

By Erin Ailworth and Jon Kamp
Feb. 23, 2018 8:00 a.m. ET

Massachusetts officials thought they were close to securing future supplies of green energy by piping in hydroelectric power from Canada.

But a week after Massachusetts said yes to the $1.6 billion project, neighboring New Hampshire said no, jeopardizing the 192-mile transmission line that would bring in the electricity through the Granite State.

The rejection earlier this month marked the latest example of how hard it is to build large energy infrastructure in New England, which is pursuing aggressive renewable power goals and sometimes strains to meet current, pressing electricity needs.

The six-state region—where electricity costs are 56% above the national average—is heavily dependent on natural gas-fired power after years of losing older, uneconomic coal, oil and nuclear plants to retirement. Gas is also in high demand for heating area homes.

Yet New England sometimes has difficulty importing enough natural gas to satisfy its needs due to a shortage of pipelines, including conduits to the cheap natural gas being produced less than 400 miles away from Boston, in Pennsylvania, where shale drilling has helped trigger a boom.

"The not-in-my-backyard concept is extraordinarily powerful in New England," said Chris Lafakis, the head energy economist at Moody's Analytics.

New England turned to burning oil for electricity during a two-week winter cold snap around Christmas and New Year's, using about 2 million barrels—more than twice the oil burned in all of 2016, according to ISO New England, the organization that runs the region's power grid. The strain was so acute that the North American arm of French energy company Engie SA recently brought a shipment of liquefied natural gas—including fuel that originated about 5,000 miles away in Russia—to Everett, Mass., from Europe.

ISO New England warned in a February report that without some new infrastructure, "keeping the lights on in New England will become an even more tenuous proposition." With more power plants set to retire in coming years, ISO New England said, the grid is likely to be at risk of fuel shortages and rolling blackouts.

The region's energy constraints and high costs are an irritant for business groups such as Associated Industries of Massachusetts, which represents several thousand businesses. It says those costs make it harder for companies to compete, putting jobs at risk.

Energy constraints also frustrate some of the area's politicians, including New Hampshire Gov. Chris Sununu, who opposed his state's decision to block the power line to Massachusetts, known as Northern Pass.

The power line defeat "sends a pretty bad message out there that our process isn't conducive to looking at new ideas," Mr. Sununu, a Republican, said in a radio interview earlier this month. "You can't just say no to everything."

Plans to bring Canadian hydroelectricity to Massachusetts hit a snag when neighboring New Hampshire said no to the $1.6 billion project. Above, the Jean-Lesage hydroelectric dam generates power along the Manicouagan River north of Baie-Comeau, Quebec. PHOTO: JACQUES BOISSINOT/ASSOCIATED PRESS

New England states have ambitious mandates to meet future electricity needs with clean energy—populous Massachusetts wants 40% of its power from clean energy sources by 2030. Those goals have spurred some renewable energy installations, including dozens of projects totaling more than a gigawatt of wind-powered capacity.

But the large-scale energy infrastructure to meet those goals and increase access to fuel supplies in the region has been a nonstarter in recent years.

The developers of Cape Wind, an offshore wind farm once planned off Cape Cod, formally gave up last year after more than a decade of intense local opposition and legal challenges.

Kinder Morgan Inc. in 2016 abandoned a more than $3 billion natural-gas pipeline, Northeast Energy Direct, saying it didn't have enough buy-in from utilities and faced a tough regulatory

environment. The pipeline drew stiff opposition from environmentalists and communities worried about property values, potential safety issues and damage to the landscape.

Massachusetts officials hoped to take a big step toward their green-energy goals with the Northern Pass power line, which would import enough cheap hydroelectric power from Quebec to light up as many as 1.1 million homes. Adding a major resource that wasn't gas was a selling point. "Resources such as hydropower are critical to us," said Matthew Beaton, the state's energy and environmental affairs secretary, when the selection was announced last month.

RELATED

- Power Plants Bloom Even as Electricity Prices Wilt (Dec. 28)
- Plans for U.S. Wind Farms Run Into Headwinds (July 9, 2017)
- As Natural Gas Gains, a Taxed Grid Raises Alarm (June 19, 2017)
- New England Looks North for Power Boost (Oct. 13, 2015)

But in woodsy New Hampshire, the idea of turning part of the state into an extension cord for Massachusetts has long been controversial. New Hampshire's Site Evaluation Committee voted the project down this month, citing concerns including a negative impact on tourism and property values.

Eversource Energy , which proposed the line, is mounting an appeal, arguing that the committee didn't give the project proper consideration. "We're going to remind them of their legal obligation to do so," said Eversource New Hampshire President Bill Quinlan.

Massachusetts officials have said they are sticking with Northern Pass for now, but will also start negotiating with the developers of another project that could bring Canadian hydropower via a transmission line through Maine, though not as quickly.

Some environmentalists played down concerns that New England can't get energy projects built. Peter Rothstein, president of the Northeast Clean Energy Council, said his group supports infrastructure that leads to cleaner power, like offshore wind, which he called a huge resource right off the New England coastline.

"It's not that you can't get something built, it's that you have to get the process right," he said.

Bianco, Todd (PUC)

From: William Horan <billyhoran@cox.net>
Sent: Saturday, February 24, 2018 8:32 AM
To: Bianco, Todd (PUC); ka1rm@aol.com; captbirdfish@gmail.com; towncouncil@middletownri.com; louis_dipalma@yahoo.com; Governor (GOV)
Subject: [EXTERNAL] : Power Problem.pdf
Attachments: Power Problem.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Todd.Bianco@puc.ri.gov

Please see atached WSJ article titled; WSJ New England as a very big power problem today!
Please consider this at the upcoming Burrillville Combined Cycle natural gas power station hearings.
William F Horan
1 Jean Street
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todd.bianco@puc.ri.gov,

Todd

I trust that in spite of the mfg barriers that RI has the political courage - stays the course and the Burrillville combined cycle power station hearings are successfully concluded. The subsequent implementation once accomplished benefits RI and all of southern New England.

Looking at the big picture for energy and power (latest attached draft summary) today does RI exhibit a comprehension of or subscribe to this reality? The national designated pivot bridge fuel to the future, especially for the north east US. That is dual fueled / NG combined cycle power stations. Such with expanded and up graded pipe line routes and local LNG storage buffers etc.

The current thinking is that a Ngas Bridge period logically followed down the road by disruptive technologies e.g. a) existing nuclear **fission + new** LFTR Thorium and b) out years Nuclear fusion..

HOWEVER THEIR IS STILL A POLITICAL AGENDA IN PLAY that is hell bent on premature wholesale elimination of base load modern clean coal power stations and nuclear power stations. Yes, with out considering the economic and yes even ultimately health impacts e.g water & sewer processing heating and cooling etc.

The political romance with WWS wind, water and solar mathematically is an abject self evident failure (see the attached numbers). Yes, great political ink and a source of revenue for cronies capitalism camp followers. Unfortunately like the still evolving European failure with reliance on WWS is an economic time bomb. OBTW the plethora of storage schemes as band aids for those low energy density power generation methods is a desperate canard consuming even more funds while incapable of delivering a viable solution. Unfortunately Gov Raimondo in her recent address to The RI General Assembly subscribes to WWS apparently based on a political pseudo science? Today after excessive funding and subsidies direct and indirect only 2% penetration has been achieved (see attached data file)! Looking at life-cycle attrition rates the data depicts that a meaningful contribution from WWS is impractical.

I recall that in past years RI PUC provided comprehensive and cogent presentations on the depth and breath of energy and power etc. to IEEE Providence Section and in 2014 a IEEE National Technical conference INNOTEK 2014 held here in RI.

However today's Burrillville proposal hearings exhibit a nefarious influence from outside agitators aka environmental extremist organizations, some directly or indirectly taking significant monies from portions of the energy industry that publicly they oppose?! The general public exhibits a frighten anti economics, science or math ignorance and NIMBY / BANANA mindset. Yes, ingredients of fear & ignorance projected by a self destructive victim hood based on outright propaganda indoctrination.

Yes, the general population has been bombard with an overt effort resulting in an end game a mfg sabotage! I remain shocked and disappointed that The RI AG Peter Kilmartin has publicly fallen in league with such a superficial political agenda constructed to sabotage the power station hearings and ultimate approval!

One example of mfg grievance - cooling water for the gas turbines that spin the prime generators subsequently once heated during the cooling process is routed to a secondary steam turbine to spin a second electrical generator followed by a closed loop

condenser and air evaporation cooling process.

PROJO reported that Woonsocket / Blackstone cooling water sources were among the first candidates identified. Then a political campaign covered most of RI and near by MA to shut down water sources while dispensing misinformation by defacto environmental victim hood terrorists ! I see this as overt interference in conducting legal and orderly business.

In contrast the successful Johnston RI combined cycle power station utilizes piped in processed Cranston sewer water for cooling needs. Another example the modern clean coal Brayton Point

MA base load Power station utilized piped in Summerset MA processed sewer water with a closed loop evaporation process via pollution free cooling towers.

My point is that many hybird cooling solutions can be devised if the parties are committed to realizing a successful outcome benefiting the community and all of RI. Today unfortunately the Burrillville Power station hearings exhibits a stark exception to a behavior based on realizing a common good for the general welfare.

Again, I trust that in spite of the mfg barriers that RI stays the course and the Burrillville combined cycle power station hearings are successfully concluded and a subsequent implementation is accomplished that benefits RI and all of southern New England.

William F Horan
Engineering Fellow & Sr mgr retired

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Why must we continue to engage in that European branded group think? The evidence is overwhelming that 100% Alleged renewable is now a RI Branded Rhodemap to nowhere. Yes, a nothing burger. that must be rejected. Mark Z. Jacobson's 100% Renewables (WWS) Roadmap to Nowhere by...gordonmcdowell https://www.youtube.com/watch?v=V2KNqluP8M0&feature=em-uploademaillitics .

WWS is low energy density and unscaleable to replace other forms of electrical generation.
Why repeat the socialist European failure of wind, water and solar (WWS). How many times have we heard the untruth of Germany and Denmark as a text book success story deploying WWS.
Energy and power comparison;•
Power is the capacity (of an energy source) to deliver energy. Sources are rated at their peak capacity,
i.e. a coal plant may peak at 1 Giga-Watts capacity. A rooftop solar array may peak at 2 Kilo-Watts capacity.
• Energy is heat, work or electricity delivered to a teapot, a car or a electric motor.
• Capacity Factor is the per cent fraction of time a Source delivers Energy.
• A Baseload plant (coal, nuclear or gas) typically delivers at 90% CF.
• A Solar farm typically delivers at 20% CF.
• A Wind farm typically operates at 30% CF
• Energy:
• A 1 GigaWatt Baseload Plant at 90% CF delivers a 0.9 GigaWatt-years of Energy
• A 1 GigaWatt Wind Farm at 30% CF delivers 0.3 GigaWatt-years of Energy.
• A 1 GigaWatt daytime Solar Farm at 20% CF delivers 0.2 GigaWatt-year of Energy .
• A GigaWatt is 10E9 Watts. A Kilo-Watt is 10E3 Watts . There are one million Kilo-Watts in a Giga-Watt
The average (in US) residential home uses 11,000 KiloWatt-hours of Energy per year. EIA. There are 8760 hours in a year. Therefore a 1 GW source delivering continuously for a year is 8750 GW-hours Energy
Therefore a 1 Giga-Watt source at 100% CF would power 8760 x 10E9 Watt-hrs divided by 11,000 Kilo-Watt hours per home = 800 thousand homes. In New England with less than average home use roughly a million homes.

I would rather let this paper remain "pure" at the annual meeting after we show or state the conclusion of the DoE and National Grid tables: **solar and wind have been a constant 2% of energy delivered during the past 14 years** and that percentage is declining even as the number of installs increased "exponentially". I just added a "holy scripture" quote from ClimateReatyProject.org: i.e. 'Solar capacity has increased "4800% in the past 10 years'.. Probably true but on a percentage basis the **energy delivered** (at CapFactor 0.20 and low density

around 10W/sq meter) has declined about 4 % over the same period as the world cut its nukes and upped its fossil (EnvironmentalProgress.org)

Thanks for reading SuperFuel and Thorium: Energy Cheaper than Coal !!!- it will be good if you reminded the steering committee what that did for you. It might keep rotten tomatoes off my shirt!

Peace, love- standing on the side of E=mc squared.

Mike

TMSR: A Solution for Global Warming, Energy, Poverty, Ending Nuclear Arms: (Thorium Molten Salt Reactor))
Purpose: to educate legislators on advancements in nuclear power for the above issues.

1. **Yes, today's nuclear reactors are based on designs developed for nuclear warfare,**
2. **But almost every nuclear nation has signed the Nuclear Non-Proliferation Treaty for disarmament and peaceful use of nuclear technology. North Korea has not.**
3. **Yes we know Global Warming (GW) requires an immediate shift from fossil to low-Carbon (low-C) energy.**
4. **The question: Do we (the USA and RI) want to advance peaceful uses of nuclear technology or kill it? Aren't we inviting a GW catastrophe by killing nuclear power? Why are we killing it?**

Because we don't care about GW or fossil fuel pollution? No. Most care "passively". A small minority actively try to eliminate nuclear power and nuclear weapons. *Bills in the US Congress are trying to harness nuclear for GW.*

Because it killed or sickened many people? No. Statistically, it is the safest form of power ever even with the accidents. No one died or got sick at Fukushima and no one will. The level of radiation in all but the reactor itself went back to harmless levels (less than 100 millisieverts) in days. The press and the public doesn't know what a safe level of radiations is. A bill in the US Congress addresses this: *H.R.4675 -Low-Dose Radiation Research Act of 2017.*

Because it perpetuates weapons of war? Many believe nations need to ban reactors to disarm. This is true for plutonium weapons and old reactors however new TMSRs are ideal "furnaces" to destroy nuclear weapons while TMSRs can't be used to make weapons. We or China can give TMSRs to North Korea and Iran without worry. Bills in Congress address disarming using nuclear power: *H.R.3853 - 115th Congress_ Nuclear Weapons Abolition and Economic and Energy Conversion Act; S.512 - 115th Congress_ Nuclear Energy Innovation and Modernization Act;* sponsored by RI Senator Sheldon Whitehouse is addressing the development of advanced reactors including designs that can disarm nations. Nuclear reactors to disarm? An oxymoron? Absolutely not – the technology is in use.

More on nuclear weapons: *The first (Hiroshima) had no need for a reactor. It used fissile uranium. Bad actors still make these bombs without reactors. The second bomb (Nagasaki) required a reactor to produce plutonium. That reactor was then "pushed" into commercial power where some 600 exist or are in construction. Yet 99% of the fuel in these reactors is unburned leaving highly radioactive plutonium waste that lasts for a million years. These are Pressurized (or Boiling) Water Reactors* ***(PWRs).***

In the Manhattan Project (WWII) scientists looked at many reactors. Some were built and tested. Today 70 years after MP one of these, TMSR, has been resurrected by a group of humanist engineers. TMSR burns 99 % of its fuel (vs 1 % for PWRs). It can burn the nuclear weapons stockpile. Most importantly, TMSR is useless for making weapons but ideal for making low-C electricity cheaply. TMSR cost is one fourth of a PWR due to inherent safety, unpressurized, and it can't melt down or explode.

China is key to reversing GW. China (and India) burn more coal than all other countries combined and will continue until the market offers a "better" fuel. Thorium is the "ideal fuel" in the TMSR to replace all high carbon fuels. If the USA wants clean energy and disarmament we must recommend politicians and citizens to Richard Martin's book SuperFuel: Thorium. SuperFuel describes US scientists' efforts to license TMSR in the US and Canada only to be "redirected" by our own government to China! Many US engineers think this was poor decision and many in Congress agree: The US will lose its nuclear expertise. China already controls the price and quality of renewables (low compared to US tech) because it controls key materials in solar and wind products: the 17 rare earth elements on the Periodic Table. Thorium, the fuel for TMSRs comes from the same China mines as rare earths. China controls Thorium. Fearing this geopolitical imbalance, 20 Congress members have drafted bills in favor of advanced reactors and the mining of materials to make them in the USA. These bills deserve RI voter support because States decide energy types through portfolio standards and RECS (renewable energy credits). RI out of passive neglect and apparently fear does not address nuclear power of any sort for low-C energy.

TMSR: perfect for power, useless for weapons. It is easy to compare TMSRs to PWRs: TMSR physically can't melt or explode. In an emergency, terrorism or tsunami it is "inherently" safe"; it requires no backups. Its liquid-salt fuel stops chain-reacting on its own; it "freezes" leaving no explosive gasses, pressurized cloud of radiation, long-lived radioactive waste or weapons materials requiring burial for a million years. TMSRs are 30% more efficient than any power plants meaning their waste heat can warm cities or desalinate water for billions living in poverty. Scientists know TMSR waste can't make a nuclear bomb because TMSR waste contains only trace amounts of uranium or plutonium, the explosives needed for these weapons. For disarmament TMSRs can use liquid fuel mixtures to convert uranium or plutonium weapons to useful energy.

Nuclear power dominates low-C energy. Today 100 PWRs supply **20 percent of all US electricity AND 54% of all US low-C electricity.** Nevertheless as reported by Michael Shellenberger (environmentalprogress.org): Worldwide the % of total electricity from **nuclear declined 7 %,** 1995-2016. The % of **renewables electricity also declined 4.2%**; this **percentage** decline was despite "exponential" increases in wind and solar (solar capacity increased 4800% in the past 10 years per ClimateRealityProject. org). Low-density power and 20% capacity factor (time producing) for renewables compared to high-density, 90% CF nuclear are the reasons renewables have not replaced nuclear retirements. Instead high-capacity, high-C **fossil fuels** are on an increase in the US, China, India, Japan, Germany, France and most OECD nations. The New England grid transmits a large fraction of nuclear energy from surrounding states. Each plant powers a million homes. According to National Grid's actual measured usage (Exhibit 1), if we kill nuclear, **RI low-C energy** usage is cut in half, the…….the remainder being almost entirely imported hydro.

Rhode Island:
50% of RI low-C energy is nuclear.
46% is hydro.
Anything else?

What happens if we kill nuclear use in RI? **RI high-C usage** is currently natural gas; it would climb from 66% to 79 % of our RI energy usage. Solar and wind in RI equals the national average of 2 % for the last 14 years per DoE chart Ex 1. Therefore National Grid's actual measured usage shows that without nuclear, RI energy will be **79% high-C + 19% hydro + 2% renewables, a 20% backward slide** in our Carbon footprint as we kill nuclear in our local grid. So the question remains: Should RI join other states supporting nuclear to stop GW with portfolio standards and RECS? Or should we remain passive quoting nuclear investor Bill Gates waiting for an energy "miracle"?

Eco-Ethics Doubletalk? **R**enewables in RI are favored with mandated RECs or RPS (renewables portfolio standards). RI has yet to join other states to add **low-C** nuclear to portfolio standards to keep the **50% of RI low-C energy that is already nuclear.** (*Exhibit 1)*. Nuclear is campaigned against by national opponents (e.g. big oil) and some environmental groups for illogical reasons. The current administration's illogical "lumping" of high-C coal with low-C nuclear could deny us nuclear-powered CO2 "extractors" to combat GW. Extractors need very dense clean energy to remove carbon. Environmental groups who lump coal with nuclear as "dirty fuels" confuse the public and diminish their organizations' credibility. TMSRs can change the national nuclear discourse, erasing radiation and weapon fears associated with PWRs while introducing these positive TMSR benefits: (1) actually reversing GW, (2) solving radiation and waste issues and (3) providing the physical means for weapons disposal/disarmament. Radiation! First it takes education to displace the long held erroneous "belief" that nuclear power radiation is strong and dangerous like nuclear weapons radiation. This bill can correct this: *H.R.4675 -Low-Dose Radiation Research Act of 2017.*

The world GW problem: In world energy growth terms (tonnes and cubic feet): more coal, oil and gas is being burned so the modest goals of the Paris Accord are unachievable. The US, despite conservation and the shift to less polluting Natural Gas will continue to be a major cause of GW if we don't replace our aged fleet of reactors with Gen III (e.g. Westinghouse AP-1000) or better yet Gen IV designs like TMSR. Both are being built in China. The Obama Administration believes it acted ethically when it gave to China the best, according to James Hanson the only real climate solution: U.S. designed "TMSRs" to halt and reverse GW to pre-industrial levels. CO2 can be removed from the biosphere safely by a temporary doubling of carbon-free energy (nuclear) for about 20 years. Without nuclear we are resigned to costly "mitigation" schemes that do not address the obvious long-term solution **carbon removal**. Extractors must be fueled with a carbon-free fuel, lots of it. (Solar and wind are not fuels.) Walls around New York City, dams in Narragansett Bay and coastal cities on stilts are temporary. Halting and removing carbon with TMSRs is far cheaper and permanent until the next ice age 100,000 years away after we destroy nuclear weapons! *See HR 4084 Nuclear Innovation Capabilities Act* which aims to bring back into USA the technology to defeat GW.

Lack of energy leads to world poverty, declining living standards, poor health, and wars. One fourth to one third of the world uses wood and dung for heat and cooking, have inadequate sanitation and no access to clean water. To correct this requires more energy and infrastructure to levelize world prosperity. Imperfect nations and leaders throughout history used technologies to remove inequality or for greed and war. Born into a democracy, we are blessed, but if we ignore or abandon our best technologies we give away our liberties. Humanist engineers know this: Generation IV nuclear TMSR is the best technology now for these most serious issues of now. We also know now is the future in GW terms. TMSR can make the world safer (disarmed), prosperous (resources) and healthy (heat and sanitation) only if an educated populace understands it and changes the political landscape.

Rhode Island's passive energy future? If all PWR reactors in New England are shut down and not replaced: RI cuts its **low-C fuel usage 50%** and raises its **high-C fuel usage to 70%** of delivered energy regardless of where it is produced. Some people want to produce zero baseload energy in RI so we can brag about being green "green". This is nonsensical eco-double talk.

