No. 22o160

In the
Supreme Court of the United States

Utah,

Plaintiff,

v.

United States,

Defendant.

ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

MOTION TO INTERVENE AND BRIEF OF UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION IN OPPOSITION TO UTAH'S MOTION OR IN THE ALTERNATIVE AMICUS BRIEF IN OPPOSITION TO UTAH'S MOTION FOR LEAVE TO FILE

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MOTION TO INTERVENE

The Ute Indian Tribe moves to intervene for the limited purpose of moving to dismiss some or all of Utah's claims. This motion is based upon the brief below.

The Tribe notes that its view is that if the Court denies Utah's motion for leave to file, the Court could and should deny the Tribe's motion to intervene as moot. For this reason, the Tribe submits the brief below both in support of its motion to intervene and as an amicus brief in opposition to Utah's motion for leave to file.

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ALTERNATIVE STATEMENT OF INTERESTS OF THE *AMICI CURIAE*[1]

The Ute Indian Tribe of the Uintah and Ouray Reservation (the Ute Indian Tribe) is a sovereign federally recognized Indian Tribe composed of three bands of the greater Ute Tribe—the Uintah Band, the White River Band, and the Uncompahgre Band—who today live on the Uintah and Ouray Reservation in northeastern Utah. *Ute Indian Tribe v. State of Utah*, 521 F. Supp. 1072, 1093 (D. Utah 1981).

As discussed in detail below, the Tribe has multiple substantial interests in the broad issues that Utah seeks to present to this Court. These include that Utah is seeking an order regarding 1,500,000 acres of land, of which the Tribe claims to be beneficial owner, and that Utah is seeking a precedent which would, if adopted, lead to loss of tribal trust land and tribal governmental authority.

SUMMARY OF ARGUMENT

In its motion for leave to file and its brief in support, the State of Utah claims that it is presenting a single legal issue: Should the Supreme Court do away with federal public lands?

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[1] Pursuant to this Court's Rule 37.6, counsel for *amici curiae* certify that no person or entity other than *amici curiae* and their counsel authored this brief in whole or in part. No person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission of the brief. The parties were notified of the intention of amici curiae to file as required by Rule 37.2.

If that were "all" the State were doing here, its motion would still present a naked political issue with unimaginable consequences, not a case or controversy. The Ute Indian Tribe expects that the United States and others will discuss the numerous obvious reasons this Court should decline the State of Utah's attempt to skip over the lower courts and present its vision of an America without public lands to the Supreme Court.

However,, Utah is not presenting a single, streamlined legal issue. Contrarily, this case is exponentially bigger and will take exponentially more judicial resources than Utah claims. The Ute Indian Tribe's brief will solely focus on the Indian law issues that Utah seeks to hide from this Court through misleading elisions and inaccurate disclaimers.

First, Utah requests leave to file a complaint which presents to this Court the same issue that Utah is currently litigating, and which is the central issue in a fully briefed motion for summary judgment in *Ute Indian Tribe v. United States*, D.D.C. case. 1:18-cv-00546.

In *Ute Indian Tribe v. United States*, the Tribe pled that an 1880 Act of Congress provides that 1,500,000 acres of land on the Tribe's Reservation are *not* public lands, and that the 1880 Act recognized the Tribe's "compensable title" to those lands. Utah intervened in the case in support of the United States and has been and is currently litigating the status of those 1,500,000 acres.

After six years of complex and costly litigation in both the District Court and in a related Federal Court of Claims case for monetary damages, the Tribe has prevailed on most of the substantial issues. Oral argument in both cases is expected before the end of the year. The

primary issue in the pending motions for summary judgment is whether the 1,500,000 acres are or should be tribal trust lands.

Utah submits a proposed complaint in this Court in which Utah asks this Court to take up the exact same question—whether those same 1,500,000 acres are public lands. This Court should deny Utah's attempt to take that issue from the District Court.

Second, Utah asks this Court to issue a precedential interpretation of section 3, paragraph 2 of the Utah Enabling Act which would do away with both federal public lands and would identically **do away with Indian Country and with tribes as governments**—a goal Utah has been working on since it came into existence. *See generally Ute Indian Tribe v. Utah*, 790 F.3d 1000 (10th Cir. 2015) (*Ute VI*); *Ute Indian Tribe v. Utah*, 521 F. Supp. 1072 (D. Utah 1981) *(Ute I).*

In paragraph 29 of its complaint, Utah openly asks this Court to issue an Orwellian precedential interpretation that Utah's "forever" disclaimer of rights in federal public lands, Utah Enabling Act §3¶2, was only temporary; and that this Court must order the United States to relinquish ownership and federal jurisdiction over all federal public lands in Utah.