What can we do in RI? Here are some ideas from the Congressional bills named above in the current Congress:

1. Educate ourselves on nuclear reactors: What are the Gen IV choices? What is radiation? How much is good or bad? What are the health effects from radiation vs coal/chemical pollution, oil/gas explosions, and fracking?
2. Educate RI politicians, Public Utilities Commission, and Federal Energy Regulatory Commission on benefits of dispersed, modular, small Gen IV reactors using existing transmission infrastructure. Is Gen IV thorium a renewable, resilient, reliable resource? Can it run out? Is it hard, expensive or dangerous to mine?
3. Encourage local and State legislators to support national efforts (study Senator Whitehouse's bipartisan advanced nuclear bills e.g. *S97*). Then support his leadership advocating States legislation to include existing low-C nuclear in RI portfolio standards and RECs.
4. Pass resolutions at the town and state level to create an Advanced (Gen IV) Nuclear Design and Safety Study in RI. We have a superb confluence of scientists at NUWC, Raytheon, and General Dynamics and others. We have radiation experts in our Hospitals to explain levels of radiation.
5. Hold a university hosted symposium of startups and industry to explore the potential of manufacturing small modular reactors at Quonset Point.
6. Encourage/facilitate a private consortium of startups and industry to build MSR/TMSR reactors on assembly lines at Quonset point – like car engines they require no fuel until they are sited. There is no radiation during manufacture or radiation hazard transporting thorium fuel. Thousands of jobs with markets worldwide: energy is 10 $trillion a year, the biggest commodity on earth. One one-thousandth of that accruing to RI is more than the $9B RI annual budget underwritten by us the taxpayers, many of us fleeing the state.
7. Encourage legislation to make RI an energy R&D and manufacturing preferred zone (tax, incentives, bonds, Federal grants) for advanced nuclear technology. See comparable State bills in Idaho, CA, and Texas.

For more information, educational materials or events contact engineers (such as):
Michael Armenia (CaptBirdFish@gmail.com , 401-626-5840
Robert Kieronski (rnrower@msn.com , 401-871-4471

I. Jurisdiction Statement

At a duly called Tribal Monthly Meeting on August 29, 1992, the Tribe adopted TA 92-082992, which established the UNIFIED JUSTICE CODE that creates the Tribal Court and provides its legal basis under Title 1. This resolution informs that "said Code of Justice is hereby enacted on a provisional basis, subject to further review from the pertinent committees and commissions of the Tribe, but *shall have the full force and effect of law.*" (Emphasis added.)

This resolution also formally identified the Tribe's expectation for its government and sworn duties its council should uphold.

> WHEREAS: The Tribal Assembly recognizes and acknowledges the need of protecting the Narragansett community from unlawful acts, lawlessness and harm, and
>
> WHEREAS: The Tribal Council is sworn to uphold the rights of the Tribal people and community, in the areas of general health, education, welfare, and is also sworn to keep the peace and maintain harmony within the tribe.

Since that time, it is of record that the Tribal Government revised the Code twice through expansion. The first time was December 31, 2000, made effective January 1, 2001. This document reflects a major change in the title, from the UNIFIED JUSTICE CODE to the COMPREHENSIVE CODES OF JUSTICE, as well as other content changes that do affect jurisdiction, and again on August 21, 2001 through notice of added sections.

Tribal Meeting Minutes, previously reviewed for the *2010 Election Decision* released on August 10, 2010, reveal that the Tribe was primed to make a concentrated, fresh start at the beginning of a new century. This fresh start began with the *Tribal Profile of 1998*, which revises the 1989 version, followed by revision of the CODE at the close of 2000, as well as establishment of a revised process to seat Council, via staggered terms under TA-123000-01. The Tribe created the stagger as a means to create stability and continuity within the government; however, it did not apply the stagger process systematically under the terms originally adopted. What results have been obtained bring the Tribe to reconsider its election process today. *See, for example,* T*ribal Council Memorandum, re Narragansett Indian Tribal Constitution Bylaws* dated November 2, 20002. This document, attached to the *2014 General Election Notice* (November 6, 2014), hereinafter the *2014 Notice,* provides notice and a copy of the Tribe's ratified resolutions between 1997 and 2000, which amend the NIT CONSTITUTION AND BY-LAWS.

Over the years, the court system has received sporadic attention and fewer resources. Between 2002 and 2003, Council brought in a consultant to look at and plan for the court's development. The consultant identified individuals to sit as an advisory board based upon their combined experience and knowledge of the community, federal Indian law, customary practices and traditions. Through consultation and dialogue, the seed of a proposed Tribunal grew, which received positive reception from Council under TC-01-20-05, *Establishment of a Tribunal,* on January 20, 20005 and a seed budget from the Sachem. The Government's resolution states, in part:

> Whereas: The Infrastructure envisioned to establish a formal tribal court system as ratified under the Narragansett Comprehensive Codes of Justice is not in place nor are the necessary resources at hand, and

Whereas: The complaints processed by the tribal police and the internal personal/civil disputes require timely resolution by a systematic adjudicator body.

The Tribunal heard cases from 2005 to 2008. Then active support dried up. A subsequent search for individuals who were willing and able to serve had fruitless result. The Tribe also attempted a search by nominating candidates to sit and had the same result.

Even though the Tribunal was defunct, the Court remained a legally established and separate government-level, adjudicatory body duly, created by the Tribe through customary and constitutional process. In both 2008 and 2010, the Court received complaints from government officials regarding election challenges that included complaint about the election grievance procedures. These procedures, found within the Tribe's *Election Rules and Procedures* (the ERP) rely upon the use and exhaustion of traditional channels and entities for remedy; however, once exhausted and if legal issue remains, the Tribe's statutory law provides the Court with jurisdiction.

The *2010 Election Decision* (August 10, 2010) was the first instance where judicial review concentrated on the Tribe's application of the staggered terms. The *Decision* was critical of the Tribe's implementation of constitutional law, which strayed from using the established procedure to revise or change the election process. Personalities without focused regard for election policy rose to undercut the Court's jurisdiction and Chief Judge around this time. A lesson rising from this approach is tribal law and policies are not self-enforcing.

On June 28, 2014, by Council resolve, the Judge resumed hearing argument about the election matters' legal aspects and applying tribal law and policy to them, politically unfettered by further intrusion of personalities. The CODE at Title 1 provides Council with the authority to appointment a Special Judge in the event that the Chief Judge is unable for any reason to hear a case. Consequently, arguing that the judge's term has expired as a means for removal is irrelevant and immaterial when Council, by resolve, made a specific judicial appointment.

That Defendants reference a vote of no confidence made by the tribal assembly, which also does not affect the legal standing of a duly appointed judge, has no merit; because, a judge's removal requires specific process that includes adherence to an explicit review standard and statutory process. See the NICCJ at Title 1-3-305, which establishes no right or authority in law to displace the Court or remove a judge summarily. That discussion took place in a special or assembly meeting does not change the legal requirements the CODE provides to protect the Court and sitting judges from personalities or personal displeasure that can result from a judge fulfilling the obligations of Office.

II. Summary of Facts and Procedural History

Issues with the election process fully bloomed before the Tribe in 2014. Members of the Tribal Government and Tribe submitted complaints to the Court. On November 6, 2014, the Court provided notice of submitted complaints about the 2014 election in the *2014 Election Notice*. Allegations challenged constitutional and rule interpretations to support decisions made, subsequent actions taken, as well as lines of authority and

responsibility. Plaintiffs also complained about the disregard of protocols and generally known understandings regarding customary practices embedded in tribal law. They further alleged that these omissions placed hurdles around direct input from the Tribe. Specific, reoccurring challenges have concerned the law and policy relied upon by the Tribal Election Committee (the TEC) to conduct the 2014 election. These issues range across the various methods that committee members have used to conduct the Tribe's election business and itself, which plaintiffs submit will bring irreparable harm if allowed to continue unabated and that the balance of equities favors the Tribe.

The *2014 Election Notice* stated, in part,

> The fact that there is deadlock over the legitimacy of the election within the tribal government deserves further examination for its cause. Multiple opinions and explanations arise to validate challenged rules and ad hoc actions, which reveal that the rules still do not uniformly instruct, important issues remain unresolved, and designated responsibilities and accountabilities [are] misconstrued. Bottom line, the processes and procedures used to conduct the 2014 election and seat Council do not meet what the Tribe and candidates required from the start—clarity and the application of standing tribal law.

The Tribe still has not had this information need met. Under Next Steps in the *Notice*, at page 6, the Court further provided:

> Finding a path to resolution has become a contest of political power and personal will. The main issue is not should the election be overturned, should new council members step down, should the election process be corrected now or later or should the TEC oversee deliberations by the Tribe.

Tribal law and policy already provides the answers to these questions by defining rights and responsibilities. Law and policy can further serve to arbitrate.

In December 2014, complaint arose through traditional channels against the TEC Chair for her disrespectful conduct at the December 2014 Special Meeting facilitated by the TEC. At the January end of month meeting, the Chair was involved in another incident that involved violent conduct, which in turn spurred additional violent acts by members of the challenged 2014 council-elect. Without further detailing, the cumulative record provides example that the Tribe's complaints against the conduct of TEC members and their application of law and policy have been under continuing legal challenge—without definitive and final tribal resolve—for some time.

On July 8, 2016, specific request for a Preliminary Injunction came through the Tribal Police, who received complaints on July 7, and 8, 2016 for submission to the court from Dean Stanton et al. and Mary Brown respectively. Since the subject matter and relief sought overlaps in the complaints, the Court consolidated the plaintiffs' petitions.

Prior to seeking injunction, Plaintiffs sought and received a TRO without notice. *See Petition and Grant to place a Temporary Restraining Order without Notice to Restrict the TEC from further interference with the Reserved Right of the Tribe to determine how it shall seat Council in the Next General Election for Tribal Council Seats* (June 30, 2016), hereinafter the TRO. The Court granted the TRO because the presented evidence supported that the TEC was acting beyond its lawful authority by dictating to the Tribe what the election process and council terms shall be when a motion for tribal deliberation about this matter remains on the table. In addition, the presented evidence verified that TEC committee members ignore preparatory election requirements under the ERP. These

requirements relate to the committee's composition and seating as well as ensuring that the ERP reflects the Tribe's determinations regarding the election process and procedural updates or corrections for the 2016 election.

The Court's TRO findings stated, "[T]hese actions constitute imminent harm to the Plaintiffs and Tribe because the TEC undercuts a customary, reserved right. Furthermore, these actions set obstacles between the government and Tribe and interferes with the creation of consensus about how to move the election process forward in an orderly, legitimate and transparent manner." The TRO restrained the Defendants from publishing or pursuing any activities to promote or conduct a general election for tribal council seats on July 30, 2016.

Plaintiffs now seek a preliminary injunction against Defendants and allege that these individuals persist in advancing purported authority to conduct a general election. As evidence of this intent, Plaintiffs submitted copies of additional communications received to demonstrate Defendants continuing activities and statements of intended action(s). Plaintiffs meet their burden of production within the cited time constraints and considerations. The Court, through instruction in the TRO, provided a communication channel for document submission that specified delivery through the Tribal Police.

The Court provides judicial notice that Plaintiffs attended and adhered to legal requirements and that the Defendants continued actions under purported right to conduct a general election and to determine the Tribe's election process, date and number of open seats. Broadcasted communications also continue to assert the right of Defendants to defy a court Order with claim that the Court and Judge lack constitutional underpinning. This claim overlooks the interconnections and structure of

tribal law. In addition, there has been claim federal law demands adherence to Defendants' election plan. *See* *TRO* at pp. 8-9 (discussing the irrelevancy of citation to 25 CFR 81.8 because the Tribe does not hold secretarial elections and that reliance on CFR Part 81 requires reading the statute's purpose, which is found at 25 CFR 81.2).

While making these various arguments and accepting no contrary response, Defendants attempt the assumption of authority to make and implement tribal-wide, governmental level decisions about tribal law, policy, process and procedures. Under this ill-advised and illegal assertion, they continue to attempt action that the Tribe protests through germane, legal argumentation. The Court has not received any documentation from Defendants that uses the Court communication channel specified and directly responds to legal challenges made by Plaintiffs.

III. Analysis

A. Preliminary Injunctions

A preliminary injunction restrains activities of a defendant until the case can be determined on the merits. Plaintiffs continue to dispute Defendants' claim regarding automatous authority a TEC to predetermine the election process, procedures, date rand ignore standing obligations and rules within the ERP. Plaintiffs seek further restraint on Defendants from any more publication about or action geared towards conducting a general election.

As obliged per notice in the TRO, Plaintiffs submitted formal applications through the Tribal Police for a preliminary injunction within 10 days' time of the TRO

and provided two days' notice to the adverse party of their intent to pursue additional remedy pursuant to the NICCJ, Title IV-4-402. Tribal Police delivered a verified copy of the complaints received within the deadline to Darlene Monroe, acting TEC secretary, at 10:30 AM on Friday July 8, 2016.

Since then, Plaintiffs submit that Defendants have continued to broadcast publications to the tribal community indicating intent to hold an election, seeking the involvement or attention of federal agents, while ignoring their own obligation to obey tribal law and arguing against Plaintiffs' right to seek remedies provided under tribal law. The Court provides judicial notice that it too has been the recipient of various emails from the secretary, who continues broadcast publishing and assertion that the defendants must conduct an election despite ample evidence to the contrary.

B. Standard of Review

> No preliminary injunction shall be issued (1) absent clear and convincing proof by specific evidence that the applicant will suffer irreparable harm during the pendency of the litigation unless a preliminary injunction is issued and (2) that the balance of equities favors the applicant over the party sought to the enjoined.

Defendants' announcement of a general election, its date and the process to be used was not released under the terms of the Constitution at Article I, §I. It is of record that a partial budget was released and that Defendants rely on this fact to promote authority to *conduct* the election. It does not; because, an election committee has specific obligations and preparatory steps that it must complete before conducting an election. Defendants have not met this threshold and the fact remains that they are obligated to provide the legal basis for assuming autonomous authority over the Tribe and Tribal

Government as well as answer the formal complaints and challenges about their actions and conduct.

(1) Under the first element, email communication from the acting secretary—sent before, during and since the TRO—provide evidence that neither the Chair nor other defendants oppose the conduct that shows intent to allow continued frustration and interference with any challenge to holding their election. Assigning ownership of the purported election is purposeful because to date, no legal argument—despite incessant communications—supports the right of any TEC to determine independently:

- What conduct the Tribe should expect and must accept when committee members engage in official business on behalf of the Tribe,
- How and when to fill expired TEC seats,
- When the next election should and shall take place,
- What process the Tribe will use to determine how a council is seated in the next general election, and
- The number of seats opened.

Arguments, sowed within the community, provide no legal or persuasive basis to justify the actions and conduct of the Defendants. Argumentation relies on appeals to emotion, personal attack buttressed by illogical reasoning to shift focus and overlooking change. For example, the flyer appeals to emotion by rallying the Tribe to assert its right to get out and vote. Yet, Defendants ignore that very right by interfering with the Tribe's right to vote on the fundamental issues it has previously raised about the election process and procedures. No broadcasted communication cogently explains

why the Tribe must forfeit this right and begin with the predetermined choices advanced by the Defendants.

Argumentation seeks to inflame and delay dialogue through use of institutional and personal attack. In addition to not addressing Plaintiffs' pointed issues, the content of the broadcasted communications contain randomly introduced, wide-ranging criticisms of others, which does not distract from Defendants failure to fulfill the designated obligations and responsibilities of a TEC. More importantly, acts and actions undertaken obstruct the Tribe from creating a pathway to resolve. By introducing subjects irrelevant to *the Tribe's resolution of the matter at hand*, Defendants use conduct and methods they accuse or infer in others.

A reoccurring argument advances two wrongs make a right. First, this approach entangles then compresses separate issues. Since 2014, the Tribe has indicated repeatedly that it wants to examine *the election process* and indicated dissatisfied with the conduct and decisions of elected, public officials.

One issue involves the application of tribal law regarding election protocols and customary practices. Protocols and enduring customary practices reduce to expected standards of public behavior, which includes the deportment of public officials, which includes committee members, while holding office as well as each individual's responsibility to be responsible for their own conduct in assembly. A major protocol under deportment of public officials is to honor (respect) the reserved right of the Tribe to assemble and discuss its internal matters without threat of violence. Once assembled, whether for social interaction or to conduct business, there is an equal expectation about the behavior of community member participants. It does not serve the collective rights of the Tribe when public behaviors by tribal officials or individuals denigrates. The use

or threat of violence now becomes commonplace, exemplified by hostile acrimonious conduct during assemblies. The use of "fighting words," physical attacks and disregard for rules of law and public deportment is a non-productive way to conduct assembly business or an election. TEC members do not stand outside or above these behaviors.

Another attempted shield is using 'Others' as in other's misuse or abuse of tribal resources and property. Here the public release of business confidential documents through the TEC opens discussion about public officials' adherence to (1) the confidentially of internal, business matters and (2) the protocols and authority needed for release. Moreover, there is gathering and distribution of public, legal documents with interpretations are misleads the community or is outright incorrect.

Reiterating example of the latter, faulty reliance on a federal statute, based upon an incorrect reading of the statute's purpose, to contend that the federal government demands the Tribe follow Defendants leads into a deeper election quagmire. This argument demonstrates shallow reading without attention to context and content or an understanding of the legal concepts and policy found within federal Indian law or vetted research findings, which validate the superior results obtained when a tribe resolves political, internal tribal matters through judicious use of its own law, policy and customary practices. Ensuring that the interconnections between these sources ring true for the future well-being of Tribe is no easy task; yet, this task belongs to the contemporary Tribe. While it has historically designated and distributed authority and responsibility to handle the roles and tasks of running the government, the Tribe has not released the right to assemble peaceably or determine how to seat its government.

The Tribal Government and Tribe stand at a crossroads. Today's focus does not omit how we got here nor dismiss missteps that may yet need correction or procedural

resolve. Nonetheless, the intent remains to produce consistency and stability within the tribal government by setting a consensual course for fair and efficient resolution of election issues. Considering the number of people involved and the tribal-wide impact, there is a need for prioritization, methodical analysis and deliberation to resolve outstanding issues.

The Defendants' actions do not contribute to resolution because they act without legal standing, authority and tribal consent. Yet, broadcasted publications skip over these facts, which ignore the standing law, policy and issues on the election discussion table. Plaintiffs accurately distinguish that Defendants' conduct and actions do not represent the letter or spirit of Narragansett tribal law. By its response and repeated requests following customary practices, the Tribe has made it plain that it wishes to have a forum dedicated to discussion and resolve of named election issues. Defendants do not contribute to resolve. By not correcting internal abuse of resources and position or renouncing this conduct, the individual defendants associate themselves as whole with these behaviors and demonstrate an inability to correct themselves.

The ERP, under Obligations at Article II§1(B)(5) states "In the event a member of the TEC becomes rude, vulgar, combative and/or is the cause of unavoidable conflict, he or she can be removed by a 2/3 vote of the committee." This obligation to control itself is not limited to the day of an election. The list covers general duties like TEC meeting attendance and adherence to privileged business confidentially.

For example, there is nothing in the ERP that specifically designates the TEC shall facilitate special meetings for ERP review. This is a task that the Tribe has either requested or allowed over the last few elections. Consequently, proper deportment of the committee and its members under §1(B)(5) broadens in fulfillment of expanded

tasks. Yet, neither the chairs nor individuals provide example that demonstrates fidelity to written law and rules, customary practices or protocol. The internal secretary uses the official mailing list as a personal soapbox to spam email mailboxes with incessant and derogatory tirades that lack cogent legal argumentation and analysis. Defendant committee members are well aware that the Chair's past conduct has been combative as well as harmful to tribal members and yet the members, as a committee, have ignored its affirmative obligation to disapprove this type of conduct and done nothing. In addition, public announcement for a purported election rally was made on the same date reserved for a special meeting. This knowingly set the stage for unavoidable conflict between tribal members and the Defendants and their election candidates who walk, whether naïvely or defiantly, into a cycle of conflict and lawlessness perpetuated by defendants.

(2) Since the 2014 election, tribal members have sought to convene a forum that would allow deliberation about outstanding issues within their election process. Out of the entities and opinions that previously sought to command, persuade against, redirect or otherwise subvert the right of the Tribe to reject the methods used to conduct the election and its grievance procedures, and consequent invalidated results, only one—the Defendants acting as a self-titled TEC—remains discernably obstructionist.

First, evidence shows that Defendants have used tribal resources and public office as a personal platform to effect outcomes that show no redeeming benefit for the Tribe. They also allow one person to seek and then broadcast non-sequential, old news, dated issues and irrelevant facts and argumentation without sanctioned purpose or legal standing. No authority and individual right allows a TEC or any of its members the freedom to take precedence over other community members—and by implication

tribal-wide reserved—rights or that the official mailing list may be used to bombard promotion of personal opinion. This conduct also presumes that a purported individual right asserted by any one tribal member supersedes the right of other community members to entertain and participate in dialogue about tribal-wide issues. There is misassumption of a personal right to override other community member's voices, and opportunity to listen to other points of view, as a means to prevent building any consensus that does not follow the direction and steps charted by Defendants about election issues.

Second, recent communications take aim to foreclose the tribal community's access to the Court by misrepresenting its legal foundation and jurisdiction in a multi-pronged attempt to dismantle the governmental infrastructure that (1) the Tribe has established under constitutional process and (2) the government rises to protect. These communications express raw personal desire through insistence on continuing acts that demonstrate intent to waylay and prevent others, who do not embrace this methodology or intent, from seeking relief in the Tribal Court. Council's resolve removed all political question of the Court's jurisdiction over the election. Reviving or manipulating past politics, which are off the table, in an attempt to obstruct the Tribe's right to use an institution it has created, offers no defense, rationale or mitigating circumstance when this stance unabashedly seeks to perpetuate unresolvable conflict. This begs the question: if one stands apart from the Tribe and disregards its well-being and future, what is the purpose and underlying intent?

Third, the broadcasted communications attempt to obstruct customary pathways and publically embarrass the Tribe by shinning a strobe light on known past, narrowly focused and poor decision-making. In the meantime, Defendants' conduct continues to obstruct tribal resolve, extends to misrepresentation or release of internal

matters-at-will to federal agencies, and enticing tribal members to partake in activities that offer no individual honor or merit or benefit to the tribal community; because, these actions prolong confusion, waste and ill will within the Tribe.

IV. Findings and Procedural Next Steps

Many of the arguments presented to the community in personal communications using the official mailing lists relies on justifying the Defendants' conduct challenges and illegal action by pointing to or inferring that others are guilty of other wrongs. This is Red Herring reasoning, which does not constitute a cogent argument. The reasoning is not persuasive because it attempts to shift the Defendants' burden to answer for their own actions by creation of a slippery slope that assumes there is always some another wrong to point to and that it can be used as defense. If this were true, anything could be justified. Not only is this assertion legally unsustainable, the communications broadcasted contain non-sequential fact development linked to argument that is immaterial and contradictory. It does not account for the decisions and the long the steps that Defendants make. Argumentation self-centers on political and social degradation of the Tribe through a piecemeal attempt to dismantle governmental structures and entities the Tribe has legally established that other tribal members, if not defendants, wish to maintain and correct, if necessary, but not destroy.