Utah fails to mention, and in fact deletes from its quote of Section 3 paragraph 2, that Utah provided the identical disclaimer for both federal public lands and tribal lands. The precedential interpretation of the statute it openly seeks for federal public lands is also the precedent it opaquely seeks for tribal lands

Third, Utah's attempt to terminate the Ute Indian Tribe and to obtain jurisdiction over the Tribe's remaining Reservation land is barred by the final mandates in *Ute Indian Tribe v. Utah*. Those mandates became final when this Court denied Utah's petitions for writs of certiorari. Utah now seeks to overturn those mandates through its proposed complaint. That attempt raises multiple obvious complex legal issues regarding res judicata, mandates, and related doctrines.

More generally, the issues summarized above illustrate one of the primary reasons this Court should deny the motion for leave to file. Utah's skilled Supreme Court counsel attempts to package this case as if it presents a single legal issue: Should the Supreme Court do away with federal public lands? Utah implies this Court will not have to get into the unique factual or legal histories of any of those lands. The reality is that if this Court opens the package that Utah presents, it will find that it will have to review those unique histories.

As a party which has been litigating "only" 1,500,000 acres of those lands, the Ute Indian Tribe points this Court to the substantial legal, historical, and factual complexity presented in *Ute Indian Tribe v. United States*. The land at issue in that case has a uniform legal and factual history, but it has still taken six years to get to the point of summary judgment. Reviewing the statutory and factual history of the much more varied and larger quantity of land that Utah seeks to bring to this Court, to determine if Utah's "one decision fits all" claim is correct, will be overwhelming.

Before the Tribe filed this motion, it consulted with the State of Utah, requesting that the State amend its proposed complaint to eliminate its allegation that the

land at issue in *Ute Indian Tribe v. United States* are "public lands," and to eliminate claims for Indian lands. Utah refused to withdraw the allegations.

Discussion of relevant facts

The Ute Indian Tribe of the Uintah and Ouray Reservation (the Tribe) is a federally recognized Indian Tribe composed of three bands of the greater Ute Tribe—the Uintah Band, the White River Band, and the Uncompahgre Band--who today live on the Uintah and Ouray Reservation in northeastern Utah. *Ute Indian Tribe v. State of Utah*, 521 F. Supp. 1072, 1093 (D. Utah 1981) *(Ute I). See Ex. A (BIA map of Uintah and Ouray Reservation).*

The Uintah and Ouray Reservation is a union of two contiguous reservations: the Uintah Valley Reservation and the Uncompahgre Reservation. The Uintah Valley Reservation was established by Executive Order by President Lincoln (Oct. 3, 1861) (reprinted in I C. Kappler, Indian Affairs: Laws and Treaties 900 (2d ed. 1904)), confirmed by Congress, Act of May 5, 1864, 13 Stat. 63.

The Uncompahgre Reservation in Utah was a replacement reservation for the Uncompahgre Band of Ute Indians. The Uncompahgre Band initially reserved through Treaties a Reservation in Colorado. Treaty with the Utah Tabeguache (Tabequache) Band, Oct. 7, 1863, 13 Stat. 673, II Kappler 856; Treaty with the Ute, Mar. 2, 1868, 15 Stat. 619, II Kappler 990.

In 1880, based upon an "agreement" which the United States forced upon the Ute bands living in Colorado, Congress passed a statute which required the Uncompahgre

Band to relocate from their Treaty reservation in northwestern Colorado to a replacement Reservation which would be created:

> upon agricultural lands on Grand River [renamed the Colorado River], near the mouth of the Gunnison River, in Colorado, if a sufficient quantity of agricultural land shall be found there, if not then upon such other unoccupied agricultural lands as may be found in that vicinity in the Territory of Utah.

1880 Act §3.

Congress provided that once the land on the replacement Reservation was allotted to individual Indians, the United States would act as the Tribe's broker for sale of the unallotted lands."

The 1880 Act expressly states that the unallotted lands are *not* public lands. The unallotted lands are similar to public lands but with two pivotal express differences from public lands. First, the United States as broker for sale for the Tribe could not give the lands away or allow homesteading. Instead, the lands were only open to cash entry. Second, the proceeds from the sale of the land or interest in the land "*shall be deposited in the Treasury as now provided by law for the benefit of the said Indians.*…" 1880 Act §3. Because profits from sales would go to the Tribe, the Tribe had "compensable title" to the lands, as that term is used in federal Indian law.

As required by the 1880 Act, the Executive Branch established the replacement Reservation for the Uncompahgre Band. Executive Order by President Arthur (Jan.

5, 1882) (reprinted in I C. Kappler, Indian Affairs: Laws and Treaties 901 (2d ed. 1904)).

The Uintah Valley and Uncompahgre Reservations predate Utah's 1896 admission into the Union.

"The Uncompahgre Reserve is a desert. Of the 1,933,440 acres embraced therein not one can be relied on to produce a crop without irrigation, and not more than 3 per cent of the whole is susceptible of being made productive by process of irrigation." U.S. Department of the Interior, *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1886*, 225. The United States, as the Tribe's broker for sale, found very few buyers for that uninhabitable high desert land. The United States still owns about 1,500,000 of the original 1,800,000 acres of land on the Uncompahgre.

With the adoption of the Indian Reorganization Act in 1934, Act of June 18, 1934, 48 Stat. 984, Congress stopped sales of federally owned land on Indian Reservations, and in section 3 of the Act, it gave the Secretary of the Interior authority to return remaining federally owned land to tribal trust ownership. In 1945, the Secretary of the Interior issued an order returning all surplus land to the Ute Tribe. Uintah and Ouray Reservation, Utah, Order of Restoration, 10 Fed. Reg. 12,409 (Oct. 2, 1945). The Tribe asserts that this includes the 1,500,000 acres of federally owned land on the Uncompahgre Reservation.

A. Overlap between Utah's current complaint and the issues Utah is currently litigating in *Ute Indian Tribe v. United States.*

In April 2018, the Ute Indian Tribe filed Ute Indian Tribe v. United States, D.D.C. case 1:18-cv-00546, asserting that the 1,500,000 acres of land which the United States owns on the Uncompahgre is either tribal trust land or must be returned to tribal trust ownership. D.D.C. Dkt. 1, ¶¶1, 112-117.

The first premise of the Tribe's argument in that D.C. District Court suit is that the Tribe obtained compensable title to the lands on the replacement Uncompahgre Reservation based upon the 1880 Agreement, ratified by Congress in the 1880 Act. D.D.C. Dkt. 109, §II. The Tribe's argument has multiple additional premises connecting the dots from compensable title in 1880 to trust ownership today. Those remaining secondary premises are based upon multiple fine legal points in federal Indian law, the Treaties with the Ute Indian Tribe, multiple federal laws related to those lands, and the historical record specific to the Uintah Valley Reservation.

Numerous issues have been resolved in the six years the parties have been litigating. The Tribe's position in that case is that the United States and Utah have lost or conceded most of the issues. D.D.C. Dkt. 109 at 2. The sole remaining issue that needs to be determined for summary judgment is the relatively simple legal question of whether the 1880 Act provided the Tribe with compensable title to the 1,500,000 acres of land that are still owned by the United States. *Id.* Argument on summary judgment is expected in December 2024.

The State of Utah intervened, and it remains a party to that suit to this day. D.D.C. Dkt. 44. On summary judgment, it has ratified all of the United States' arguments. D.D.C. Dkt. 94, 105, 111.

If, as the Tribe alleges, the Tribe has either compensable title or trust title, then the lands are not federal public lands and are not subject to administration by BLM. 43 U.S.C. § 1702(e).

In its proposed complaint, Utah seeks to move litigation regarding those 1,500,000 acres to this Court. *E.g.*, Tribe's App. A. Appendix A is Utah's Appendix 4, to which the Tribe added, in black outline, the approximate boundary of the Uintah and Ouray Reservation in the northeast corner of Utah. The land shown in red within that boundary are the 1,500,000 acres at dispute in the District Court, which Utah now seeks to put in dispute in this Court.

B. Overlap between Utah's current complaint and issues resolved by mandates in *Ute Indian Tribe v. Utah*, D. Utah case 2:75-cv-408.

The Tribe filed *Ute Indian Tribe v. Utah* in 1975. There are five Tenth Circuit merits decisions in the case, 716 F.2d 1298 (10th Cir. 1983) (*Ute II*); 773 F.2d 1087 (10th Cir. en banc 1985) (*Ute III*), 114 F.3d 1513 (10th Cir. 1997) (*Ute V*); 790 F.3d 1000 (10th Cir. 2015) (*Ute VI*), 832 F.3d 1220 (10th Cir. 2016) (*Ute VII*). There were five related petitions to this Court for writs of certiorari, all of which were denied. The District Court case has been dormant for periods of time, but has been reopened by the Tribe as needed when Utah seeks to overturn or violate

the appellate mandates. *See generally Ute V*, 790 F.3d 1000.