Under tribal law, the Court is duty-bound to respond to Plaintiffs' plea for Extraordinary Writ. Addressing this matter under the standing law, policy, procedures and traditional practices demonstrates a key attribute of sovereignty and self-determination, the right to create tribal law and subsequent obligation to live by it.

Moreover, allowing the Tribe to deliberate about these matters in turn without further committee or ancillary interference, creates pathways to understanding and knowing (a) as much as possible about the election process's legal impediments, (b) the implications of options for corrective change and (c) any foreseeable consequences. All of which will go a long way in avoiding similar debacle in the future.

To that end, the approach and resolve asserted by Defendants does not lead the Tribe to consensual or peaceful resolution. Defendants' resolve promotes more conflict because they self-select the same election process, procedures and conduct that have been under widening and active legal challenge since 2014. Their approach uses aggressive behaviors, which have transgressed into physical violence, the use of intimidation and hogging the floor with singular focus to push for right-of-way or crude confrontations. These methods prevent focused deliberation when the Tribe has been in assembly and filled the tribal community's email and snail mailboxes with innuendo, incorrect or misleading information and reasoning. These acts and methods are unconscionable behaviors.

Holding: The Court finds the evidence presented shows clear and convincing proof that the applicants will suffer irreparable harm during the pendency of the litigation. Defendants, as a group or as individuals, have used and continue to use aggressive or violent conduct that serves no redeeming or sanctioned purpose and undercuts basic and customary reserved rights of the Plaintiffs. The balance of equities favors Plaintiffs over the individuals enjoined because the Defendants' communications and actions derail forthright and legal deliberation about tribal-wide issues and fails to provide sincere, constructive contribution towards resolution of election issues.

The Court stays the general Election until the Tribe has examined and determined the election process, set a date and resolved any other outstanding election issues, including those associated with the TEC. Actions taken by Defendants are not, cannot and will not be legal until the committee sits properly under tribal law, process and approval. The Court prohibits Defendants from any further action in election business. This prohibition includes:

> Conducting any business, meeting, rally, election or any other gathering on tribal property that concerns election matters or interferes via collective or individual conduct by the enjoined persons with same;
>
> Communicating or publishing any information or entering into any contract in the name of the Narragansett Indian Tribal Election Committee; OR
>
> Using names gathered from the official tribal mailing list to broadcast into or spam tribal email or snail mailboxes as a means to circulate privately authored communications, personal opinions or for any other private or unofficial purpose.

All actions taken or attempted by Defendants are void.

Process Due: At noted on the Summons, the Court sets a hearing date for 11:00 AM on Wednesday, August 17, 2016 at the Longhouse. Should any intervening events take place before this date, where the government and Tribe are able to meet and begin addressing next steps and election matters directly, without further obstructionist behaviors or conduct, then the Court will dissolve or modify this preliminary injunction, as the interests of justice require.

If not, then at the hearing, the Court will ascertain

1. Whether defendants have any defenses to claim or wish to present any counterclaim against the plaintiffs or cross-claim against any other party or person concerning the same occurrences in the complaints *that the Court has not already set aside as irrelevant or immaterial;*

2. Whether any party wishes to present evidence to the Court concerning the facts of the challenged TEC's actions, publications and assertions;

3. Whether the interests of justice require any party to answer written interrogatories, make or answer requests for admissions, produce any documents or other evidence, or otherwise engage in pre-trial discovery considered proper by the Judge;

4. Whether some or all of the issues in dispute can be settled without a formal adjudication.

IT IS SO ORDERED.

Judge D. Davidde

July 21, 2016

Exhibit E

Narragansett Indian Tribal Court

TEC Permanent Injunction: Memorandum and Decision

Proceedings Below

For nearly a year, Defendants in this matter have, among other actions, represented themselves as constituting the Tribal Election Committee, when they are not the Tribal Election Committee. On June 30, 2016, the Tribal Court granted a *Temporary Restraining Order without Notice* that restricted the named Defendants from "any further action or communications in any form or use of any governmental resources to represent official action on behalf of the Tribal Government or Tribe." Thereafter, Plaintiffs petitioned for a preliminary injunction, using the procedure and standards required under the NARRAGANSETT INDIAN COMPREHENSIVE CODES OF JUSTICE [the NICCJ, Title IV-4-402, Preliminary Injunctions, and within the mandated time frame submitted their petition, which included two days' notice to Defendants.

Particularly confusing has been Defendants refusal to accept that they do have a right in the Tribal Court to independently resolve foundational election challenges and determine critical points of information and law.

At the hearing held on August 17, 2016, Defendant Darlene Monroe plead a right to silence under the 5th Amendment and repeatedly protested continuance of the hearing until she was allowed representation by counsel under the INDIAN CIVIL RIGHTS

ACT [ICRA]. This posturing impaired presentation of plaintiffs' case and resolution of important issues besieging the Tribe.

Notice of Service

Ms. Monroe also complained that the Court had not accepted a document submitted via registered mail. Ms. Monroe was reminded that the T*emporary Restraining Order without Notice* contained specific instruction for document submission to the Court. Ms. Monroe denied receipt of that order. Because the responding Officer was not present at the hearing, service of the order required verification before continuance. The Court adjourned the hearing. Thereafter Tribal Police records were obtained, which documented that, on July 1, 2016, Tribal Police Chief Monroe provided personal service of the TRO to Darlene Monroe, individually and as secretary for the election committee. In addition, Officer Hazard submitted a Report detailing service of the Preliminary Injunction to Bella Noka in the parking of the Four Winds on July 23, 2016.

Verification of personal service by the Tribal Police closes further dispute of notice of the Court's order and the method stated for submitting filings to the Tribal Court.

Right to Counsel in a civil matter under the Indian Civil Rights Act

The Court denies Defendants' demand for personal representation by counsel before the Court as a condition of moving this proceeding forward. ICRA does not provide a right to halt or prolong court proceedings in a civil proceeding so a party may obtain representation by legal counsel before a court. Ms. Monroe has had many

opportunities to seek advice concerning previous submissions and communications broadcasted throughout the Tribe. Ms. Monroe has never informed the Court that she has engaged counsel to represent her in this matter.

DISCUSSION

Prima facie case established for a Permanent Injunction

Plaintiffs have established success on the merits and presented a prima facie case for a Permanent Injunction. The enjoined Defendants were given a final opportunity, detailed in the Court's *Show Cause Order* delivered by personal service to Darlene Monroe, the acting TEC Secretary, to submit with 15 days any relevant documentation or additional matters showing cause why a final injunction should not be issued.

Defendants failed to submit any additional documentation or respond to the original questions posed regarding the legal authority of the 2014 Tribal Election Committee to hold an election in 2016. Consequently, Defendants have failed to demonstrate any legal basis under tribal law that provides any authority to conduct a general election in 2016 or displace the Tribe's right to determine the election process, the voting date and number of open seats in the next Tribal Council election.

There is no genuine, factual issue in dispute. The self-proclaimed election committee does not have an autonomous right or responsibility to determine how the Tribe shall seat an executive board. Despite multitudinous protestations and means, Defendants have yet to provide an argument that demonstrates or persuades otherwise. It is of record that they have employed disruptive behaviors during tribal assemblies

and gatherings, used undisclosed means to decide voter and candidate eligibility, made appointments, and held an independent election to seat a faux executive board. Then thereafter, they began a campaign to claim legitimacy by dubious citations to inapplicable tribal and federal law that were sent to federal agents. At the same time, they created derogatory and nuisance stories to besmear the Tribe in the press.

The purported 2016 election is null and void for noncompliance with and misrepresentation of tribal law and policy.

Non-compliance with Tribal Law

In a Letter to Bruce Maytubby, BIA-Eastern Regional Director dated August 17, 2016, the election committee claimed legal compliance based upon "TEC rules and regulation with 25 CFR USC 81.8, Constitution and By-Laws staggered terms, 1965 Voting Rights Act and in conjunction with the Rhode Island State Board of Canvassers."

On its face, this declaration is specious. The failure to adhere to tribal law and the continuation of an unauthorized election deepens the harm to Tribe because the committee's faulty legal reliance provides no basis for recognition of the body it seated. This body now purports to act as a legitimate council and attempts to conduct business on behalf of the Tribe. The individuals who participated in that unauthorized election and now claim executive authority over the Tribe are Domingo Talldog Monroe, Adam Jennings, Tammy Monroe, Chandra Machado, Jazmin Jones, Randy Noka, Wanda Hopkins, and Chastity Machado.

Misstatement / Misrepresentation of Tribal Law and Policy

The legal basis of the election committee's certification to the BIA demonstrates why assertions of "duly elected" by the members of election committee and faux council carry no weight under tribal law. It also explains why these individuals do not receive the acceptance and recognition from the Tribe that they seek.

First, the election committee conducted its 2016 election under the federal standard set for secretarial elections. A *Tribal Court Community Briefing and Notice* titled "No Assembly Meeting October 1, 2016" informed that the Narragansett do not conduct Secretarial elections and that the committee was in error. Tribal law governs and determines Narragansett elections. The TEC's reliance on "25 USC 81.8" does not determine anything about the NARRAGANSETT INDIAN CONSTITUTION AND BY-LAWS or its amendments. This citation to the UNITED STATES CODE refers to 25 C.F.R. Part 81, which relates to tribes that hold secretarial elections. This statute does not provide a federal foundation that supports the asserted authority of the election committee. Moreover, the TEC's reliance on the U.S CONSTITUTION is misplaced and demonstrates a lack of understanding about the political standing of Tribes, which are pre-constitutional as well as extra-constitutional and a lack of knowledge of tribal election law. Citation to the 15th Amendment[1], Bill of Rights (first and fifth amendments) are immaterial and irrelevant assertions to rationalize the decisions made or the actions undertaken

[1] This Amendment states that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude." Narragansett tribal elections are for tribal members. Even so, out of the multitude of complaints regarding the 2014 or the 2016 election process, no petition raises complaint that race, color or previous condition of servitude factored into denying or abridging a tribal member's right to vote. Nor are these elements found within the INDIAN CIVIL RIGHTS ACT.

regarding the established and customary procedures that the TEC is expected to use when conducting an election.

In protest, Darlene Monroe has broadcasted publications that claim violations of the Narragansett Indian Constitution, due process, equal protection under the law, civil rights and liberties, defamation of character, right to vote, discrimination and infringement of tribal rights. Their actions with those of their council constitute a splinter group acting outside of tribal law and without recognition that their actions interfere with the rights and privileges of the Tribe; for example, the reserved right of the Tribe to determine how it wishes to seat its next council. The Tribe has not had the opportunity to finish the voting process to fill vacant TEC seats, determine whether or how to maintain the stagger, or receive sufficient information to understand why the process did provide the intended results. By defendants' actions, the basic right to participate in and have a voice in the election process has been denied to the tribal community. Moreover, abridgement of tribal assemblies' civil liberties has taken place repeatedly because defendants' disruptive tactics have not allowed orderly meetings or the opportunity to speak and participate without interruption, harassment or threat of harm. Defendants' conduct has curtailed the ability of the Assembly to work out problems through traditional consensus and to conduct tribal business.

Establishment of Tribal Codified Law and the Tribal Court

Jurisdiction of the Tribal Court

On June 28, 2014, the Tribal Council provided notice to the Court that it had given jurisdiction over issues arising from the 2014 Council Election to the Tribal Court and the Tribal Court accepted. Nonetheless, the Defendants have dismissed the Court's

application of tribal law and policy through innuendo, rhetoric and reliance on political maneuvers devoid of standing law.

To date, neither the 2014 TEC and its officers or the members of their 2016 executive board have provided any legal or policy arguments that support their actions. There is repeated reference and reliance on a vote of no confidence made by the tribal assembly about the Tribal Court in 2010, which coincides with the Court's criticism of the staggered terms implementation and its oversight. This political statement, by an assembly gathering, does not affect the legal standing of a duly appointed judge because a judge's removal has due process requirements, which include adherence to explicit procedures and standard of review under the NICCJ. There is no right or authority in law or policy to remove the Court or a judge summarily. That discussions took place in special or assembly meetings does not change legal requirements that the CODE provides to protect the Court and sitting judges from political displeasure that might result from a judge fulfilling the obligations of the Office.

The Law and Order Code

Bella Noka and Darlene Monroe have presented argument that citation to the 2000 promulgation of the NICCJ defeats the Court's jurisdiction. In affidavits before the federal court, they have stated that

> The constitution of the Tribe makes no provision for a tribal court and it has never been amended to create such a court. ... Any action the Council may have taken to adopt [the NICCJ] was unauthorized and ineffective. Only the assembled members of the Tribe could have enacted such a sweeping legislative initiative, one that purported for the first time to establish a tribal court, enact a comprehensive set of criminal offenses, procedures, and penalties, and establish rules for civil procedure, among other things.

> In short, the tribal court could only have been created by the tribal constitution, an amendment to that constitution, or the vote of the tribal assembly. Since none of those steps was taken here, the Narragansett tribal court was never property constituted.

Noka and Monroe's protestations undercut their own self-assertions of familiarity with the Tribe and interpretations of tribal and federal law. Citation to a legal statute requires reference to the most recent enactment. The establishment of a tribal court does not require constitutional enactment. Historically, many tribes adopted constitutions that use the unique style of constitutional writing and characteristics of IRA-styled constitutions from the 1930s.

Moreover, their statement omits the legislative history of the Code. The Court has provided the legislative history of the Code and now reiterates that a duly called Tribal Monthly Meeting on August 29, 1992, the Tribe adopted TA 92-082992, which established the UNIFIED JUSTICE CODE that creates the Tribal Court and provides its legal basis under Title 1. This resolution informs that "said Code of Justice is hereby enacted on a provisional basis, subject to further review from the pertinent committees and commissions of the Tribe, but shall have the full force and effect of law."

This resolution also formally identified the Tribe's expectation for its government and sworn duties its council should uphold.

> WHEREAS: The Tribal Assembly recognizes and acknowledges the need of protecting the Narragansett community from unlawful acts, lawlessness and harm, and
>
> WHEREAS: The Tribal Council is sworn to uphold the rights of the Tribal people and community, in the areas of general health, education, welfare, and is also sworn to keep the peace and maintain harmony within the tribe.

Since that time, it is of record that the Tribal Government revised the Code twice through expansion. The first time was December 31, 2000, made effective January 1, 2001. This document reflects a change in the title, from the Unified Justice Code to the Comprehensive Codes of Justice, as well as other content changes that do not affect the court's jurisdiction. The second time, on August 21, 2001, the Code was revised by notice of added sections as reported by Randy Noka.

Ill Will

In particular, the former 2014 TEC Chair and Secretary have perpetuated egregious harm by manifesting ill will throughout the Tribe. Both individuals have acted and encouraged others to insert themselves into tribal affairs far beyond the scope of their standing or demonstrated understanding. For example, their aforementioned affidavits into a federal civil matter that concerns a contract dispute, which the federal District Court had referred to the Tribal Court under the tribal exhaustion doctrine per National Farmers Union Ins. Cos. v. Crow Tribe of Indians, 471 U.S. 845 (1985).

Falsely empowered by Noka and Monroe's actions, the faux 2016 Council has attempted to assert authority, create other legal disputes that drain tribal resources, and divert attention and focus from the issues and challenges that await the Tribe within its election process. Most recently, this Court has been informed that this group misrepresented itself to order checks from the Tribe's bank account and changed the locks to the Administration Building to gain entrance in the building under a false theory of legitimate right.

Tribal Election Issues

The election process, which has been a recurring issue before the Court since 2010, has tested understandings and the application of tribal election law and policy. These include–though not limited to–matters associated with the implementation of a constitutional process and its policy dictates, conflicting interpretations of election rules and procedures, separation of powers issues, and conflict management styles and skills. However, recent challenges have brought tradition protocols and customary practices to the forefront.

Decisive resolution to conduct the next general election for tribal council seats remains a political question. However, the steps to begin that process are set as a matter of law, which still requires a long awaited and fundamental tribal discussion ending with a tribal-wide vote if the process is changed.

In sum, the 2014 Election inherited and created problems. First, it inherited a faulty application of a major, constitution-based process with mandated procedures for amendment. Knowledge about this aspect of the election process initially received limited attention from the Tribe. Next, interpretations of the Tribe's election grievance regulations, and the process used to announce and transition the 2014 candidates-elect into council seats, received challenge because standing election protocols and customary practices were not given recognition. These grievances created disputes, which rose through adjudicatory and assembly challenges about the validity of the 2014 Election.

Earnest conservations began within the tribal community about the election process and its procedures. For a while, some tribal members regularly met to discuss rules of conduct for the assembly and government officials. While in assembly, the Tribe accepted a motion to review the election process, which is currently set as staggered terms.

Throughout this process, issues brought before the Tribal Court received review and determinations. *See* Narragansett Indian Tribal Court, *2014 General Election Notice* (11/06/2014). *See also*, *Analysis and Decision for Governmental Resolve of the 2014 Election* (01/29/2016). In addition, the Tribal Court specifically addressed the TEC's standing obligations under election rules and procedures as well as the special roles of TEC officers. *Temporary Restraining Order without Notice* (6/30/2016) (requesting formal submission of means to prevent further interference with the reserved right of the Tribe to determine how it shall seat Council in the next general election).

The Tribe's issues with the TEC concern the various methods used to conduct election business and itself. Spikes of confrontations regarding committee and personal conduct have included acts of violence and repeated demonstrations of ill-tempered interactions that have disrupted tribal forums and prevented civil dialogue. These hostile tactics have served to commandeer tribal forums in an attempt to impose decisions about issues requiring tribal-wide deliberation. As a result, the Tribe has been unable to dialogue or undertake deliberative analysis about the authentic, designated seating method and its objectives or the implementation problem(s) that the policy behind the Staggered Terms was supposed to resolve.

Tribal law, policy, protocols and customary practices are interconnected and tribal elections depend upon each one of these elements. When one element is changed or not fully implemented it can and does affect others. Over time, gaps created and left uncorrected or revisions not reviewed for consistency have created a hodge-podge that spoils a unified whole.

Politics without policy has resulted in trampling the 2014 and 2016 Plaintiffs' and general tribal community members' right to participate in a sought and mandated, tribal-wide decision-making process. This exclusion has been an ongoing process travelling deeper into the community with each election since 2010. Tribal values

embed within this debacle because discussions about law and policy inevitably put social norms and values on the table. Norms and values affect implementation of law and policy, which generate processes and procedures that become the pathways to achieve policy goals and the steps to apply and enforce laws. *See, 2014 Election Decision Summary: the 2016 Focus* (2/22/2016) (discussing the responsibility of the Interim Council and the Tribe to move election deliberations forward and raising consideration of values, "Values direct choices and choices have consequence").

Conclusion

The Defendants' approach hobbles the Tribe because they seek a measure that is not theirs to take for themselves. A reading of the defendants' arguments presented in broadcasted communications shows a manipulation of the Tribe's political infrastructure without positive regard for its structure and legal foundation, or the reality of maintaining a recognizable site of government. Defendants have attacked the Tribe, without proposing a cogent legal argument or providing a consensual alternative that is free of the impediments about which they complain and further increase.

In tribal assemblies, defendants began by chanting, hollering, monopolizing the floor, and interrupting others when speaking. Thereafter, they sought to legitimize their election to fill council seats, which took place without full governmental sanction or the Tribe's consent. Their election took place in a local bar located off the reservation. It used election rules and procedures that the Tribe had not accepted or validated for use. It created records of a purported legitimate, tribal-wide election with a voter turnout of less than 60 people. The faction led by Defendants has yet to legitimize the power they are have attempted to assert (1) over the standing laws of the

Tribe and (2) the decision-making authority that *the Tribe reserves* to determine how to seat its governing body.

During the negotiations to seat the interim council, members of the 2014 Council-elect rejected opportunities offered to find common ground and by their own actions removed themselves from participating in that body. They chose, instead, to splinter themselves off and then ignite a sensationalist campaign, through broadcasted publications, social media and the press, to demand compliance with their will.

HOLDING

Without a legal foundation, all actions taken by the 2014 TEC and its council members are null and void. The record provides evidence that their actions fall outside of and without merit under tribal law and policy. This evidence now includes their attempt to impeachment the Chief Sachem at an unauthorized gathering in the parking lot of the Four Winds, to embroil the Tribe in federal court action without their purported legal standing, to access tribal funds by misrepresentation to order tribal checks and their trespass on tribal property. The professed 2016 TEC and its elected body have no legal or vested right to autonomously speak for or act on behalf of the Tribe.

Defendants are hereby permanently enjoined from any further action or communications in any form, or use of any governmental resources, to represent themselves, singly or jointly, directly or indirectly, as conducting official or lawful action on behalf of the Narragansett Tribal Government or the Narragansett Tribe.

THE COURT ORDERS that the enjoined persons must not interfere with the protected parties, their right to peacefully assemble or to conduct and maintain the daily operations of the Tribe, by:

1. **Conducting any business, meeting, rally, election or any other gathering on tribal property that concerns election matters or interferes with the conduct of daily tribal business through collective or individual conduct by the enjoined persons with same;**
2. **Communicating or publishing any information or entering into any contract in the name of the Narragansett Tribal Election Committee or the Tribe; OR**
3. **Using names gathered from the official tribal mailing list to broadcast into or spam tribal email or snail mailboxes as a means to circulate privately authored communications, personal opinions or for any other private or unofficial purpose.**
4. **Defendants are hereby permanently enjoined from any further action or communications in any form, or use of any governmental resources, to represent themselves, singly or jointly, directly or indirectly, as conducting official or lawful action on behalf of the Narragansett Tribal Government or the Narragansett Tribe.**

IT IS SO ORDERED.

/s/Judge D. Dowdell

December 22, 2016

Exhibit F

NARRAGANSETT INDIAN TRIBE
TRIBAL COURT

NARRAGANSETT INDIAN TRIBE, *Plaintiff,*	:	
v.	:	CA No. 2017-02
TRIBAL COUNCIL OF THE NARRAGANSETT INDIAN TRIBE, as identified in the Motion to Intervene filed before the Energy Facility Siting Board by Attorney Shannah Kurland *Defendant.*	:	

ORDER

This matter came before the Narragansett Indian Tribal Court on October 24, 2017 through Plaintiff's Petition for a Temporary Restraining Order. After consideration of Plaintiff's Petition, Memorandum of Law, and accompanying Exhibits, the Court determines that Plaintiff has set forth clear and convincing evidence that it will suffer immediate and irreparable injury if an injunction is not granted and that the equities—at this juncture—favor Plaintiff's interests over Defendant's.

Jurisdiction

Title I, Chapter 1 of the NARRAGANSETT INDIAN COMPREHENSIVE CODES OF JUSTICE (the NICCJ) establishes the Court at §101, its civil jurisdiction at §107 and the position of Chief Judge at §102.

Standard of Review for Extraordinary Writs

The NICCJ, at Title IV-4-401 & 402, provides the standard for issuing a TRO without Notice under Extraordinary Writs. Section 401(a) contains three prongs for Court consideration or action.

(a) No temporary restraining order or other injunction without notice shall be granted where the Tribe or a tribal official in his official capacity is a defendant.

(b) [N]o temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by oral testimony, affidavit, or the verified complaint that immediate and irreparable injury will result to the applicant before notice can be served and a hearing had thereon.

(c) Every temporary restraining order granted without notice shall include the date and hour of issuance and shall expire within such time after entry, not to exceed ten (10) days, as provided in the order.

Discussion

Similar complaints about individuals claiming governmental authority been have been formally adjudicated before this Court, which found no evidence that supports any authorized and official Tribal Election taking place since last confronted with this issue in December 2016. Furthermore, Plaintiff presents evidence that the Defendant is, and has been, publicly holding itself out as the "Tribal Council of the Narragansett Indian Tribe" by filing a Motion to Intervene before the Rhode Island Energy Facility Siting Board ("EFSB"), yet the actual sitting Tribal Council never authorized such a filing.

Contrary to the Defendant's elected "Tribal Council" assertion, the presence of previous legal proceedings is relevant as they directly relate to the issue of the unnamed "Tribal Council" members' legal standing to appear before the EFSB in official tribal, intervenor status. Attempts to claim Tribal authority where it does not exist, not only creates confusion amongst Tribal members and the public, these claims seriously disrupt the Tribe's internal and business relations. The Tribal Court, in addition to previously administering tribal law and policy on previous claims, has answered jurisdictional objections, corrected legal misrepresentations or misinterpretations of tribal law and detailed correction of procedural noncompliance. Furthermore, Federal and State proceedings have recognized this Court's jurisdiction over such tribal internal matters. Consequently, neither Defendant nor their attorney may summarily ignore previous legal proceedings to advance appearance before a local administrative body.

Moreover, the Court has also addressed how advancing misleading information to take ad hoc actions in the name or authority of Tribe handicaps the Tribe. It has forewarned that internal or public actions based on legal misrepresentations, which unabashedly ignores adjudicated determinations of tribal law and policy, customary practices and the reserved right(s) of Tribe in an effort to assert political authority, constitutes harm to the Tribe. Consequently, if Defendants were able to proceed with their activities—claiming to be the duly authorized representative body of the Narragansett Indian Tribe—Plaintiff will suffer immediate and irreparable harm because Tribal interests favor examining and upholding tribal law when such claim(s) arise, which supports issuance of a TRO without Notice at this time.

Accordingly, it is hereby:

ORDERED, ADJUDGED AND DECREED that:

1. Defendant, and its named counsel Shannah Kurland, Esq., are temporarily and immediately enjoined from (a) identifying itself and therefore themselves as the "Tribal Council of the Narragansett Indian Tribe" and (b) pursuing a Motion to Intervene before the Rhode Island Energy Facility Siting Board and

2. The Rhode Island Energy Facility Siting Board is hereby advised that the so-called "Tribal Council of the Narragansett Indian Tribe" cited in the filed EFSB Motion is not the lawful representative of the Narragansett Indian Tribe and was not elected by a duly authorized Tribal Election.

Finally, since the Court grants this TRO without Notice, there are additional steps to ensure due process for all affected parties. Every TRO granted without notice must include the date and hour of issuance and expires within such time after entry, not to exceed ten (10) days[1], as provided in the Order.

This TRO begins at 11:00 AM on Wednesday, October 25, 2017 and automatically dissolves on Monday, November 6, 2017 at 11:00 AM unless Plaintiff seeks further relief.

[1] The Tribal Court previously adopted F.R.C.P. Rule 6 for computing and extending Time when dealing with outside attorneys to provide a methodology for computing time with standard cross-jurisdictional application. Under Rule 6(1), this Court excludes the day of the event that triggers the period. It counts every day, including intermediate weekend days and legal holidays (including tribal holidays) and counts the last day of the period; however, if the last day is a weekend day or defined legal holiday, the period continues to run until the next day that is not a Saturday, Sunday, or legal holiday.

If so, then Plaintiff must petition for a preliminary injunction, using the procedure and standards required under the NICCJ, Title IV-4-402, Preliminary Injunctions, within 10 business days, as defined, which shall include two days' notice to Defendant's attorney. The statue directs:

A preliminary injunction restrains activities of a defendant until the case can be determined on the merits. No preliminary injunction shall be issued without notice to the adverse party and an opportunity to be heard. No preliminary injunction shall be issued absent clear and convincing proof by specific evidence that the applicant will suffer irreparable harm during the pendency of the litigation unless a preliminary injunction is issued, that the balance of equities favors the applicant over the party sought to the enjoined. The Court may dissolve or modify a preliminary injunction at any time, as the interests of justice require.

Given past the Determinations and directives, this Court provides notice that it will not entertain any Argument by either Party that fails to include a valid legal basis under tribal law. Document submissions originating from the Parties' attorneys may be submitted electronically to Tribal Court at NarragansettTribalCourt@nitribe.org, which will be certified by received receipt.

Entered as an Order of this Court on October 25, 2017,

Judge D. Barnes

The Guardian

France bans fracking and oil extraction in all of its territories

French parliamentarians have passed a law banning fossil fuel extraction. President Macron says he wants France to lead the world with switch to renewables

Agence France-Presse

Wed 20 Dec 2017 06.27 EST

France's parliament has passed into law a ban on producing oil and gas by 2040, a largely symbolic gesture as the country is 99% dependent on hydrocarbon imports.

In Tuesday's vote by show of hands, only the rightwing Republicans party opposed, while leftwing lawmakers abstained.

No new permits will be granted to extract fossil fuels and no existing licences will be renewed beyond 2040, when all production in mainland France and its overseas territories will stop.

Socialist lawmaker Delphine Batho said she hoped the ban would be "contagious", inspiring bigger producers to follow suit.

France extracts the equivalent of about 815,000 tonnes of oil per year - an amount produced in a few hours by Saudi Arabia.

But centrist president Emmanuel Macron has said he wants France to take the lead as a major world economy switching away from fossil fuels - and the nuclear industry - into renewable sources.

His government plans to stop the sale of diesel and petrol engine cars by 2040 as well.

Above all the ban will affect companies prospecting for oil in the French territory of Guyana in South America, while also banning the extraction of shale gas by any means - its extraction by fracking was banned in 2011.

Topics

- Fossil fuels
- Shale oil
- Oil (Environment)
- Energy
- France
- Oil (Business)

Bianco, Todd (PUC)

From: Sally Mendzela <salgalpal@hotmail.com>
Sent: Wednesday, December 20, 2017 12:12 PM
To: Bianco, Todd (PUC)
Subject: [EXTERNAL] : timely and relevant

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Todd,

I've not selected for my message itself to be underlined, but here it is. Please read and share with the board.

https://www.theguardian.com/environment/2017/dec/20/france-bans-fracking-and-oil-extraction-in-all-of-its-territories?CMP=share_btn_fb

https://350.org/press-release/divest-new-york-victory/

THANKS,
Sally

Sent from Outlook

PANNONE LOPES
DEVEREAUX & O'GARA LLC
counselors at law

William P. Devereaux
401 824-5106
wdevereaux@pldolaw.com

October 25, 2017

VIA HAND DELIVERY

Rhode Island Energy Facility Siting Board
Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Narragansett Indian Tribe

Dear Board Members:

I write regarding issues recently brought to the attention of the duly constituted Narragansett Indian Tribal government through the filing of a "Motion for Intervention of the Tribal Council of the Narragansett Indian Tribe" by attorney Shannah Kurland. Please be advised that this filing was not authorized by the Narragansett Indian Tribe Tribal Council or the Tribe's Chief Sachem, and Attorney Kurland does not represent the properly constituted Tribal Council of the Narragansett Indian Tribe. Since Attorney Kurland elected not to identify her clients by name, it is believed that Attorney Kurland represents a dissident group of Tribal members, or former members, that have challenged the authority of the properly constituted Tribal leadership in the past. In fact, the Tribal Court of the Narragansett Indian Tribe has dealt with these individuals as recently as December 22, 2016, and ordered that they cease from holding themselves out as representing or having authority to represent the Tribe. Despite this strong directive from the Tribal Court, it appears as though these same members have once again taken it upon themselves to falsely represent that they hold lawful representative capacity by filing this Motion to Intervene through Attorney Kurland.

By way of background, a recent decision by Mr. Justice McConnell of the U.S. District Court for the District of Rhode Island entitled ***Narragansett Indian Tribe Tribal Council v. Matthew Thomas, C.A. 16-cv-622-M (D.R.I. Dec. 22, 2016)*** (attached as **Exhibit A)** determined that there was no Federal jurisdiction to consider internal Tribal Court decisions regarding Tribal governance disputes. In particular, Judge McConnell noted the 1st Circuit's decision in ***Narragansett Indian Tribe v. Rhode Island, 449 F. 3d 16, 26 (1st Cir. 2006)***, wherein the Court stated, "We recognize that the Tribe may continue to possess some degree of autonomy 'in matters of local governance', including . . . the regulation of domestic relations." ***Id.*** Noting this decision as precedent, Judge McConnell then stated, "This Court finds elections and related judicial orders the archetypal function of self-governance." ***Id. at 2.*** Consequently, the U.S. District Court for the District of Rhode Island has recognized the autonomy of the Narragansett Tribal Court to render decisions regarding internal tribal government matters.

The Tribal Court's jurisdiction over this matter is also clear from the Tribe's Comprehensive Code of Justice. The Code provides for the establishment and maintenance of a Tribal Judiciary, including a Chief Judge. See Excerpted Portions of Comprehensive Code of Justice, attached as **Exhibit B**. Presently, the Chief Judge of the Tribal Court is Denise Dowdell, a graduate of Catholic University and the University of Wisconsin School of Law. Judge Dowdell has rendered decisions for nearly a decade on a number of Tribal matters, including issues related to Tribal elections, and has analyzed, at length, the jurisdiction of the Tribal Court to adjudicate such disputes.

Of equal importance, the United States District Court for the District of Rhode Island has also recognized, on more than one occasion, the authority of the Tribal Court to make determinations related to internal Tribal disputes. See ***Luckerman v. Narragansett Indian Tribe, C.A. No. 13-185S (D.R.I. Sept. 30, 2016)***, attached as **Exhibit C** (analyzing and ultimately approving the authority of the Tribal Court to determine tribal jurisdiction over breach of contract claim); ***Narragansett Indian Tribe Tribal Council, C.A. No. 16-cv-622-M***, previously cited and attached as **Exhibit A** (concluding that "elections and related judicial orders [are] the archetypal function of self-governance and declining to exercise jurisdiction where "underlying governance dispute culminat[ed] from a tribal judge's order"). Consequently, the decisions and orders of the Tribal Court constitute lawful and effective Tribal government decisions.

With this in mind, the relevant Tribal Court decisions on the issue referred to in the Motion as "internal disputes" has actually been adjudicated by the Tribal Court. The Tribal Court has unequivocally ruled that the dissident group of Tribal members (which the Tribal Court refered to as "the TEC Members") were restrained and enjoined on July 21st, 2016 from:

- Conducting any business, meeting, rally, election, or any other gathering on tribal property that concerns election matters or interferes through collective or individual conduct by the enjoined persons with same.

- Communicating or publishing any information or entering any contract in the name of the Narragansett Tribal Election Committee.

- Any further action or communications in any form, or use of any governmental resources, to represent themselves, singly or jointly, directly or indirectly as conducting official or lawful action on behalf of the Narragansett Tribal Government or the Narragansett Tribe (see ***Narragansett Indian Tribal Court decision and order dated July 21, 2016***, attached as **Exhibit D).**

No appeal was taken from this order and therefore the so-called Tribal election that took place on July 30, 2016 at a local VFW hall in Charlestown (in which it is alleged that 68 ballots were cast out of a Tribe of at least 2400 recognized members) was in direct contravention of the Tribal Court's July 16th decision. On December 22nd, 2016, the Tribal Court entered a **permanent injunction** enjoining those individuals from the same conduct and activities the Court specifically noted in its July 16th, 2016 order. (see ***Narragansett Indian Tribal Court***

decision, dated December 22nd, 2016, attached as **Exhibit E**). Furthermore, the December 22, 2016 opinion states that the "purported 2016 election is null and void for noncompliance with and misrepresentation of tribal law and policy." Lastly, the TEC Members were "permanently enjoined from any further action or communications in any form, or use of any governmental resources, to represent themselves, singly or jointly, directly or indirectly, as conducting official or lawful action on behalf of the Narragansett Tribal Government or the Narragansett Tribe."

The group that filed the Motion to Intervene before the EFSB is simply not the properly constituted Tribal Council, as they purport to be in the filing. Rather, upon information and belief, it is made up of either the same TEC Members that were enjoined by Chief Judge Dowdell, or the members that were purportedly "elected" in the 2016 election which Chief Judge Dowdell determined was null and void. Certainly, the lawful Tribal Council, headed by First Councilman Cassius Spears, did not take any action or vote on authorizing the filing of any such Motion to Intervene, and in fact, specifically oppose such a Motion from being filed.

In order to adequately protect the interests of the properly constituted Tribal leadership and government, a temporary restraining order was obtained from the Tribal Court on October 25, 2017 (attached as **Exhibit F**). This restraining order specifically ordered that:

> "1. Defendant, and its named counsel Shannah Kurland, Esq., are temporarily and immediately enjoined from (a) identiftying itself and therefore themselves as the "Tribal Council of the Narragansett Indian Tribe" and (b) pursing a Motion to Intervene before the Rhode Island Energy Facility Siting Board and
> 2. The Rhode Island Energy Facility Siting Board is hereby advised that the so-called "Tribal Council of the Narragansett Indian Tribe" cited in the filed EFSB Motion is not the lawful representative of the Narragansett Indian Tribe and was not elected by a duly authorized Tribal Election."

This order went into effect at 11:00 AM on October 25th and remains in effect until November 6th, or until further order of the Tribal Court. Based on the above, I ask that you disregard and/or dismiss the motion filed by Attorney Kurland, as she does not represent the duly elected Tribal Council of the Narragansett Indian Tribe, and the Tribal Council of the Narragansett Indian Tribe has not authorized such a filing. To recognize this particular group, in any representative capacity, will in my opinion, thrust the EFSB unnecessarily into issues related to Tribal sovereignty.

While the Tribe, is ordinarily reluctant to discuss internal Tribal government matters, the actions of Attorney Kurland and whatever group she represents, require some clarification regarding the authority of the Narragansett Indian Tribal government to enter into a secondary water supply contract with Clear River Energy, LLC ("CRE"). In this regard, the Narragansett Indian Tribe, at tribal assemblies in 1998, 2005 and 2006, passed resolutions relating to the development of its water infrastructure and sources on the trust lands and other property that it owns in fee simple. Specifically the Narragansett Indian Tribal Historic Preservation Office and

the Land and Water Resources Committee of the Tribe were mandated to work on the development of water sources. As you are aware, the contract with CRE simply provides that the Narragansett Indian Tribe will serve as a *secondary* water source for the project in Burrillville. The signatories to that contract—the Chief Sachem and the Tribal Historic Preservation Officer—are authorized to enter into this contract.

As I am sure you are aware the Tribe is a federally recognized Indian Tribe and therefore a recognized "Indian Tribe" within 54 U.S.C. §300309. The Tribe's constitution and by-laws ("Tribal Constitution") provide that the Chief Executive of the Tribe is the Chief Sachem. Section One of the Tribal Constitution provides that the Chief Sachem is the proper party to sign all documents on behalf of the Tribe, and accordingly, the Chief Sachem has the authority to sign any agreement regarding natural resources on tribal land. Furthermore, the NITHPO has the authority to determine if any such agreement would involve construction that could disturb Indian burial grounds or Indian historical artifacts.

Importantly, the Rhode Island Indian Claims Settlement Act, 25 U.S.C. § 1701 *et seq.* (the "Act"), specifically recognized that the transfer of lands pursuant to the Act included "water and water rights." Pursuant to the Act, the State of Rhode Island was to arrange for the transfer of certain "land and natural resources" which constituted the settlement lands. The Act defines "land and natural resources" as "any real property or natural resources, or any interest in or right involving any real property or natural resource, including but not limited to . . . **water and water rights** . . . ." (emphasis added). Accordingly, it is without a doubt that the Tribe has the authority to exercise rights over water located within Tribal lands.

An important and inherent power of any sovereign is the ability to make and enforce its own laws. United States v. Wheeler, 435 U.S. 313, 324 (1978) (enforcing laws is an exercise of retained tribal sovereignty); Williams v. Lee, 358 US 217, 220 (1959) (a state may not infringe on a tribe's rights to "make their own laws and be ruled by them.") The Indian Tribal Justice Act, 25 U.S.C. §3601(5)(200) indicates that "tribal justice systems are an essential part of tribal governments and serve as important forums for insuring public health and safety and the political integrity of tribal governments." See also Montana v. Gilham, 133 F.3rd 1133, 1140 (9th Cir. 1998) ("development of tribal court systems is a critical component of tribal self-government, one which courts have encouraged"). Indian tribes are free to set up their courts however they feel appropriate, save for the restrictions found in the ICRA. See Stephen L. Pevar, The Rights of Indians and Tribes: The Authoritative ACLU Guide to Indian and Tribal Rights 103 (3rd ed. 2004). Subsequent congressional legislation has also affirmed the position that tribal customs are an important tool for tribal courts. See Indian Tribal Justice Act, 25 U.S.C. §3601-02, 3611-14, 3621, 3631 (2000) ("the congress finds and declares that . . . traditional tribal justice practices are essential to the maintenance of the culture and identity of Indian tribes. . .) Id. §3601(7).

Closely related to self-determination is the doctrine of inherent sovereignty. See Burrell v Armijo, 456 F.3d 1159 (10th Cir. 2006) (the role of comity in Federal Court review of tribal court judgments). Thus, while the federal government can divest tribes of some of their

authority, that which remains is not delegated, it is inherent. United States v. Wheeler 435 U.S. at 322-23. A tribe's right to self-determination does not exist because of a federal policy of self-determination; rather, a tribe's right to self-determination exists because it has always existed. Federal policy, then, can be seen as recognition, not a delegation of this authority.

In summary, the Narragansett Indian Tribe is a sovereign government. It objects to any characterization by the petitioners that they are the "Tribal Council of the Narragansett Indian Tribe" or are representative of any lawful Narragansett Indian Tribal government entity. On behalf of the Tribe, I sincerely hope that the EFSB will recognize the doctrine of tribal sovereignty and the inherent right of Indian Tribes to self-governance and therefore this petition to intervene should either be disregarded or dismissed.

Please contact me with any additional questions or concerns regarding this matter.

Very truly yours,

PANNONE LOPES DEVEREAUX & O'GARA LLC

William P. Devereaux

WPD

cc: Shannah Kurland, Esq. (skurland.esq@gmail.com)
Alan Shoer, Esq. (ashoer@apslaw.com)
Patricia S. Lucarelli, Esq. (patricia.lucarelli@puc.ri.gov)

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

NARRAGANSETT INDIAN TRIBE TRIBAL COUNCIL Plaintiff,	)	
v.	)	C.A. No. 16-cv-622-M
MATTHEW THOMAS, Defendant.	)	

ORDER DENYING REQUESTS FOR
TEMPORARY RESTRAINING ORDERS

The principals of tribal sovereignty and right to self-determination guide this Court.

As a federal district court, this court is a court of limited jurisdiction, and it has a sua sponte duty to ensure the existence of jurisdiction. *United States v. Univ. of Massachusetts, Worcester*, 812 F.3d 35, 44 (1st Cir. 2016). Now, "[t]ribal sovereign immunity 'predates the birth of the Republic.'" *Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth.*, 207 F.3d 21, 29 (1st Cir. 2000) (quoting *Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685, 694 (1st Cir. 1994)). "[This] immunity rests on the status of Indian tribes as autonomous political entities, retaining their original natural rights with regard to self-governance." *Id.* "An Indian tribe's sovereign immunity may be limited by either tribal conduct (i.e., waiver or consent) or congressional enactment (i.e., abrogation)." *Narragansett Indian Tribe v. Rhode Island*, 449 F.3d 16, 25 (1st Cir. 2006).

The Narragansett Indian Tribe cites the Rhode Island Indian Claims Settlement Act as the jurisdictional hook for the instant action. Section 1708(a) of the Rhode Island Indian Claims Settlement Act subjects the settlement lands to the criminal and civil laws of Rhode Island and bestows jurisdiction to the State of Rhode Island. 25 U.S.C. § 1708(a). Section 1711 confers

jurisdiction to the District Court for the District of Rhode Island for constitutional challenges to the Act. Neither of these provisions is relevant to the underlying governance dispute culminating from a tribal judge's order. Furthermore, the First Circuit, in interpreting the jurisdictional scope of the Rhode Island Indian Claims Settlement Act, stated, "We recognize that the Tribe may continue to possess some degree of autonomy 'in matters of local governance,' including . . . the regulation of domestic relations." *Narragansett Indian Tribe*, 449 F.3d at 26. This Court finds elections and related judicial orders the archetypal function of self-governance.

Consequently, the Court lacks jurisdiction and, therefore, DENIES both requests for Temporary Restraining Orders (ECF Nos. 2 and 8). The parties shall show cause why this matter should not be dismissed for lack of subject matter jurisdiction on or before January 13, 2017.

IT IS SO ORDERED.

John J. McConnell, Jr.
United States District Judge
December 22, 2016

Exhibit B

Narragansett Indian Tribal Resolution

No. TA 92-08-2092 Unified Justice Code

WHEREAS: The Narragansett Indian Tribe is a Federally Recognized and Acknowledged Indian Tribe; and

WHEREAS: The Narragansett Indian Tribal Council is the governing body of the Tribe; and

WHEREAS: The Tribal Assembly recognizes and acknowledges the need of protecting the Narragansett Community from unlawful acts, lawlessness and harm, and

WHEREAS: The Tribal Council is sworn to uphold the rights of the Tribal people and community, in the areas of general health, education, welfare, and is also sworn to keep the peace and maintain harmony within the tribe.