Unlike its current proposed complaint, where Utah implies that this Court will not need to review the specific legal and factual history of each parcel, the arguments in the Ute line of cases required detailed review of unique histories of parcels. As a few of the many examples, the District Court and Tenth Circuit Court of Appeals had to issue separate decisions on:

- Lands on each of the two reservations, taking into account the different histories of each;
- Lands allotted to Indians but later purchased by non-Indians;
- Land once owned by "mixed blood" Indians, Act of Aug. 27, 1954, 68 Stat. 868 (1954), *reprinted in* VI Kappler 650;
- Lands for reservoirs, *e.g.*, Act of Apr. 4, 1910, 36 Stat. 269, 285, *reprinted in* III Kappler 429, 445; Act of October 31, 1988, 102 Stat. 2826.
- Lands that are on the Reservation but are part of a national forest or otherwise under the administrative jurisdiction of the forest service. Presidential Proclamation of July 14, 1905, 34 Stat., pt. 3, 3116, *reprinted in* III Kappler 602-605; 18 Fed. Reg. 426; 21 Fed. Reg. 5015, 24 Fed. Reg. 8175, and 26 Fed. Reg. 1718.

The lower court issued decisions on each of these types of land, and those decisions became final when this Court denied Utah's petitions for writ of certiorari. Utah now asks this Court to directly take up an argument that

it could have made in *Ute Indian Tribe v. Utah*, but which it but did not make: that the lands should not be Indian Country because the United States is required to relinquish title and all jurisdiction over the Ute Indian Tribe's Indian Country.

ARGUMENT

I. This Court should deny the motion for leave to file because Utah is seeking to raise the same issue which Utah is currently litigating against the Tribe in *Ute Indian Tribe v. United States*, D.D.C. case 18-cv-00546.

a. Utah's proposed complaint seeks an order that the United States promptly extinguish federal title to 1.5 million acres on the Uncompahgre Reservation

In its proposed complaint, Utah defines that the land which would be directly at stake in its suit is all land currently managed by BLM.[2] As undisputable, this includes 1.5 million acres on the Uncompahgre Reservation. Utah attached as Appendix 4 to its motion a map which depicts

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[2] Utah uses the legally incorrect dysphemism "unappropriated lands" to gloss over its a priori claim that if land is administered by BLM today, it does not serve any purpose enumerated in the Constitution. Based upon that incorrect claim, Utah asserts that this Court can issue a single legal decision applicable to all 18,500,000 acres of land, without reviewing any of the innumerable underlying Acts of Congress and historical differences and uses related to each parcel of land. This flaw is discussed in section ¶IV, infra.

in red the lands that Utah alleges would be directly at stake. Attached hereto as Exhibit B is a copy of Utah's map (Utah App. 4), to which the Tribe has added the approximate boundaries of the Uintah and Ouray Reservation in northeast Utah. The area in red within the Reservation boundaries are approximately 1,500,000 acres.

Consistent with that definition of the lands directly at stake, Utah asserts that there are roughly 18.5 million acres at stake in its suit.[3] To reach that acreage, Utah included the 1,500,000 acres on the Uncompahgre Reservation.

The Tribe notes that in paragraph 43 of its complaint Utah includes a delusive "disclaimer" that its proposed complaint would not directly challenge the United States':

> authority to retain lands that it is using to carry out its enumerated powers, such as the more than 1.8[4] million acres in Utah that are devoted to military installations, lands held in trust for Indian

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[3] Paragraph 1 of the complaint states that the United States owns "roughly 37.4 million [] acres" of land in Utah, and that "roughly 18.5 million acres … are administered by the federal Bureau of Land Management." Numerous other paragraphs also refer to these 18.5 million acres as the land which Utah asserts the United States cannot continue to own.

[4] Utah's statement that it is currently not challenging 1.8 million acres for military reservations and Indian lands is confusing at best. The Department of Defense alone controls 1.8 million acres of land in Utah. Department of Defense State Fact Sheet, Utah (available at https://www.repi.mil/Portals/44/Documents/State_Fact_Sheets/Utah_StateFacts.pdf). The United States owns millions of additional acres in Utah in trust for tribes.

> tribes, federal courthouses and office buildings and the like.

Proposed Complaint ¶ 43.

Whatever the scope of that vague disclaimer, and even if the disclaimer applied to some tribal lands somewhere in Utah, Utah is alleging that the 1,500,000 acres on the Uncompahgre are not tribal trust lands and therefore are not within the disclaimer. Instead, they are part of the 18.5 million acres which Utah asserts the United States cannot continue to own.

b. The 1,500,000 acres on the Uncompahgre are the exact same lands which Utah, the United States, and the Tribe are litigating in the D.C. District Court suit.