NOW THEREFORE BE IT RESOLVED, By the Narragansett Indian Tribal Assembly hereby create, establish and enact the Narragansett Indian Unified Code of Justice Titles I through VII of Title 2, (see attached codes)

BE IT FURTHER RESOLVED, That said Code of Justice is hereby by enacted on a provisional basis, subject to further review, from the pertinent committees and commissions of the Tribe, but shall have the full force and effect of law.

BE IT FURTHER RESOLVED, that these laws in no way shall be construed or meant to be construed to infract upon and/or abrogate the Oral and Traditional Organic Laws of the Narragansett Indian Tribe.

CERTIFICATION

I, the Undersigned hereby certify that the above resolution was officially adopted by the Tribal Assembly and is a true and accurate account of the happenings at the duly called Tribal Monthly meeting of August 29th, 1992

Attest:

Tribal Secretary

Chief-Sachem/First Councilman

TITLE I of TITLE 2

CHAPTER 1. UPGRADE OF OPERATION OF NARRAGANSETT TRIBAL COURT

Sect 101. Upgrade of Operations of Narragansett Tribal Court

This Law hereby upgrades, replaces and supersedes those non-traditional organic Tribal Laws relating to Tribal Court, as a Court of Record.

Sect 102. Composition of the Courts.

There shall be a Tribal Court consisting of a Chief Judge, and several other justices, who shall be appointed by the Tribal Council. In the event the Chief Judge is unable for any reason to preform his duties as a Chief Justice the Tribal Council shall appoint a Special Judge to serve in his or her stead

Sect 103. Records of the Court.

The Court shall keep a record of all proceedings of the Court, showing the title of the case, the names and addresses of the parties, attorneys, lay counselors and witnesses; the substance of the complaint; the dates of all hearings or trials; the name of the judge; the findings of the Court or the verdict of the jury and judgement; the preservation of testimony for perpetual memory by electronic recording, or otherwise; together with any other facts circumstances deemed of importance to the case. A record of all proceedings leading to incarceration will be submitted, when necessary to the Eastern Area Director, to be made part of the records of the Eastern Area Office in keeping with 25 U.S.C. Sec. 200*** Unless specifically excepted by this Code, the records of the Court shall be public.

Sect 104. Rules of Court

The Chief Judge may prescribe written rules of court, consistent with the provisions of this Code, including rules establishing the time and place of court sessions. The rules shall be approved by the Tribal Council before coming effective.

Sect 105. Services to Court by tribal or federal employees.

The Court may request and utilize social service, health, education or other professional services of tribal employees as requested, and or federal employees as authorized by the Secretary of the Interior or his authorized representative.

Sect 106. Criminal jurisdiction of the Court.

The Court shall have jurisdiction over all offenses by an Indian committed within the boundaries of the Narragansett Indian Reservation against the law of the Tribe as established by duly enacted ordnances of the Tribal Council.

Sect 107. Civil jurisdiction of the Court.

The Court shall have jurisdiction over any action where one party to the action shall be an Indian, or a corporation or entity owned in whole or in substantial part by an Indian or the Tribe or a corporation or entity chartered by the Tribe; an:

(a) The cause of action arises under the Constitution or laws of the Tribe; or

(b) An Indian party to the action resides on the Narragansett Reservation.

Sect 108. Jurisdiction over persons outside Reservation.

In a case where it otherwise has jurisdiction, the Court may exercise personal jurisdiction over any person who does not reside on the Narragansett Reservation if such person, personally or through an agent:

(a) Transacts any business on the Reservation, or contracts or agrees anywhere to supply goods or services to persons or corporations on the Reservation; or

(b) Commits an act on the Reservation that causes injury.

Sect 109. Jurisdiction over suits commenced by Tribe.

Notwithstanding any other provision of this Code, the

Tribal Court shall have jurisdiction of all civil actions commenced by the Narragansett Tribe, or by any agency or officer thereof expressly authorized to file suit by the Tribal Council.

Sect 110. Tribe immune from suit.

The Tribe shall be immune form suit. Nothing in the Code shall be construed as consent of the Tribe to be sued.

CHAPTER 2. ESTABLISHMENT AND OPERATION OF COURT OF APPEALS

Section 201. Upgrade of Court of Appeals.

This Law hereby upgrades, supercedes and replaces those non-traditional laws relating to the Tribal Court of Appeals.

Section 202 Jurisdiction of Court of Appeals.

The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court. The Court of Appeals shall review de nova all determinations of the Tribal Court on matters of law, but shall not set aside any factual determination of the Tribal Court if such determinations are supported by substantial evidence.

Section 203 Composition of Court of Appeals.

From time to time as the need arises the Tribal Council shall appoint a Chief Judge and two Associate Judges, none of whom shall be Judges of the Tribal Court. Appointment shall be a two-thirds vote, of those members present at a meeting of the Tribal Council at which a quorum is present. The Council shall set the term of each appointment and the composition of each Judge, which shall not be valid unless affirmed and ratified by the Tribal Assembly.

Section 204 Records of Court of Appeals.

The Court of Appeals shall keep a record of all proceedings of the Court, showing the title of the case, the name and addresses of all parties and attorneys, the briefs, the date of any oral agreement, the names of the Judges who

Exhibit C

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

DOUGLAS J. LUCKERMAN	:	
	:	
v.	:	C.A. No. 13-185S
	:	
NARRAGANSETT INDIAN TRIBE	:	
	:	

MEMORANDUM AND ORDER

Plaintiff Douglas Luckerman is an attorney who previously represented Defendant Narragansett Indian Tribe. In 2013, Plaintiff sued the Tribe in State Court for breach of contract, alleging that the Tribe failed to fully compensate him for his legal services. The Tribe removed the case to this Court and moved to dismiss arguing that (1) it is immune from suit under the doctrine of Tribal Sovereign Immunity; (2) the dispute is within the exclusive jurisdiction of its Tribal Court; and (3) Plaintiff failed to exhaust Tribal Court remedies. (Document No. 8-1 at pp. 2-3). On August 29, 2013, Chief Judge Smith denied the Tribe's Motion to Dismiss. (Document No. 16). He held that the Tribe had expressly waived its sovereign immunity in its 2003 and 2007 agreements with Plaintiff. Id. at p. 5. However, he also concluded that the Tribal Court had "at least a colorable claim" of Tribal jurisdiction over this suit and deferred to it to conduct the jurisdictional analysis "in the first instance" "subject to review by this Court." Id. at pp. 11-13. Accordingly, he exercised his discretion to stay this action pending Tribal exhaustion.[1] Id. at pp. 13-14.

[1] Chief Judge Smith made clear in his decision that "[s]hould the tribal court assert jurisdiction and adjudicate the merits of the case, Plaintiff may return to this Court for review of the jurisdictional issues." (Document No. 16 at p. 14).

Discussion

Plaintiff now moves to vacate the stay. (Document No. 45). He argues that "[i]t has now become clear that the Tribe does not have a properly constituted and functioning tribal court, and that its representations to the contrary were made in bad faith." Id. at p. 1. He asks that this Court vacate the stay and, after appropriate briefing and argument, address the Tribe's contention that Plaintiff's claims are within the exclusive jurisdiction of the Tribal Court. Id. The Tribe objects and points to the activities of the Tribal Court as evidence that it is properly constituted and functioning. (Document No. 49).

While the stay was entered over three years ago, some of the delay in this matter is attributable to the Tribe's unsuccessful interlocutory appeal to the First Circuit Court of Appeals. The Tribe filed its Notice of Appeal on January 17, 2014. (Document No. 24). The Appeal was dismissed for lack of jurisdiction on May 29, 2015. (Document No. 38). On February 28, 2014, Judge Dowdell of the Tribal Court granted, in a five-page Memorandum, the Tribe's request to stay Tribal Court proceedings pending outcome of the appeal. (Document No. 46-8 at pp. 3-7). On June 25, 2015, Judge Dowdell issued a one-page Order granting Plaintiff's Motion to Vacate the stay due to the dismissal of the Tribe's appeal. (Document No. 46-10 at p. 2). She also called for suggested dates from the parties to hold a conference.[2] Id. Ultimately, a briefing schedule was established and, in October of 2015, the parties submitted briefs to Judge Dowdell on the issue of Tribal Court jurisdiction. (Document No. 46 at p. 8). Judge Dowdell acknowledged receipt on October 30, 2015. Id. On December 2, 2015, Plaintiff submitted a supplemental filing to bring a recent Seventh Circuit

[2] On April 4, 2014, Judge Dowdell held an initial conference with counsel to discuss "housekeeping and procedural matters." (Document No. 46 at p. 7).

decision to Judge Dowdell's attention. Id. at p. 9. On January 26, 2016, Plaintiff's counsel wrote to Judge Dowdell on the status of the matter. (Document No. 46-11). The Tribal Court did not respond to the writing and, to date, has not held any further proceedings or issued any rulings on this matter. However, on July 21, 2016, the Tribal Court issued a Preliminary Injunction in an unrelated case and scheduled a court hearing for August 17, 2016. (Document No. 49-6).

In Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians, 471 U.S. 845, 857 n.21 (1985), the Supreme Court enumerated three exceptions to the so-called tribal exhaustion doctrine. It recognized, inter alia, that tribal exhaustion is not required "where exhaustion would be futile because of the lack of an adequate opportunity to challenge the court's jurisdiction." Id.

Plaintiff here contends that it should be excused from exhaustion as futile because the Tribe does not have a properly constituted or functioning Tribal Court.[3] Plaintiff has not presently made a sufficient showing of futility to warrant vacating the stay. As noted by Judge Smith in his 2013 ruling, the Tribal exhaustion doctrine is rooted in principles of tribal autonomy and comity. (Document No. 16 at pp. 7-8). When boiled down, Plaintiff's argument is primarily based on the Tribal Court's several-month delay in ruling on the issue of tribal jurisdiction. However, it has been held that "[d]elay alone is not ordinarily sufficient to show that pursuing tribal remedies is futile." Johnson v. Gila River Indian Cmty., 174 F.3d 1032, 1036 (9th Cir. 1999). See also Basil Cook Enter., Inc. v. St. Regis Mohawk Tribe, 26 F. Supp. 2d 446, (N.D.N.Y. 1998) (rejecting attempt to

[3] Plaintiff relies in part on an Affidavit of the Tribe's Chief Sachem Matthew Thomas dated December 2, 2014. (Document No. 46-15 at p. 5-6). Plaintiff contends that Chief Thomas "advised the appellate arm of the Bureau of Indian Affairs...that the Tribe's court had been 'suspended.'" (Document No. 46 at p. 5). Plaintiff neglects to point out that the indication of suspension was qualified by the statement "except for a singular and unrelated issue" which presumably refers to this pending matter.

divest Tribal Court of jurisdiction as a non-functioning entity in part because the Tribal Court had rendered decisions in two separate matters within the last six months).

While an extreme and inordinate delay in adjudication may ultimately support a futility argument, we are not there yet. The issue of tribal jurisdiction is complex and likely not frequently litigated in a Tribal Court. Further, the Supreme Court in Nat'l Farmers held that the Tribal Court must determine the scope of its jurisdiction in light of federal law and must conduct "a careful examination of tribal sovereignty, the extent to which that sovereignty has been altered, divested, or diminished, as well as a detailed study of relevant statutes, Executive Branch policy as embodied in treaties and elsewhere, and administrative or judicial decisions." 471 U.S. at 855-856. Moreover, Chief Judge Smith cautioned that "[t]he care with which the tribal court conducts its jurisdictional analysis as well as the conclusions reached are, of course, subject to [his] review." (Document No. 16 at p. 13) (emphasis added).[4] Thus, it is not surprising that the Tribal Court took the matter under advisement and has not rushed to judgment on the issue.

Conclusion

For the foregoing reasons, Plaintiff's Motion to Vacate Stay (Document No. 45) is DENIED without prejudice.

SO ORDERED

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
September 30, 2016

[4] When the issue of tribal exhaustion was litigated before Chief Judge Smith in 2013, it does not appear that Plaintiff claimed that the Tribe did not have a properly constituted and functioning Tribal Court or sought discovery on that issue.

Original decision by Chief Justice William Smith in Luckerman v. Narragansett Indian Tribe, C.A. No. 13-185 S

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DOUGLAS J. LUCKERMAN, Plaintiff, v. NARRAGANSETT INDIAN TRIBE, Defendant.	)	C.A. No. 13-185 S

OPINION AND ORDER

WILLIAM E. SMITH, United States District Judge.

Plaintiff Douglas Luckerman, an attorney who formerly represented Defendant Narragansett Indian Tribe ("Tribe"), brought suit against the Tribe in state court for breach of contract, alleging that the Tribe failed to fully compensate him for his services. The Tribe removed the case to federal court and filed the instant motion to dismiss, arguing, among other things, that the case falls within the jurisdiction of its tribal court. (ECF No. 8.) Luckerman filed an opposition to the Tribe's motion (ECF No. 10), as well as his own motion to remand the matter to state court (ECF No. 11). For the reasons set forth below, both motions are DENIED, and the case shall be stayed pending adjudication in the tribal court.

I. Facts

Luckerman, a Massachusetts attorney and non-member of the Tribe, began representing the Tribe in 2002. In March 2003, Luckerman prepared and directed to the Tribe's Chief Sachem Matthew Thomas, a letter memorializing the terms of the engagement ("2003 agreement"). The 2003 agreement provides, in pertinent part: "The Tribe agrees to waive any defense of sovereign immunity solely for claims or actions arising from this Agreement that are brought in state or federal courts." (Ex. to Stipulation 8, ECF No. 4-1.) While the agreement is not signed by any representative of the Tribe, the complaint alleges that the Tribe accepted its terms. A note at the end of document states: **"THIS IS YOUR AGREEMENT. . . . IF YOU DO NOT UNDERSTAND IT OR IF IT DOES NOT CONTAIN ALL THE AGREEMENTS WE DISCUSSED, PLEASE NOTIFY ME."** (Id. at 9.)

In February 2007, Luckerman was again engaged by the Tribe to act as counsel to one of its offices, the Narragansett Indian Tribal Historic Preservation Office ("NITHPO"). Luckerman and NITHPO entered into an agreement setting forth the terms of the engagement ("2007 agreement"). The agreement provides, in pertinent part: "The NITHPO agrees to a limited waiver of Tribal sovereign immunity in Tribal, federal and state courts, solely for claims arising under this Agreement." (Id. at 11.) The 2007 agreement is signed by John Brown, the Narragansett

Indian Tribal Historic Preservation Officer. Like the 2003 agreement, it directs the recipient to notify Luckerman if there is any problem with the terms.[1]

The Tribe made some payments to Luckerman, but those payments allegedly were not sufficient to meet the Tribe's obligations under the 2003 and 2007 agreements. Luckerman claims that the Tribe is currently indebted to him in an amount of over $1.1 million.

II. Discussion

"The question whether an Indian tribe retains the power to compel a non-Indian . . . to submit to the civil jurisdiction of a tribal court is one that must be answered by reference to federal law . . . ." Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth., 207 F.3d 21, 27-28 (1st Cir. 2000) (quoting Nat'l Farmers Union Ins. Cos. v. Crow Tribe, 471 U.S. 845, 852 (1985)). Thus, in the present case, this Court has federal question jurisdiction to determine "(1) the extent of the tribal court's jurisdiction over the plaintiff's claims, and (2) the defendant's assertion that, as an arm of a federally recognized Indian tribe, the impervious shield of tribal

[1] Both the 2003 and 2007 agreements were attached to Luckerman's state court complaint. In any event, the Court may consider matters outside the pleadings in ruling on Defendant's Rule 12(b)(1) argument. See 5B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1350 (3d ed. 2004).

sovereign immunity protected it from suit."[2] Id. at 25. The First Circuit has indicated that the latter issue should be addressed first. See id. at 28.

A. Sovereign Immunity

"Generally speaking, the doctrine of tribal sovereign immunity precludes a suit against an Indian tribe except in instances in which Congress has abrogated that immunity or the tribe has foregone it." Id. at 29. Here, the Tribe argues that the complaint must be dismissed on sovereign immunity grounds pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. Luckerman counters that the Tribe waived its immunity in the 2003 and 2007 agreements.

With regard to the 2003 agreement, the Tribe responds that the document was not signed by any of its representatives. However, the complaint alleges that Luckerman sent the agreement to Chief Thomas and that the Tribe accepted the terms of the agreement through its conduct. Indeed, the Tribe does not dispute the fact that it received the letter and continued to accept Luckerman's legal services. While it is true that "a waiver of sovereign immunity cannot be implied," Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978) (internal citation and quotation marks omitted), the Tribe's conduct here cannot

[2] The Tribe's other arguments for dismissal must be addressed, in the first instance, by the tribal court if it decides to exercise jurisdiction over this case.

fairly be characterized as an implied waiver. By receiving a proposed agreement that unequivocally purported to waive the Tribe's sovereign immunity, and treating that agreement as valid, the Tribe expressly waived its immunity. The cases cited by the Tribe are not to the contrary. See id. at 58-59 (holding that a statute making habeas corpus available to individuals detained by Indian tribes did not constitute a general waiver of sovereign immunity); Bottomly v. Passamaquoddy Tribe, 599 F.2d 1061, 1066 (1st Cir. 1979) ("[T]he Tribe's mere acceptance of benefits conferred upon it by the state cannot be considered a voluntary abandonment of its sovereignty and its attendant immunity from suit."); Federico v. Capital Gaming Int'l, Inc., 888 F. Supp. 354, 356 (D.R.I. 1995) (holding that "a waiver of sovereign immunity cannot be inferred from [an Indian] Nation's engagement in commercial activity" (internal citation and quotation marks omitted) (alteration in original)).

The 2007 agreement, unlike the 2003 agreement, is signed by a representative of NITHPO. The Tribe, however, contends that this organization is "an entity of the Tribe," which lacked the authority to waive the Tribe's sovereign immunity. (Def. Narragansett Indian Tribe's Mem. in Supp. of its Mot. to Dismiss 6, ECF No. 8-1.) However, three federal courts of appeals, including the First Circuit, have reached the opposite conclusion on similar facts. See Ninigret, 207 F.3d at 29-31

(holding that the Narragansett Indian Wetuomuck Housing Authority, which the court characterized as "an arm of the Tribe," acting pursuant to a tribal ordinance, waived sovereign immunity by contract); Confederated Tribes of the Colville Reservation Tribal Court v. White, (In re White), 139 F.3d 1268, 1269, 1271 (9th Cir. 1998) (holding that Colville Tribal Credit, "an agency of the Confederated Tribes of the Colville Reservation," waived sovereign immunity by participating in a Chapter 11 bankruptcy proceeding); Altheimer & Gray v. Sioux Mfg. Corp., 983 F.2d 803, 806, 812 (7th Cir. 1993) (holding that "a wholly-owned tribal corporation and governmental subdivision" waived sovereign immunity in a letter of intent).

Further, the fact that the Tribe, not NITHPO, is named as the sole defendant is immaterial. The Tribe has presented no evidence that NITHPO has any independent legal existence. In fact, to the contrary, the Tribe acknowledges that NITHPO is an office of the Tribe. Indeed, in 2002, the Tribe filed a complaint in this Court, listing as the single plaintiff, "Narragansett Indian Tribe of Rhode Island, by and through the Narragansett Indian Tribe Historic Preservation Office." (Attach. 2 to Pl. Douglas J. Luckerman's Objection to Def. Narragansett Indian Tribe's Mot. to Dismiss 12, ECF No. 10-2.) Because NITHPO lacks an independent legal existence, its sovereign immunity and the Tribe's sovereign immunity are one

and the same. See Ninigret, 207 F.3d at 29 ("[W]e shall not distinguish between the Tribe and the Authority in discussing concepts such as tribal immunity and tribal exhaustion.").

B. Tribal Exhaustion

The Tribe's second argument in support of dismissal is predicated upon the tribal exhaustion doctrine. Under this doctrine, "when a colorable claim of tribal court jurisdiction has been asserted, a federal court may (and ordinarily should) give the tribal court precedence and afford it a full and fair opportunity to determine the extent of its own jurisdiction over a particular claim or set of claims." Id. at 31; see also Rincon Mushroom Corp. v. Mazzetti, 490 F. App'x 11, 13 (9th Cir. 2012) (holding that "[t]ribal jurisdiction need only be 'colorable' or 'plausible'" for exhaustion to apply). Unlike sovereign immunity, "[t]he tribal exhaustion doctrine is not jurisdictional in nature, but, rather, is a product of comity and related considerations." Ninigret, 207 F.3d at 31. Therefore, while the Tribe waived its sovereign immunity in the 2003 and 2007 agreements, this holding has no bearing on the question of whether this Court should defer to the tribal court and require exhaustion. In the present case, the parties disagree on the existence of a colorable claim of tribal court jurisdiction.

As a preliminary matter, "the determination of the existence and extent of tribal court jurisdiction must be made with reference to federal law, not with reference to forum-selection provisions that may be contained within the four corners of an underlying contract." Id. at 33. For this reason, Luckerman's argument that the Tribe waived the exhaustion requirement in the 2003 and 2007 agreements is meritless.

The Supreme Court has made clear that "the sovereignty that the Indian tribes retain is of a unique and limited character. It centers on the land held by the tribe and on tribal members within the reservation." Plains Commerce Bank v. Long Family Land & Cattle Co., 554 U.S. 316, 327 (2008) (internal citation and quotation marks omitted). Moreover, "a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction." Id. at 330 (internal citation and quotation marks omitted). Consistent with these limitations, "tribes do not, as a general matter, possess authority over non-Indians who come within their borders." Id. at 328. The Supreme Court has, however, recognized two exceptions to this principle, which allow tribes to:

> exercise civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands.[3] First, [a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. Second, a tribe may exercise civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

Id. at 329-30 (quoting Montana v. United States, 450 U.S. 544, 565-66 (1981)) (internal quotation marks and citations omitted) (second alteration in original).

Luckerman argues that the first of these so-called "Montana exceptions" does not apply here because his activities pursuant to the contracts were largely conducted off the reservation. However, he concedes that some of these activities occurred on tribal land. Moreover, both the 2003 and 2007 agreements are addressed to tribal officials and were presumably accepted at the Tribe's offices. See F.T.C. v. Payday Fin., LLC, No. CIV 11-3017-RAL, 2013 WL 1309437, at *10 (D.S.D. Mar. 28, 2013) ("The test of the place of a contract is the place where the last act is done by either of the parties which is necessary to complete the contract and give it validity." (internal citation and quotation marks omitted)). In these circumstances,

[3] The Supreme Court has defined "non-Indian fee land" as "land owned in fee simple by non-Indians." Plains Commerce Bank v. Long Family Land & Cattle Co., 554 U.S. 316, 328 (2008).

"treating the nonmember's physical presence as determinative ignores the realities of our modern world that a [non-member], through the internet or phone, can conduct business on the reservation and can affect the Tribe and tribal members without physically entering the reservation." Id. at *11.

Moreover, the First Circuit has suggested, albeit before the Supreme Court's decision in Plains Commerce Bank, that a tribal court may, in some circumstances, have jurisdiction over activities occurring off the reservation. In assessing tribal jurisdiction over an off-reservation dispute, "an inquiring court must make a particularized examination of the facts and circumstances attendant to the dispute in order to determine whether comity suggests a need for exhaustion of tribal remedies as a precursor to federal court adjudication." Ninigret, 207 F.3d at 32 (requiring exhaustion of a claim arising from an agreement for the construction of a housing development "on land purchased by the Tribe but situated outside the reservation"). First, the court must ask whether the claim "impact[s] directly upon tribal affairs." Id. This initial requirement appears satisfied in the present case. See id. ("Courts regularly have held that a contract dispute between a tribe and an entity doing business with it, concerning the disposition of tribal resources, is a tribal affair for purposes of the exhaustion doctrine."). The next step in the analysis is to "measure the

case against the tribal exhaustion doctrine's overarching purposes." Id. These purposes include "supporting tribal self-government," "foster[ing] administrative efficiency," and "provid[ing] other decisionmakers with the benefit of tribal courts' expertise." Id. at 31. Here, the Tribe's act of securing legal representation regarding issues of tribal land and sovereignty constitutes an exercise of the Tribe's governmental functions. Moreover, deferring to the tribal court, which regularly deals with issues of tribal jurisdiction, will foster efficiency and produce a record that will assist other decisionmakers.

In sum, Luckerman reached out to the reservation by entering into a consensual relationship with the Tribe, and, accordingly, the tribal court has at least a colorable claim of jurisdiction over suits arising from that relationship.

In a last ditch effort to avoid the exhaustion requirement, Luckerman points to "a joint memorandum of understanding" executed by the Tribe and the State of Rhode Island in 1978, pursuant to which the Tribe gained control of certain lands. See Narragansett Indian Tribe v. Rhode Island, 449 F.3d 16, 19 (1st Cir. 2006). In exchange, the Tribe agreed that, except for state hunting and fishing regulations, "all laws of the State of Rhode Island shall be in full force and effect on the settlement lands." Id. Congress subsequently passed the Settlement Act,

which stated that "the settlement lands shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island." Id. (quoting 25 U.S.C. § 1708(a)). The First Circuit has held that this provision "largely abrogates the Tribe's sovereign immunity," and that, in light of this abrogation, the state could enforce its criminal laws on settlement lands by executing a search warrant against the Tribe. Id. at 26.

The first problem with Luckerman's argument on this point is that Narragansett was a sovereign immunity case, in which the First Circuit had no occasion to discuss the doctrine of tribal exhaustion. Additionally, the Narragansett court expressly distinguished its prior decision in Maynard v. Narragansett Indian Tribe, 984 F.2d 14 (1st Cir. 1993), which involved "civil suits premised on activities occurring outside the settlement lands." Id. at 29. Because the instant case is civil in nature and involves the tribal exhaustion doctrine, a separate and distinct issue from sovereign immunity as explained above, the implications, if any, of Narragansett are far from clear. Accordingly, an assessment of tribal jurisdiction over this case "will require a careful examination of tribal sovereignty, the extent to which that sovereignty has been altered, divested, or diminished, as well as a detailed study of relevant statutes, Executive Branch policy as embodied in treaties and elsewhere, and administrative or judicial decisions." Nat'l Farmers, 471

U.S. at 855-56 (footnote omitted). This examination "should be conducted in the first instance in the Tribal Court itself." Id. at 856. The care with which the tribal court conducts its jurisdictional analysis as well as the conclusions reached are, of course, subject to review by this Court.

Where, as here, the doctrine of tribal exhaustion applies, whether to dismiss the complaint or merely stay the proceedings pending exhaustion is a decision left to the discretion of the trial court. See Ninigret, 207 F.3d at 35. However, a stay is preferable where dismissal may cause problems under the applicable statute of limitations. See, e.g., Rincon, 490 F. App'x 13-14. Here, some of the allegations in the complaint date back to 2002. Rhode Island has a ten-year statute of limitations for contract actions. See Martin v. Law Offices Howard Lee Schiff, P.C., C.A. No. 11-484S, 2012 WL 7037743, at *1 (D.R.I. Dec. 10, 2012) (citing R.I. Gen. Laws § 9-1-13(a)), report and recommendation adopted, No. CA 11-484 S, 2013 WL 489655 (D.R.I. Feb. 7, 2013). Thus, if Luckerman was forced to re-file, more of his claims would become time-barred with each passing day. For this reason, the Court finds that a stay is appropriate.

III. Conclusion

For the foregoing reasons, Defendant's motion to dismiss is DENIED, and Plaintiff's motion to remand is DENIED as moot. The

case is stayed pending tribal exhaustion. Should the tribal court assert jurisdiction and adjudicate the merits of the case, Plaintiff may return to this Court for review of the jurisdictional issues.

IT IS SO ORDERED.

/s/ William E. Smith
William E. Smith
United States District Judge
Date: August 29, 2013

Exhibit D

	NARRAGANSETT INDIAN TRIBAL COURT **Hearing Address: Longhouse, 4425 South County Trail** **Charlestown, RI** **Telephonic Contact through 401-364-1107**	*FOR COURT /TRIBUNAL USE ONLY*
PLAINTIFFS:	**Dean Stanton et al. and Mary S. Brown**	CALL NUMBER: CASE NUMBER: CA-2016-01
DEFENDANTS:	**Bella Noka (TEC chair), Shaena Soares (vice chair), Darlene E. Monroe (secretary), and Ollie Best, Chali Machado, Harold Northup, and Anthony Soares**	

The above named Plaintiffs have petitioned the Court for a *Preliminary Injunction* against the named Defendants. A court ordered *Preliminary Injunction* requires (1) specific evidence clearly and convincing proves that the applicant(s) will suffer irreparable harm during the pendency of the litigation unless a preliminary injunction is issued and (2) that the balance of equities favors the applicant(s) over the party sought to the enjoined. NICCJ at IV-4-401.

Evidence submitted clearly and convincing proves that Plaintiffs meet their burden of production. The Court grants a *Preliminary Injunction*. It has determined that the current circumstances require immediate court intervention because irreparable harm will be suffered if activities by the self-titled TEC members touching Tribal elections are not enjoined and that applicants asserted Tribal interests greatly outweigh the interests of the parties enjoined.

1. To defendants: Bella Noka, Shaena Soares, Darlene E. Monroe, Ollie Best, Chali Machado, Harold Northup and Anthony Soares

2. A court hearing has been set at the time and place indicated below:

   Time: 11:00 AM Location: LONGHOUSE Date: Wednesday, August 17, 2016

3. NOTICE OF DEFAULT JUDGMENT:

   a. To Defendants: Notice of a preliminary injunction against you and a hearing date has been served through your internally appointed secretary. If you fail to appear at the hearing (whether in person or through a representative) or otherwise to defend the case, the Court may enter a default judgment permanently granting the relief sought in the complaint upon such showing of proof by the plaintiffs as the Court deems appropriate.

   b. To Plaintiffs: You have been notified of the hearing time and place, if you fail to appear at the hearing (whether in person or through a representative) or otherwise to prosecute the case, the Court may dismiss the case for failure to prosecute.

   c. The Court may, for good cause shown, set aside entry of a default judgment or dismissal for failure to prosecute.

PRELIMINARY INJUNCTION

THE COURT FINDS

4. a. The defendants are: Bella Noka, Shaena Soares, Darlene E. Monroe, Ollie Best, Chali Machado, Harold Northup and Anthony Soares

   b. The protected person and entity are: Dean Stanton et al., Mary S. Brown and the Narragansett Indian Tribe

5. THE COURT ORDERS that the enjoined persons must not interfere with the protected parties, or their right to assemble with others, by:

   a. Conducting any business, meeting, rally, election or any other gathering on tribal property that concerns election matters or interferes through collective or individual conduct by the enjoined persons with same;

   b. Communicating or publishing any information or entering into any contract in the name of the Narragansett Indian Tribal Election Committee; OR

   c. Using names gathered from the official tribal mailing list to broadcast into or spam tribal email or snail mailboxes as a means to circulate privately authored communications, personal opinions or for any other private or unofficial purpose.

   d. The 2016 general election for tribal council seats is stayed. This PRELIMINARY INJUNCTION remains in effect until the Hearing or the Court receives verified notice the Tribal Government and Tribe have vetted TEC matters, which in turn may require the Court to dissolve or modify the preliminary injunction, as the interests of justice require.

Violations of this ORDER are subject to penalties.

Date: 7/21/2016 Time: 5:20 PM

Judge D. Pardell

Signature: Tribal Court Judge / Clerk

I. Jurisdiction Statement

At a duly called Tribal Monthly Meeting on August 29, 1992, the Tribe adopted TA 92-082992, which established the UNIFIED JUSTICE CODE that creates the Tribal Court and provides its legal basis under Title 1. This resolution informs that "said Code of Justice is hereby enacted on a provisional basis, subject to further review from the pertinent committees and commissions of the Tribe, but *shall have the full force and effect of law.*" (Emphasis added.)

This resolution also formally identified the Tribe's expectation for its government and sworn duties its council should uphold.

> WHEREAS: The Tribal Assembly recognizes and acknowledges the need of protecting the Narragansett community from unlawful acts, lawlessness and harm, and
>
> WHEREAS: The Tribal Council is sworn to uphold the rights of the Tribal people and community, in the areas of general health, education, welfare, and is also sworn to keep the peace and maintain harmony within the tribe.

Since that time, it is of record that the Tribal Government revised the Code twice through expansion. The first time was December 31, 2000, made effective January 1, 2001. This document reflects a major change in the title, from the UNIFIED JUSTICE CODE to the COMPREHENSIVE CODES OF JUSTICE, as well as other content changes that do affect jurisdiction, and again on August 21, 2001 through notice of added sections.

Tribal Meeting Minutes, previously reviewed for the *2010 Election Decision* released on August 10, 2010, reveal that the Tribe was primed to make a concentrated, fresh start at the beginning of a new century. This fresh start began with the *Tribal Profile of 1998*, which revises the 1989 version, followed by revision of the CODE at the close of 2000, as well as establishment of a revised process to seat Council, via staggered terms under TA-123000-01. The Tribe created the stagger as a means to create stability and continuity within the government; however, it did not apply the stagger process systematically under the terms originally adopted. What results have been obtained bring the Tribe to reconsider its election process today. *See, for example, Tribal Council Memorandum, re Narragansett Indian Tribal Constitution Bylaws* dated November 2, 20002. This document, attached to the *2014 General Election Notice* (November 6, 2014), hereinafter the *2014 Notice*, provides notice and a copy of the Tribe's ratified resolutions between 1997 and 2000, which amend the NIT CONSTITUTION AND BY-LAWS.

Over the years, the court system has received sporadic attention and fewer resources. Between 2002 and 2003, Council brought in a consultant to look at and plan for the court's development. The consultant identified individuals to sit as an advisory board based upon their combined experience and knowledge of the community, federal Indian law, customary practices and traditions. Through consultation and dialogue, the seed of a proposed Tribunal grew, which received positive reception from Council under TC-01-20-05, *Establishment of a Tribunal*, on January 20, 20005 and a seed budget from the Sachem. The Government's resolution states, in part:

> Whereas: The Infrastructure envisioned to establish a formal tribal court system as ratified under the Narragansett Comprehensive Codes of Justice is not in place nor are the necessary resources at hand, and

Whereas: The complaints processed by the tribal police and the internal personal/civil disputes require timely resolution by a systematic adjudicator body.

The Tribunal heard cases from 2005 to 2008. Then active support dried up. A subsequent search for individuals who were willing and able to serve had fruitless result. The Tribe also attempted a search by nominating candidates to sit and had the same result.

Even though the Tribunal was defunct, the Court remained a legally established and separate government-level, adjudicatory body duly, created by the Tribe through customary and constitutional process. In both 2008 and 2010, the Court received complaints from government officials regarding election challenges that included complaint about the election grievance procedures. These procedures, found within the Tribe's *Election Rules and Procedures* (the ERP) rely upon the use and exhaustion of traditional channels and entities for remedy; however, once exhausted and if legal issue remains, the Tribe's statutory law provides the Court with jurisdiction.

The *2010 Election Decision* (August 10, 2010) was the first instance where judicial review concentrated on the Tribe's application of the staggered terms. The *Decision* was critical of the Tribe's implementation of constitutional law, which strayed from using the established procedure to revise or change the election process. Personalities without focused regard for election policy rose to undercut the Court's jurisdiction and Chief Judge around this time. A lesson rising from this approach is tribal law and policies are not self-enforcing.

On June 28, 2014, by Council resolve, the Judge resumed hearing argument about the election matters' legal aspects and applying tribal law and policy to them, politically unfettered by further intrusion of personalities. The CODE at Title 1 provides Council with the authority to appointment a Special Judge in the event that the Chief Judge is unable for any reason to hear a case. Consequently, arguing that the judge's term has expired as a means for removal is irrelevant and immaterial when Council, by resolve, made a specific judicial appointment.

That Defendants reference a vote of no confidence made by the tribal assembly, which also does not affect the legal standing of a duly appointed judge, has no merit; because, a judge's removal requires specific process that includes adherence to an explicit review standard and statutory process. See the NICCJ at Title 1-3-305, which establishes no right or authority in law to displace the Court or remove a judge summarily. That discussion took place in a special or assembly meeting does not change the legal requirements the CODE provides to protect the Court and sitting judges from personalities or personal displeasure that can result from a judge fulfilling the obligations of Office.

II. Summary of Facts and Procedural History

Issues with the election process fully bloomed before the Tribe in 2014. Members of the Tribal Government and Tribe submitted complaints to the Court. On November 6, 2014, the Court provided notice of submitted complaints about the 2014 election in the *2014 Election Notice*. Allegations challenged constitutional and rule interpretations to support decisions made, subsequent actions taken, as well as lines of authority and

responsibility. Plaintiffs also complained about the disregard of protocols and generally known understandings regarding customary practices embedded in tribal law. They further alleged that these omissions placed hurdles around direct input from the Tribe. Specific, reoccurring challenges have concerned the law and policy relied upon by the Tribal Election Committee (the TEC) to conduct the 2014 election. These issues range across the various methods that committee members have used to conduct the Tribe's election business and itself, which plaintiffs submit will bring irreparable harm if allowed to continue unabated and that the balance of equities favors the Tribe.

The *2014 Election Notice* stated, in part,

> The fact that there is deadlock over the legitimacy of the election within the tribal government deserves further examination for its cause. Multiple opinions and explanations arise to validate challenged rules and ad hoc actions, which reveal that the rules still do not uniformly instruct, important issues remain unresolved, and designated responsibilities and accountabilities [are] misconstrued. Bottom line, the processes and procedures used to conduct the 2014 election and seat Council do not meet what the Tribe and candidates required from the start—clarity and the application of standing tribal law.

The Tribe still has not had this information need met. Under Next Steps in the *Notice*, at page 6, the Court further provided:

> Finding a path to resolution has become a contest of political power and personal will. The main issue is not should the election be overturned, should new council members step down, should the election process be corrected now or later or should the TEC oversee deliberations by the Tribe.

Tribal law and policy already provides the answers to these questions by defining rights and responsibilities. Law and policy can further serve to arbitrate.

In December 2014, complaint arose through traditional channels against the TEC Chair for her disrespectful conduct at the December 2014 Special Meeting facilitated by the TEC. At the January end of month meeting, the Chair was involved in another incident that involved violent conduct, which in turn spurred additional violent acts by members of the challenged 2014 council-elect. Without further detailing, the cumulative record provides example that the Tribe's complaints against the conduct of TEC members and their application of law and policy have been under continuing legal challenge—without definitive and final tribal resolve—for some time.

On July 8, 2016, specific request for a Preliminary Injunction came through the Tribal Police, who received complaints on July 7, and 8, 2016 for submission to the court from Dean Stanton et al. and Mary Brown respectively. Since the subject matter and relief sought overlaps in the complaints, the Court consolidated the plaintiffs' petitions.

Prior to seeking injunction, Plaintiffs sought and received a TRO without notice. *See Petition and Grant to place a Temporary Restraining Order without Notice to Restrict the TEC from further interference with the Reserved Right of the Tribe to determine how it shall seat Council in the Next General Election for Tribal Council Seats* (June 30, 2016), hereinafter the TRO. The Court granted the TRO because the presented evidence supported that the TEC was acting beyond its lawful authority by dictating to the Tribe what the election process and council terms shall be when a motion for tribal deliberation about this matter remains on the table. In addition, the presented evidence verified that TEC committee members ignore preparatory election requirements under the ERP. These

requirements relate to the committee's composition and seating as well as ensuring that the ERP reflects the Tribe's determinations regarding the election process and procedural updates or corrections for the 2016 election.

The Court's TRO findings stated, "[T]hese actions constitute imminent harm to the Plaintiffs and Tribe because the TEC undercuts a customary, reserved right. Furthermore, these actions set obstacles between the government and Tribe and interferes with the creation of consensus about how to move the election process forward in an orderly, legitimate and transparent manner." The TRO restrained the Defendants from publishing or pursuing any activities to promote or conduct a general election for tribal council seats on July 30, 2016.

Plaintiffs now seek a preliminary injunction against Defendants and allege that these individuals persist in advancing purported authority to conduct a general election. As evidence of this intent, Plaintiffs submitted copies of additional communications received to demonstrate Defendants continuing activities and statements of intended action(s). Plaintiffs meet their burden of production within the cited time constraints and considerations. The Court, through instruction in the TRO, provided a communication channel for document submission that specified delivery through the Tribal Police.

The Court provides judicial notice that Plaintiffs attended and adhered to legal requirements and that the Defendants continued actions under purported right to conduct a general election and to determine the Tribe's election process, date and number of open seats. Broadcasted communications also continue to assert the right of Defendants to defy a court Order with claim that the Court and Judge lack constitutional underpinning. This claim overlooks the interconnections and structure of

tribal law. In addition, there has been claim federal law demands adherence to Defendants' election plan. *See TRO* at pp. 8-9 (discussing the irrelevancy of citation to 25 CFR 81.8 because the Tribe does not hold secretarial elections and that reliance on CFR Part 81 requires reading the statute's purpose, which is found at 25 CFR 81.2).

While making these various arguments and accepting no contrary response, Defendants attempt the assumption of authority to make and implement tribal-wide, governmental level decisions about tribal law, policy, process and procedures. Under this ill-advised and illegal assertion, they continue to attempt action that the Tribe protests through germane, legal argumentation. The Court has not received any documentation from Defendants that uses the Court communication channel specified and directly responds to legal challenges made by Plaintiffs.

III. Analysis

A. Preliminary Injunctions

A preliminary injunction restrains activities of a defendant until the case can be determined on the merits. Plaintiffs continue to dispute Defendants' claim regarding automatous authority a TEC to predetermine the election process, procedures, date rand ignore standing obligations and rules within the ERP. Plaintiffs seek further restraint on Defendants from any more publication about or action geared towards conducting a general election.

As obliged per notice in the TRO, Plaintiffs submitted formal applications through the Tribal Police for a preliminary injunction within 10 days' time of the TRO

and provided two days' notice to the adverse party of their intent to pursue additional remedy pursuant to the NICCJ, Title IV-4-402. Tribal Police delivered a verified copy of the complaints received within the deadline to Darlene Monroe, acting TEC secretary, at 10:30 AM on Friday July 8, 2016.

Since then, Plaintiffs submit that Defendants have continued to broadcast publications to the tribal community indicating intent to hold an election, seeking the involvement or attention of federal agents, while ignoring their own obligation to obey tribal law and arguing against Plaintiffs' right to seek remedies provided under tribal law. The Court provides judicial notice that it too has been the recipient of various emails from the secretary, who continues broadcast publishing and assertion that the defendants must conduct an election despite ample evidence to the contrary.

B. Standard of Review

> No preliminary injunction shall be issued (1) absent clear and convincing proof by specific evidence that the applicant will suffer irreparable harm during the pendency of the litigation unless a preliminary injunction is issued and (2) that the balance of equities favors the applicant over the party sought to the enjoined.

Defendants' announcement of a general election, its date and the process to be used was not released under the terms of the Constitution at Article I, §I. It is of record that a partial budget was released and that Defendants rely on this fact to promote authority to *conduct* the election. It does not; because, an election committee has specific obligations and preparatory steps that it must complete before conducting an election. Defendants have not met this threshold and the fact remains that they are obligated to provide the legal basis for assuming autonomous authority over the Tribe and Tribal

Government as well as answer the formal complaints and challenges about their actions and conduct.

(1) Under the first element, email communication from the acting secretary—sent before, during and since the TRO—provide evidence that neither the Chair nor other defendants oppose the conduct that shows intent to allow continued frustration and interference with any challenge to holding their election. Assigning ownership of the purported election is purposeful because to date, no legal argument—despite incessant communications—supports the right of any TEC to determine independently:

- What conduct the Tribe should expect and must accept when committee members engage in official business on behalf of the Tribe,
- How and when to fill expired TEC seats,
- When the next election should and shall take place,
- What process the Tribe will use to determine how a council is seated in the next general election, and
- The number of seats opened.

Arguments, sowed within the community, provide no legal or persuasive basis to justify the actions and conduct of the Defendants. Argumentation relies on appeals to emotion, personal attack buttressed by illogical reasoning to shift focus and overlooking change. For example, the flyer appeals to emotion by rallying the Tribe to assert its right to get out and vote. Yet, Defendants ignore that very right by interfering with the Tribe's right to vote on the fundamental issues it has previously raised about the election process and procedures. No broadcasted communication cogently explains

why the Tribe must forfeit this right and begin with the predetermined choices advanced by the Defendants.

Argumentation seeks to inflame and delay dialogue through use of institutional and personal attack. In addition to not addressing Plaintiffs' pointed issues, the content of the broadcasted communications contain randomly introduced, wide-ranging criticisms of others, which does not distract from Defendants failure to fulfill the designated obligations and responsibilities of a TEC. More importantly, acts and actions undertaken obstruct the Tribe from creating a pathway to resolve. By introducing subjects irrelevant to *the Tribe's resolution of the matter at hand,* Defendants use conduct and methods they accuse or infer in others.

A reoccurring argument advances two wrongs make a right. First, this approach entangles then compresses separate issues. Since 2014, the Tribe has indicated repeatedly that it wants to examine *the election process* and indicated dissatisfied with the conduct and decisions of elected, public officials.

One issue involves the application of tribal law regarding election protocols and customary practices. Protocols and enduring customary practices reduce to expected standards of public behavior, which includes the deportment of public officials, which includes committee members, while holding office as well as each individual's responsibility to be responsible for their own conduct in assembly. A major protocol under deportment of public officials is to honor (respect) the reserved right of the Tribe to assemble and discuss its internal matters without threat of violence. Once assembled, whether for social interaction or to conduct business, there is an equal expectation about the behavior of community member participants. It does not serve the collective rights of the Tribe when public behaviors by tribal officials or individuals denigrates. The use

or threat of violence now becomes commonplace, exemplified by hostile acrimonious conduct during assemblies. The use of "fighting words," physical attacks and disregard for rules of law and public deportment is a non-productive way to conduct assembly business or an election. TEC members do not stand outside or above these behaviors.

Another attempted shield is using 'Others' as in other's misuse or abuse of tribal resources and property. Here the public release of business confidential documents through the TEC opens discussion about public officials' adherence to (1) the confidentially of internal, business matters and (2) the protocols and authority needed for release. Moreover, there is gathering and distribution of public, legal documents with interpretations are misleads the community or is outright incorrect.

Reiterating example of the latter, faulty reliance on a federal statute, based upon an incorrect reading of the statute's purpose, to contend that the federal government demands the Tribe follow Defendants leads into a deeper election quagmire. This argument demonstrates shallow reading without attention to context and content or an understanding of the legal concepts and policy found within federal Indian law or vetted research findings, which validate the superior results obtained when a tribe resolves political, internal tribal matters through judicious use of its own law, policy and customary practices. Ensuring that the interconnections between these sources ring true for the future well-being of Tribe is no easy task; yet, this task belongs to the contemporary Tribe. While it has historically designated and distributed authority and responsibility to handle the roles and tasks of running the government, the Tribe has not released the right to assemble peaceably or determine how to seat its government.

The Tribal Government and Tribe stand at a crossroads. Today's focus does not omit how we got here nor dismiss missteps that may yet need correction or procedural

resolve. Nonetheless, the intent remains to produce consistency and stability within the tribal government by setting a consensual course for fair and efficient resolution of election issues. Considering the number of people involved and the tribal-wide impact, there is a need for prioritization, methodical analysis and deliberation to resolve outstanding issues.

The Defendants' actions do not contribute to resolution because they act without legal standing, authority and tribal consent. Yet, broadcasted publications skip over these facts, which ignore the standing law, policy and issues on the election discussion table. Plaintiffs accurately distinguish that Defendants' conduct and actions do not represent the letter or spirit of Narragansett tribal law. By its response and repeated requests following customary practices, the Tribe has made it plain that it wishes to have a forum dedicated to discussion and resolve of named election issues. Defendants do not contribute to resolve. By not correcting internal abuse of resources and position or renouncing this conduct, the individual defendants associate themselves as whole with these behaviors and demonstrate an inability to correct themselves.

The ERP, under Obligations at Article II§1(B)(5) states "In the event a member of the TEC becomes rude, vulgar, combative and/or is the cause of unavoidable conflict, he or she can be removed by a 2/3 vote of the committee." This obligation to control itself is not limited to the day of an election. The list covers general duties like TEC meeting attendance and adherence to privileged business confidentially.

For example, there is nothing in the ERP that specifically designates the TEC shall facilitate special meetings for ERP review. This is a task that the Tribe has either requested or allowed over the last few elections. Consequently, proper deportment of the committee and its members under §1(B)(5) broadens in fulfillment of expanded

tasks. Yet, neither the chairs nor individuals provide example that demonstrates fidelity to written law and rules, customary practices or protocol. The internal secretary uses the official mailing list as a personal soapbox to spam email mailboxes with incessant and derogatory tirades that lack cogent legal argumentation and analysis. Defendant committee members are well aware that the Chair's past conduct has been combative as well as harmful to tribal members and yet the members, as a committee, have ignored its affirmative obligation to disapprove this type of conduct and done nothing. In addition, public announcement for a purported election rally was made on the same date reserved for a special meeting. This knowingly set the stage for unavoidable conflict between tribal members and the Defendants and their election candidates who walk, whether naïvely or defiantly, into a cycle of conflict and lawlessness perpetuated by defendants.

(2) Since the 2014 election, tribal members have sought to convene a forum that would allow deliberation about outstanding issues within their election process. Out of the entities and opinions that previously sought to command, persuade against, redirect or otherwise subvert the right of the Tribe to reject the methods used to conduct the election and its grievance procedures, and consequent invalidated results, only one—the Defendants acting as a self-titled TEC—remains discernably obstructionist.

First, evidence shows that Defendants have used tribal resources and public office as a personal platform to effect outcomes that show no redeeming benefit for the Tribe. They also allow one person to seek and then broadcast non-sequential, old news, dated issues and irrelevant facts and argumentation without sanctioned purpose or legal standing. No authority and individual right allows a TEC or any of its members the freedom to take precedence over other community members—and by implication

tribal-wide reserved—rights or that the official mailing list may be used to bombard promotion of personal opinion. This conduct also presumes that a purported individual right asserted by any one tribal member supersedes the right of other community members to entertain and participate in dialogue about tribal-wide issues. There is misassumption of a personal right to override other community member's voices, and opportunity to listen to other points of view, as a means to prevent building any consensus that does not follow the direction and steps charted by Defendants about election issues.

Second, recent communications take aim to foreclose the tribal community's access to the Court by misrepresenting its legal foundation and jurisdiction in a multi-pronged attempt to dismantle the governmental infrastructure that (1) the Tribe has established under constitutional process and (2) the government rises to protect. These communications express raw personal desire through insistence on continuing acts that demonstrate intent to waylay and prevent others, who do not embrace this methodology or intent, from seeking relief in the Tribal Court. Council's resolve removed all political question of the Court's jurisdiction over the election. Reviving or manipulating past politics, which are off the table, in an attempt to obstruct the Tribe's right to use an institution it has created, offers no defense, rationale or mitigating circumstance when this stance unabashedly seeks to perpetuate unresolvable conflict. This begs the question: if one stands apart from the Tribe and disregards its well-being and future, what is the purpose and underlying intent?

Third, the broadcasted communications attempt to obstruct customary pathways and publically embarrass the Tribe by shinning a strobe light on known past, narrowly focused and poor decision-making. In the meantime, Defendants' conduct continues to obstruct tribal resolve, extends to misrepresentation or release of internal

matters-at-will to federal agencies, and enticing tribal members to partake in activities that offer no individual honor or merit or benefit to the tribal community; because, these actions prolong confusion, waste and ill will within the Tribe.

IV. Findings and Procedural Next Steps

Many of the arguments presented to the community in personal communications using the official mailing lists relies on justifying the Defendants' conduct challenges and illegal action by pointing to or inferring that others are guilty of other wrongs. This is Red Herring reasoning, which does not constitute a cogent argument. The reasoning is not persuasive because it attempts to shift the Defendants' burden to answer for their own actions by creation of a slippery slope that assumes there is always some another wrong to point to and that it can be used as defense. If this were true, anything could be justified. Not only is this assertion legally unsustainable, the communications broadcasted contain non-sequential fact development linked to argument that is immaterial and contradictory. It does not account for the decisions and the long the steps that Defendants make. Argumentation self-centers on political and social degradation of the Tribe through a piecemeal attempt to dismantle governmental structures and entities the Tribe has legally established that other tribal members, if not defendants, wish to maintain and correct, if necessary, but not destroy.

Under tribal law, the Court is duty-bound to respond to Plaintiffs' plea for Extraordinary Writ. Addressing this matter under the standing law, policy, procedures and traditional practices demonstrates a key attribute of sovereignty and self-determination, the right to create tribal law and subsequent obligation to live by it.

Moreover, allowing the Tribe to deliberate about these matters in turn without further committee or ancillary interference, creates pathways to understanding and knowing (a) as much as possible about the election process's legal impediments, (b) the implications of options for corrective change and (c) any foreseeable consequences. All of which will go a long way in avoiding similar debacle in the future.

To that end, the approach and resolve asserted by Defendants does not lead the Tribe to consensual or peaceful resolution. Defendants' resolve promotes more conflict because they self-select the same election process, procedures and conduct that have been under widening and active legal challenge since 2014. Their approach uses aggressive behaviors, which have transgressed into physical violence, the use of intimidation and hogging the floor with singular focus to push for right-of-way or crude confrontations. These methods prevent focused deliberation when the Tribe has been in assembly and filled the tribal community's email and snail mailboxes with innuendo, incorrect or misleading information and reasoning. These acts and methods are unconscionable behaviors.

Holding: The Court finds the evidence presented shows clear and convincing proof that the applicants will suffer irreparable harm during the pendency of the litigation. Defendants, as a group or as individuals, have used and continue to use aggressive or violent conduct that serves no redeeming or sanctioned purpose and undercuts basic and customary reserved rights of the Plaintiffs. The balance of equities favors Plaintiffs over the individuals enjoined because the Defendants' communications and actions derail forthright and legal deliberation about tribal-wide issues and fails to provide sincere, constructive contribution towards resolution of election issues.

The Court stays the general Election until the Tribe has examined and determined the election process, set a date and resolved any other outstanding election issues, including those associated with the TEC. Actions taken by Defendants are not, cannot and will not be legal until the committee sits properly under tribal law, process and approval. The Court prohibits Defendants from any further action in election business. This prohibition includes:

> Conducting any business, meeting, rally, election or any other gathering on tribal property that concerns election matters or interferes via collective or individual conduct by the enjoined persons with same;
>
> Communicating or publishing any information or entering into any contract in the name of the Narragansett Indian Tribal Election Committee; OR
>
> Using names gathered from the official tribal mailing list to broadcast into or spam tribal email or snail mailboxes as a means to circulate privately authored communications, personal opinions or for any other private or unofficial purpose.

All actions taken or attempted by Defendants are void.

Process Due: At noted on the Summons, the Court sets a hearing date for 11:00 AM on Wednesday, August 17, 2016 at the Longhouse. Should any intervening events take place before this date, where the government and Tribe are able to meet and begin addressing next steps and election matters directly, without further obstructionist behaviors or conduct, then the Court will dissolve or modify this preliminary injunction, as the interests of justice require.

If not, then at the hearing, the Court will ascertain

1. Whether defendants have any defenses to claim or wish to present any counterclaim against the plaintiffs or cross-claim against any other party or person concerning the same occurrences in the complaints *that the Court has not already set aside as irrelevant or immaterial;*

2. Whether any party wishes to present evidence to the Court concerning the facts of the challenged TEC's actions, publications and assertions;

3. Whether the interests of justice require any party to answer written interrogatories, make or answer requests for admissions, produce any documents or other evidence, or otherwise engage in pre-trial discovery considered proper by the Judge;

4. Whether some or all of the issues in dispute can be settled without a formal adjudication.

IT IS SO ORDERED.

Judge D. Davidle

July 21, 2016

Exhibit E

TEC Permanent Injunction: Memorandum and Decision

Proceedings Below

For nearly a year, Defendants in this matter have, among other actions, represented themselves as constituting the Tribal Election Committee, when they are not the Tribal Election Committee. On June 30, 2016, the Tribal Court granted a *Temporary Restraining Order without Notice* that restricted the named Defendants from "any further action or communications in any form or use of any governmental resources to represent official action on behalf of the Tribal Government or Tribe." Thereafter, Plaintiffs petitioned for a preliminary injunction, using the procedure and standards required under the NARRAGANSETT INDIAN COMPREHENSIVE CODES OF JUSTICE [the NICCJ, Title IV-4-402, Preliminary Injunctions, and within the mandated time frame submitted their petition, which included two days' notice to Defendants.

Particularly confusing has been Defendants refusal to accept that they do have a right in the Tribal Court to independently resolve foundational election challenges and determine critical points of information and law.

At the hearing held on August 17, 2016, Defendant Darlene Monroe plead a right to silence under the 5th Amendment and repeatedly protested continuance of the hearing until she was allowed representation by counsel under the INDIAN CIVIL RIGHTS

ACT [ICRA]. This posturing impaired presentation of plaintiffs' case and resolution of important issues besieging the Tribe.

Notice of Service

Ms. Monroe also complained that the Court had not accepted a document submitted via registered mail. Ms. Monroe was reminded that the T*emporary Restraining Order without Notice* contained specific instruction for document submission to the Court. Ms. Monroe denied receipt of that order. Because the responding Officer was not present at the hearing, service of the order required verification before continuance. The Court adjourned the hearing. Thereafter Tribal Police records were obtained, which documented that, on July 1, 2016, Tribal Police Chief Monroe provided personal service of the TRO to Darlene Monroe, individually and as secretary for the election committee. In addition, Officer Hazard submitted a Report detailing service of the Preliminary Injunction to Bella Noka in the parking of the Four Winds on July 23, 2016.

Verification of personal service by the Tribal Police closes further dispute of notice of the Court's order and the method stated for submitting filings to the Tribal Court.

Right to Counsel in a civil matter under the Indian Civil Rights Act

The Court denies Defendants' demand for personal representation by counsel before the Court as a condition of moving this proceeding forward. ICRA does not provide a right to halt or prolong court proceedings in a civil proceeding so a party may obtain representation by legal counsel before a court. Ms. Monroe has had many

opportunities to seek advice concerning previous submissions and communications broadcasted throughout the Tribe. Ms. Monroe has never informed the Court that she has engaged counsel to represent her in this matter.

DISCUSSION

Prima facie case established for a Permanent Injunction

Plaintiffs have established success on the merits and presented a prima facie case for a Permanent Injunction. The enjoined Defendants were given a final opportunity, detailed in the Court's *Show Cause Order* delivered by personal service to Darlene Monroe, the acting TEC Secretary, to submit with 15 days any relevant documentation or additional matters showing cause why a final injunction should not be issued.

Defendants failed to submit any additional documentation or respond to the original questions posed regarding the legal authority of the 2014 Tribal Election Committee to hold an election in 2016. Consequently, Defendants have failed to demonstrate any legal basis under tribal law that provides any authority to conduct a general election in 2016 or displace the Tribe's right to determine the election process, the voting date and number of open seats in the next Tribal Council election.

There is no genuine, factual issue in dispute. The self-proclaimed election committee does not have an autonomous right or responsibility to determine how the Tribe shall seat an executive board. Despite multitudinous protestations and means, Defendants have yet to provide an argument that demonstrates or persuades otherwise. It is of record that they have employed disruptive behaviors during tribal assemblies

and gatherings, used undisclosed means to decide voter and candidate eligibility, made appointments, and held an independent election to seat a faux executive board. Then thereafter, they began a campaign to claim legitimacy by dubious citations to inapplicable tribal and federal law that were sent to federal agents. At the same time, they created derogatory and nuisance stories to besmear the Tribe in the press.

The purported 2016 election is null and void for noncompliance with and misrepresentation of tribal law and policy.

Non-compliance with Tribal Law

In a Letter to Bruce Maytubby, BIA-Eastern Regional Director dated August 17, 2016, the election committee claimed legal compliance based upon "TEC rules and regulation with 25 CFR USC 81.8, Constitution and By-Laws staggered terms, 1965 Voting Rights Act and in conjunction with the Rhode Island State Board of Canvassers."

On its face, this declaration is specious. The failure to adhere to tribal law and the continuation of an unauthorized election deepens the harm to Tribe because the committee's faulty legal reliance provides no basis for recognition of the body it seated. This body now purports to act as a legitimate council and attempts to conduct business on behalf of the Tribe. The individuals who participated in that unauthorized election and now claim executive authority over the Tribe are Domingo Talldog Monroe, Adam Jennings, Tammy Monroe, Chandra Machado, Jazmin Jones, Randy Noka, Wanda Hopkins, and Chastity Machado.

Misstatement / Misrepresentation of Tribal Law and Policy

The legal basis of the election committee's certification to the BIA demonstrates why assertions of "duly elected" by the members of election committee and faux council carry no weight under tribal law. It also explains why these individuals do not receive the acceptance and recognition from the Tribe that they seek.

First, the election committee conducted its 2016 election under the federal standard set for secretarial elections. A *Tribal Court Community Briefing and Notice* titled "No Assembly Meeting October 1, 2016" informed that the Narragansett do not conduct Secretarial elections and that the committee was in error. Tribal law governs and determines Narragansett elections. The TEC's reliance on "25 USC 81.8" does not determine anything about the NARRAGANSETT INDIAN CONSTITUTION AND BY-LAWS or its amendments. This citation to the UNITED STATES CODE refers to 25 C.F.R. Part 81, which relates to tribes that hold secretarial elections. This statute does not provide a federal foundation that supports the asserted authority of the election committee. Moreover, the TEC's reliance on the U.S CONSTITUTION is misplaced and demonstrates a lack of understanding about the political standing of Tribes, which are pre-constitutional as well as extra-constitutional and a lack of knowledge of tribal election law. Citation to the 15th Amendment[1], Bill of Rights (first and fifth amendments) are immaterial and irrelevant assertions to rationalize the decisions made or the actions undertaken

[1] This Amendment states that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude." Narragansett tribal elections are for tribal members. Even so, out of the multitude of complaints regarding the 2014 or the 2016 election process, no petition raises complaint that race, color or previous condition of servitude factored into denying or abridging a tribal member's right to vote. Nor are these elements found within the INDIAN CIVIL RIGHTS ACT.

regarding the established and customary procedures that the TEC is expected to use when conducting an election.

In protest, Darlene Monroe has broadcasted publications that claim violations of the Narragansett Indian Constitution, due process, equal protection under the law, civil rights and liberties, defamation of character, right to vote, discrimination and infringement of tribal rights. Their actions with those of their council constitute a splinter group acting outside of tribal law and without recognition that their actions interfere with the rights and privileges of the Tribe; for example, the reserved right of the Tribe to determine how it wishes to seat its next council. The Tribe has not had the opportunity to finish the voting process to fill vacant TEC seats, determine whether or how to maintain the stagger, or receive sufficient information to understand why the process did provide the intended results. By defendants' actions, the basic right to participate in and have a voice in the election process has been denied to the tribal community. Moreover, abridgement of tribal assemblies' civil liberties has taken place repeatedly because defendants' disruptive tactics have not allowed orderly meetings or the opportunity to speak and participate without interruption, harassment or threat of harm. Defendants' conduct has curtailed the ability of the Assembly to work out problems through traditional consensus and to conduct tribal business.

Establishment of Tribal Codified Law and the Tribal Court

Jurisdiction of the Tribal Court

On June 28, 2014, the Tribal Council provided notice to the Court that it had given jurisdiction over issues arising from the 2014 Council Election to the Tribal Court and the Tribal Court accepted. Nonetheless, the Defendants have dismissed the Court's

application of tribal law and policy through innuendo, rhetoric and reliance on political maneuvers devoid of standing law.

To date, neither the 2014 TEC and its officers or the members of their 2016 executive board have provided any legal or policy arguments that support their actions. There is repeated reference and reliance on a vote of no confidence made by the tribal assembly about the Tribal Court in 2010, which coincides with the Court's criticism of the staggered terms implementation and its oversight. This political statement, by an assembly gathering, does not affect the legal standing of a duly appointed judge because a judge's removal has due process requirements, which include adherence to explicit procedures and standard of review under the NICCJ. There is no right or authority in law or policy to remove the Court or a judge summarily. That discussions took place in special or assembly meetings does not change legal requirements that the CODE provides to protect the Court and sitting judges from political displeasure that might result from a judge fulfilling the obligations of the Office.

The Law and Order Code

Bella Noka and Darlene Monroe have presented argument that citation to the 2000 promulgation of the NICCJ defeats the Court's jurisdiction. In affidavits before the federal court, they have stated that

> The constitution of the Tribe makes no provision for a tribal court and it has never been amended to create such a court. ... Any action the Council may have taken to adopt [the NICCJ] was unauthorized and ineffective. Only the assembled members of the Tribe could have enacted such a sweeping legislative initiative, one that purported for the first time to establish a tribal court, enact a comprehensive set of criminal offenses, procedures, and penalties, and establish rules for civil procedure, among other things.

> In short, the tribal court could only have been created by the tribal constitution, an amendment to that constitution, or the vote of the tribal assembly. Since none of those steps was taken here, the Narragansett tribal court was never property constituted.

Noka and Monroe's protestations undercut their own self-assertions of familiarity with the Tribe and interpretations of tribal and federal law. Citation to a legal statute requires reference to the most recent enactment. The establishment of a tribal court does not require constitutional enactment. Historically, many tribes adopted constitutions that use the unique style of constitutional writing and characteristics of IRA-styled constitutions from the 1930s.

Moreover, their statement omits the legislative history of the Code. The Court has provided the legislative history of the Code and now reiterates that a duly called Tribal Monthly Meeting on August 29, 1992, the Tribe adopted TA 92-082992, which established the UNIFIED JUSTICE CODE that creates the Tribal Court and provides its legal basis under Title 1. This resolution informs that "said Code of Justice is hereby enacted on a provisional basis, subject to further review from the pertinent committees and commissions of the Tribe, but shall have the full force and effect of law."

This resolution also formally identified the Tribe's expectation for its government and sworn duties its council should uphold.

> WHEREAS: The Tribal Assembly recognizes and acknowledges the need of protecting the Narragansett community from unlawful acts, lawlessness and harm, and
>
> WHEREAS: The Tribal Council is sworn to uphold the rights of the Tribal people and community, in the areas of general health, education, welfare, and is also sworn to keep the peace and maintain harmony within the tribe.

Since that time, it is of record that the Tribal Government revised the Code twice through expansion. The first time was December 31, 2000, made effective January 1, 2001. This document reflects a change in the title, from the Unified Justice Code to the Comprehensive Codes of Justice, as well as other content changes that do not affect the court's jurisdiction. The second time, on August 21, 2001, the Code was revised by notice of added sections as reported by Randy Noka.

Ill Will

In particular, the former 2014 TEC Chair and Secretary have perpetuated egregious harm by manifesting ill will throughout the Tribe. Both individuals have acted and encouraged others to insert themselves into tribal affairs far beyond the scope of their standing or demonstrated understanding. For example, their aforementioned affidavits into a federal civil matter that concerns a contract dispute, which the federal District Court had referred to the Tribal Court under the tribal exhaustion doctrine per National Farmers Union Ins. Cos. v. Crow Tribe of Indians, 471 U.S. 845 (1985).

Falsely empowered by Noka and Monroe's actions, the faux 2016 Council has attempted to assert authority, create other legal disputes that drain tribal resources, and divert attention and focus from the issues and challenges that await the Tribe within its election process. Most recently, this Court has been informed that this group misrepresented itself to order checks from the Tribe's bank account and changed the locks to the Administration Building to gain entrance in the building under a false theory of legitimate right.

Tribal Election Issues

The election process, which has been a recurring issue before the Court since 2010, has tested understandings and the application of tribal election law and policy. These include–though not limited to–matters associated with the implementation of a constitutional process and its policy dictates, conflicting interpretations of election rules and procedures, separation of powers issues, and conflict management styles and skills. However, recent challenges have brought tradition protocols and customary practices to the forefront.

Decisive resolution to conduct the next general election for tribal council seats remains a political question. However, the steps to begin that process are set as a matter of law, which still requires a long awaited and fundamental tribal discussion ending with a tribal-wide vote if the process is changed.

In sum, the 2014 Election inherited and created problems. First, it inherited a faulty application of a major, constitution-based process with mandated procedures for amendment. Knowledge about this aspect of the election process initially received limited attention from the Tribe. Next, interpretations of the Tribe's election grievance regulations, and the process used to announce and transition the 2014 candidates-elect into council seats, received challenge because standing election protocols and customary practices were not given recognition. These grievances created disputes, which rose through adjudicatory and assembly challenges about the validity of the 2014 Election.

Earnest conservations began within the tribal community about the election process and its procedures. For a while, some tribal members regularly met to discuss rules of conduct for the assembly and government officials. While in assembly, the Tribe accepted a motion to review the election process, which is currently set as staggered terms.

Throughout this process, issues brought before the Tribal Court received review and determinations. *See* Narragansett Indian Tribal Court, *2014 General Election Notice* (11/06/2014). *See also*, *Analysis and Decision for Governmental Resolve of the 2014 Election* (01/29/2016). In addition, the Tribal Court specifically addressed the TEC's standing obligations under election rules and procedures as well as the special roles of TEC officers. *Temporary Restraining Order without Notice* (6/30/2016) (requesting formal submission of means to prevent further interference with the reserved right of the Tribe to determine how it shall seat Council in the next general election).

The Tribe's issues with the TEC concern the various methods used to conduct election business and itself. Spikes of confrontations regarding committee and personal conduct have included acts of violence and repeated demonstrations of ill-tempered interactions that have disrupted tribal forums and prevented civil dialogue. These hostile tactics have served to commandeer tribal forums in an attempt to impose decisions about issues requiring tribal-wide deliberation. As a result, the Tribe has been unable to dialogue or undertake deliberative analysis about the authentic, designated seating method and its objectives or the implementation problem(s) that the policy behind the Staggered Terms was supposed to resolve.

Tribal law, policy, protocols and customary practices are interconnected and tribal elections depend upon each one of these elements. When one element is changed or not fully implemented it can and does affect others. Over time, gaps created and left uncorrected or revisions not reviewed for consistency have created a hodge-podge that spoils a unified whole.

Politics without policy has resulted in trampling the 2014 and 2016 Plaintiffs' and general tribal community members' right to participate in a sought and mandated, tribal-wide decision-making process. This exclusion has been an ongoing process travelling deeper into the community with each election since 2010. Tribal values

embed within this debacle because discussions about law and policy inevitably put social norms and values on the table. Norms and values affect implementation of law and policy, which generate processes and procedures that become the pathways to achieve policy goals and the steps to apply and enforce laws. *See, 2014 Election Decision Summary: the 2016 Focus* (2/22/2016) (discussing the responsibility of the Interim Council and the Tribe to move election deliberations forward and raising consideration of values, "Values direct choices and choices have consequence").

Conclusion

The Defendants' approach hobbles the Tribe because they seek a measure that is not theirs to take for themselves. A reading of the defendants' arguments presented in broadcasted communications shows a manipulation of the Tribe's political infrastructure without positive regard for its structure and legal foundation, or the reality of maintaining a recognizable site of government. Defendants have attacked the Tribe, without proposing a cogent legal argument or providing a consensual alternative that is free of the impediments about which they complain and further increase.

In tribal assemblies, defendants began by chanting, hollering, monopolizing the floor, and interrupting others when speaking. Thereafter, they sought to legitimize their election to fill council seats, which took place without full governmental sanction or the Tribe's consent. Their election took place in a local bar located off the reservation. It used election rules and procedures that the Tribe had not accepted or validated for use. It created records of a purported legitimate, tribal-wide election with a voter turnout of less than 60 people. The faction led by Defendants has yet to legitimize the power they are have attempted to assert (1) over the standing laws of the

Tribe and (2) the decision-making authority that *the Tribe reserves* to determine how to seat its governing body.

During the negotiations to seat the interim council, members of the 2014 Council-elect rejected opportunities offered to find common ground and by their own actions removed themselves from participating in that body. They chose, instead, to splinter themselves off and then ignite a sensationalist campaign, through broadcasted publications, social media and the press, to demand compliance with their will.

HOLDING

Without a legal foundation, all actions taken by the 2014 TEC and its council members are null and void. The record provides evidence that their actions fall outside of and without merit under tribal law and policy. This evidence now includes their attempt to impeachment the Chief Sachem at an unauthorized gathering in the parking lot of the Four Winds, to embroil the Tribe in federal court action without their purported legal standing, to access tribal funds by misrepresentation to order tribal checks and their trespass on tribal property. The professed 2016 TEC and its elected body have no legal or vested right to autonomously speak for or act on behalf of the Tribe.

Defendants are hereby permanently enjoined from any further action or communications in any form, or use of any governmental resources, to represent themselves, singly or jointly, directly or indirectly, as conducting official or lawful action on behalf of the Narragansett Tribal Government or the Narragansett Tribe.

THE COURT ORDERS that the enjoined persons must not interfere with the protected parties, their right to peacefully assemble or to conduct and maintain the daily operations of the Tribe, by:

1. **Conducting any business, meeting, rally, election or any other gathering on tribal property that concerns election matters or interferes with the conduct of daily tribal business through collective or individual conduct by the enjoined persons with same;**
2. **Communicating or publishing any information or entering into any contract in the name of the Narragansett Tribal Election Committee or the Tribe; OR**
3. **Using names gathered from the official tribal mailing list to broadcast into or spam tribal email or snail mailboxes as a means to circulate privately authored communications, personal opinions or for any other private or unofficial purpose.**
4. **Defendants are hereby permanently enjoined from any further action or communications in any form, or use of any governmental resources, to represent themselves, singly or jointly, directly or indirectly, as conducting official or lawful action on behalf of the Narragansett Tribal Government or the Narragansett Tribe.**

IT IS SO ORDERED.

/s/Judge D. Dowdell

December 22, 2016

Exhibit F

NARRAGANSETT INDIAN TRIBE
TRIBAL COURT

NARRAGANSETT INDIAN TRIBE, *Plaintiff,*	:	
v.	:	CA No. 2017-02
TRIBAL COUNCIL OF THE NARRAGANSETT INDIAN TRIBE, as identified in the Motion to Intervene filed before the Energy Facility Siting Board by Attorney Shannah Kurland *Defendant.*	:	

ORDER

This matter came before the Narragansett Indian Tribal Court on October 24, 2017 through Plaintiff's Petition for a Temporary Restraining Order. After consideration of Plaintiff's Petition, Memorandum of Law, and accompanying Exhibits, the Court determines that Plaintiff has set forth clear and convincing evidence that it will suffer immediate and irreparable injury if an injunction is not granted and that the equities—at this juncture—favor Plaintiff's interests over Defendant's.

Jurisdiction

Title I, Chapter 1 of the NARRAGANSETT INDIAN COMPREHENSIVE CODES OF JUSTICE (the NICCJ) establishes the Court at §101, its civil jurisdiction at §107 and the position of Chief Judge at §102.

Standard of Review for Extraordinary Writs

The NICCJ, at Title IV-4-401 & 402, provides the standard for issuing a TRO without Notice under Extraordinary Writs. Section 401(a) contains three prongs for Court consideration or action.

(a) No temporary restraining order or other injunction without notice shall be granted where the Tribe or a tribal official in his official capacity is a defendant.

(b) [N]o temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by oral testimony, affidavit, or the verified complaint that immediate and irreparable injury will result to the applicant before notice can be served and a hearing had thereon.

(c) Every temporary restraining order granted without notice shall include the date and hour of issuance and shall expire within such time after entry, not to exceed ten (10) days, as provided in the order.

Discussion

Similar complaints about individuals claiming governmental authority been have been formally adjudicated before this Court, which found no evidence that supports any authorized and official Tribal Election taking place since last confronted with this issue in December 2016. Furthermore, Plaintiff presents evidence that the Defendant is, and has been, publicly holding itself out as the "Tribal Council of the Narragansett Indian Tribe" by filing a Motion to Intervene before the Rhode Island Energy Facility Siting Board ("EFSB"), yet the actual sitting Tribal Council never authorized such a filing.

Contrary to the Defendant's elected "Tribal Council" assertion, the presence of previous legal proceedings is relevant as they directly relate to the issue of the unnamed "Tribal Council" members' legal standing to appear before the EFSB in official tribal, intervenor status. Attempts to claim Tribal authority where it does not exist, not only creates confusion amongst Tribal members and the public, these claims seriously disrupt the Tribe's internal and business relations. The Tribal Court, in addition to previously administering tribal law and policy on previous claims, has answered jurisdictional objections, corrected legal misrepresentations or misinterpretations of tribal law and detailed correction of procedural noncompliance. Furthermore, Federal and State proceedings have recognized this Court's jurisdiction over such tribal internal matters. Consequently, neither Defendant nor their attorney may summarily ignore previous legal proceedings to advance appearance before a local administrative body.

Moreover, the Court has also addressed how advancing misleading information to take ad hoc actions in the name or authority of Tribe handicaps the Tribe. It has forewarned that internal or public actions based on legal misrepresentations, which unabashedly ignores adjudicated determinations of tribal law and policy, customary practices and the reserved right(s) of Tribe in an effort to assert political authority, constitutes harm to the Tribe. Consequently, if Defendants were able to proceed with their activities—claiming to be the duly authorized representative body of the Narragansett Indian Tribe—Plaintiff will suffer immediate and irreparable harm because Tribal interests favor examining and upholding tribal law when such claim(s) arise, which supports issuance of a TRO without Notice at this time.

Accordingly, it is hereby:

ORDERED, ADJUDGED AND DECREED that:

1. Defendant, and its named counsel Shannah Kurland, Esq., are temporarily and immediately enjoined from (a) identifying itself and therefore themselves as the "Tribal Council of the Narragansett Indian Tribe" and (b) pursuing a Motion to Intervene before the Rhode Island Energy Facility Siting Board and

2. The Rhode Island Energy Facility Siting Board is hereby advised that the so-called "Tribal Council of the Narragansett Indian Tribe" cited in the filed EFSB Motion is not the lawful representative of the Narragansett Indian Tribe and was not elected by a duly authorized Tribal Election.

Finally, since the Court grants this TRO without Notice, there are additional steps to ensure due process for all affected parties. Every TRO granted without notice must include the date and hour of issuance and expires within such time after entry, not to exceed ten (10) days[1], as provided in the Order.

This TRO begins at 11:00 AM on Wednesday, October 25, 2017 and automatically dissolves on Monday, November 6, 2017 at 11:00 AM unless Plaintiff seeks further relief.

[1] The Tribal Court previously adopted F.R.C.P. Rule 6 for computing and extending Time when dealing with outside attorneys to provide a methodology for computing time with standard cross-jurisdictional application. Under Rule 6(1), this Court excludes the day of the event that triggers the period. It counts every day, including intermediate weekend days and legal holidays (including tribal holidays) and counts the last day of the period; however, if the last day is a weekend day or defined legal holiday, the period continues to run until the next day that is not a Saturday, Sunday, or legal holiday.

If so, then Plaintiff must petition for a preliminary injunction, using the procedure and standards required under the NICCJ, Title IV-4-402, Preliminary Injunctions, within 10 business days, as defined, which shall include two days' notice to Defendant's attorney. The statue directs:

A preliminary injunction restrains activities of a defendant until the case can be determined on the merits. No preliminary injunction shall be issued without notice to the adverse party and an opportunity to be heard. No preliminary injunction shall be issued absent clear and convincing proof by specific evidence that the applicant will suffer irreparable harm during the pendency of the litigation unless a preliminary injunction is issued, that the balance of equities favors the applicant over the party sought to the enjoined. The Court may dissolve or modify a preliminary injunction at any time, as the interests of justice require.

Given past the Determinations and directives, this Court provides notice that it will not entertain any Argument by either Party that fails to include a valid legal basis under tribal law. Document submissions originating from the Parties' attorneys may be submitted electronically to Tribal Court at NarragansettTribalCourt@nitribe.org, which will be certified by received receipt.

Entered as an Order of this Court on October 25, 2017,

Judge D. Barrette

	NARRAGANSETT INDIAN TRIBAL COURT **Hearing Address: Longhouse, 4425 South County Trail** **Charlestown, RI** **Telephonic Contact through 401-364-1107**	*FOR COURT /TRIBUNAL USE ONLY*
PLAINTIFFS:	**Dean Stanton et al. and Mary S. Brown**	CALL NUMBER: CASE NUMBER: CA-2016-01
DEFENDANTS:	**Bella Noka (TEC chair), Shaena Soares (vice chair), Darlene E. Monroe (secretary), and Ollie Best, Chali Machado, Harold Northup, and Anthony Soares**	

The above named Plaintiffs have petitioned the Court for a *Preliminary Injunction* against the named Defendants. A court ordered *Preliminary Injunction* requires (1) specific evidence clearly and convincing proves that the applicant(s) will suffer irreparable harm during the pendency of the litigation unless a preliminary injunction is issued and (2) that the balance of equities favors the applicant(s) over the party sought to the enjoined. NICCJ at IV-4-401.

Evidence submitted clearly and convincing proves that Plaintiffs meet their burden of production. The Court grants a *Preliminary Injunction*. It has determined that the current circumstances require immediate court intervention because irreparable harm will be suffered if activities by the self-titled TEC members touching Tribal elections are not enjoined and that applicants asserted Tribal interests greatly outweigh the interests of the parties enjoined.

1. To defendants: Bella Noka, Shaena Soares, Darlene E. Monroe, Ollie Best, Chali Machado, Harold Northup and Anthony Soares

2. A court hearing has been set at the time and place indicated below:

   Time: 11:00 AM Location: LONGHOUSE Date: Wednesday, August 17, 2016

3. NOTICE OF DEFAULT JUDGMENT:

   a. To Defendants: Notice of a preliminary injunction against you and a hearing date has been served through your internally appointed secretary. If you fail to appear at the hearing (whether in person or through a representative) or otherwise to defend the case, the Court may enter a default judgment permanently granting the relief sought in the complaint upon such showing of proof by the plaintiffs as the Court deems appropriate.

   b. To Plaintiffs: You have been notified of the hearing time and place, if you fail to appear at the hearing (whether in person or through a representative) or otherwise to prosecute the case, the Court may dismiss the case for failure to prosecute.

   c. The Court may, for good cause shown, set aside entry of a default judgment or dismissal for failure to prosecute.

PRELIMINARY INJUNCTION

THE COURT FINDS

4. a. The defendants are: Bella Noka, Shaena Soares, Darlene E. Monroe, Ollie Best, Chali Machado, Harold Northup and Anthony Soares

   b. The protected person and entity are: Dean Stanton et al., Mary S. Brown and the Narragansett Indian Tribe

5. THE COURT ORDERS that the enjoined persons must not interfere with the protected parties, or their right to assemble with others, by:

   a. Conducting any business, meeting, rally, election or any other gathering on tribal property that concerns election matters or interferes through collective or individual conduct by the enjoined persons with same;

   b. Communicating or publishing any information or entering into any contract in the name of the Narragansett Indian Tribal Election Committee; OR

   c. Using names gathered from the official tribal mailing list to broadcast into or spam tribal email or snail mailboxes as a means to circulate privately authored communications, personal opinions or for any other private or unofficial purpose.

   d. The 2016 general election for tribal council seats is stayed. This PRELIMINARY INJUNCTION remains in effect until the Hearing or the Court receives verified notice the Tribal Government and Tribe have vetted TEC matters, which in turn may require the Court to dissolve or modify the preliminary injunction, as the interests of justice require.

Violations of this ORDER are subject to penalties.

Date: 7/21/2016 Time: 5:20 PM

Judge D. Faddell

Signature: Tribal Court Judge / Clerk

TOWN OF BURRILLVILLE

Office of Town Clerk
Louise R. Phaneuf
Town Clerk

Telephone: (401) 568-4300 ext. 114
FAX: (401) 568-0490
E-mail: townclerk@burrillville.org
RI Relay 1-800-745-5555 (TTY)

Burrillville Town Council
Resolution Opposing the Siting of the Clear River Energy Center
in Burrillville, RI

WHEREAS, on October 29, 2015 Invenergy Thermal Development LLC filed an application to Construct the Clear River Energy Center Power Plant in Burrillville, RI with the Rhode Island Energy Facility Siting Board (EFSB); and

WHEREAS, in the months since the filing of that application, the Town of Burrillville has conducted extensive study of the application with and through credentialed professionals, including studies of noise, water, traffic and air quality, among others; and

WHEREAS, after considering expert testimony and conducting thorough public hearing the Burrillville Planning Board and Zoning Board of Review have advised the EFSB that Burrillville, RI is not a suitable site for the Clear River Energy Center; and

WHEREAS, the Burrillville Building Inspector and Burrillville Tax Assessor, have also submitted advisory opinions to the EFSB expressing the impact the proposed Clear River Energy Center would have on the Town of Burrillville; and

WHEREAS, during the past eleven months, many citizens of the Town of Burrillville have expressed clear opposition to the siting of the Clear River Energy Center for reasons including the impacts on property, environment, water and traffic; and

WHEREAS, the Burrillville Town Council joins with the citizens and officials of Burrillville expressing concerns and objections to the siting of the Clear River Energy Center in Burrillville, RI,.

NOW, THEREFORE, BE IT RESOLVED that we, the Town Council of the Town of Burrillville, do hereby oppose the siting of the Clear River Energy Center in Burrillville, RI.

BE IT FURTHER RESOLVED that Burrillville Town Council President John F. Pacheco III, is hereby authorized and directed to testify before the EFSB to express the opposition of the Town to the siting of the Clear River Energy Center in Burrillville, RI.

Adopted this 22nd day of September 2016

John F. Pacheco III, President
Burrillville Town Council

ATTEST: Louise R. Phaneuf, Town Clerk

Todd, I am a retired engineer specializing in power/energy systems. 30 yrs USN, 30 yrs industry. I have developed or actually built nuclear, hydro, wind and solar under Contracts for DoE, and the Defense Department. I have also evaluated numerous advanced energy designs from other companies in my capacities in industry and the Navy.

I have published my opinions in news papers and public presentations. I attach my latest opinion piece for consideration by the PUC in support of the Burriville natural gas plant proposal.

I have been active in my retirement on advanced nuclear technology, i.e. The international consortium of Generation IV reactor designs. If you or PUC would like a briefing on these technologies I would be happy to meet with the Commission.

I am in favor of increasing the in-state supply of natural gas power sources as the logical step to a lower carbon world footprint and an eventual shift to baseload nucler fission (near term) and fusion (far term).

Michael Armenia

CAPT, USN (ret).

Engineering R&D Officer

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Feb 28, 2018.

Great news Rhode Island: Our renewables have increased 300% in just one year!

Don't throw away your Feb National Grid energy bill without looking at the annual insert "Electricity Facts" which details the suppliers of electric energy in and to RI for the past year (June 2016 – June 2017). If you read the numbers it is clear that Natural Gas – both in state and imported comprises nearly 50% of RI energy (42% in state, 4% imported and 5% from landfill gas).

I am amused at headline "facts" from environmental groups that "100s of cities worldwide get their power "substantially" from renewables. If you actually read the text behind these claims it is easy to see these cities get their renewable energy from hydroelectric dams in countries other than USA. According to NGrid, RI gets 15% of its energy from hydro, mostly from Canada, and 16% from nuclear from surrounding states. RI gets 31% of its annual energy from carbon free nuclear and hydro. Over the past 2 years (using the NGrid stats) both hydro and nuclear energy delivered have increased in RI both by about 7% each.

So what about solar and wind? Here's a headline from salespeople who knock on my door to sell solar panels: "solar photovoltaic capacity has increased 60% in the past year". From sales forces selling wind credits: "wind capacity has increased 300% in the past year" in RI. These statements are true for capacity but capacity is not the same as energy delivered because of intermittent operation without storage. NGrid's insert tells the real story: solar capacity delivers less than 1% of energy delivered and wind at a slightly increased annual 2.4% delivered.

How about this headline: Nuclear provides 50% of RI carbon free energy. Hydro provides 46% of RI carbon free energy. (Solar and wind provide less than 2% carbon free energy delivered.)

The bottom line: If we close nuclear plants in New England then RI goes from 66% high carbon (natural gas) to 83% high carbon energy as more gas replaces nuclear hundreds of times faster (denser)than solar and wind could ever hope to. Natural gas is a dense fuel with at least 50% lower carbon content than coal. It is the quickest way to reduce greenhouse gas accumulation. If we don't pipe it in, we will get truck caravans of oil into the state in the winter (just happened) and shiploads of NG from our Gulf and even Russia into Boston to supply New England (just happened).

We should think about nuclear power (and burn nuclear weapons) if it we want to save the planet from total extinction. Nuclear is as green and clean as solar and wind even considering the 60 year old designs that were frozen in time and melted. Also think about radiation. Isn't that the treatment for cancer? How much radiation do we get every day from natural background vs a melted nuclear power plant? Take a look at existing federal and states' legislation (NY, CT, IL, and NJ) to keep plants on line and build modern ones that can't melt down. Can RI follow these states to subsidize nuclear in RI Renewable Energy Credits (RECs) and Renewable Portfolio Standards (RPS) right alongside solar and wind? Nuclear, solar and wind make great bedfellows - all carbon free. Together these can kill coal and eventually natural gas. Fighting each other will insure continuing political dissention that big oil funds and applauds. Yes big oil funds all sides, just like Russia which is building nuclear plants faster than anyone. China is closely behind. Will they save the world?

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