The 1,500,000 acres on the Uncompahgre Reservation that Utah seeks to put directly at stake in this Court are the exact same 1,500,000 acres of land which are in dispute in the D.C. District Court case. The merits issues in that case, now set for summary judgment argument, is whether or not BLM can manage those lands on a forward going basis.

The Tribe brought suit in 2018, pleading that the 1,500,000 acres are not public lands. Utah intervened in that suit to argue that the 1,500,000 acres are public lands. This Court should not grant leave to file a complaint which seeks to raise the same issue that the Tribe, Utah and the United States have been litigating before the District Court.

II. Utah's request for leave to file a complaint asking this Court to install termination of tribes as federal policy should be rejected.

Utah is not merely seeking an order requiring the United States to relinquish ownership of federal public lands and Uncompahgre lands. Utah's *current complaint* seeks to force the United States to give up federal public lands and Uncompahgre lands administered by BLM, but Utah's arguments in support is that the United States must dispose of *all* federally owned land in Utah (with the possible exception of military bases and federal offices).

Of most concern to the Ute Indian Tribe, Utah asks this Court to issue a precedential decision that *the United States cannot hold land in Utah in trust for tribes*, and that once the United States relinquishes trust ownership, Utah would obtain complete jurisdiction over land currently held by the United States in trust for the Tribe. Proposed Complaint ¶¶ 27-29.

Paragraph 27 of Utah's proposed complaint alleges as fact, without any disclaimer regarding tribal land rights, that the United States "first acquired title to the land that now lies within the State of Utah in 1848." That factual assertion is contrary to multiple treaties with tribes and post-treaty making laws applicable to tribes.

Paragraph 28 asserts that the Supreme Court should hold that an 1850 Act of Congress required the United States to dispose of *all* federally owned land in Utah. Again, the complaint does not contain any disclaimer or qualification regarding tribal land. It also does not even contain a disclaimer or qualification regarding military lands, national parks, national monuments, forest lands, or any other federally owned lands.

Paragraph 29 goes even further, and it directly shows Utah's attempt to eliminate tribal trust land from the State. In that paragraph, Utah asserts that the correct legal interpretation of Section 3, paragraph 2 of the Utah Enabling Act requires the United States to dispose of all federal land within Utah.[5] Most directly and most notably, Utah asserts that this includes **all tribal lands; and that once the land is disposed of, the Ute Indians and all other Indians in Utah would be under state jurisdiction, subject to state taxation and all other state regulation.**[6]

In Section 3, paragraph 2 of the Utah Enabling Act, Utah disclaimed interest in land that the United States owns in fee. Expressly embedded in that same section, Utah provided the exact same disclaimer for land that the United States owned in trust for tribes. Even though the disclaimer regarding both federal fee and federal trust lands was to be "forever," Utah now asserts that

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[5] Utah's legal argument is paragraph 29 is bluntly wrong. In Section 3, clause 1 of Utah's Enabling Act, Utah and its residents agreed that they cannot complain about federal ownership, and clause 3 merely provides that if the United States were to dispose of land, that land would become subject to state jurisdiction. Clause 3 does not require federal sale of any lands. The fact that Utah's argument is wrong is of limited import for current purposes: the material point for current purposes is that Utah is seeking to have this Court act as a trial court on factually intensive case and that Utah seeks to make legal arguments to the United States Supreme Court, and seeking precedents which would require the United States to "dispose of" all federally owned land on both the Uncompahgre and the Uintah Valley Reservations.

[6] The Utah Enabling Act was passed by Congress in 1895, after the Uintah Valley and the Uncompahgre Reservations were created.

"forever" –for both federal fee and for tribal trust lands– actually meant "temporarily."

The first three clauses of Section 3, paragraph 2 of the Utah Enabling Act, with numbering added based upon the location of semicolons and commas, state:

> *1.* That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated public land lying within the boundaries thereof;
> *2.* and to all lands within said limits owned or held by any Indian or Indian tribes;
> *3.* and that until the title therefore shall have been extinguished by the United States,
>
> 3a. the same shall be and remain subject to the disposition of the United States,
>
> 3b. and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States…

Utah's skilled Supreme Court counsel attempt to distract from this Court Utah's newest challenge to the tribes in Utah and to tribal reservation land in Utah by elision of the references to tribes and tribal lands. In paragraph 29 of its complaint, Utah selectively quotes section 3 paragraph 2 as follows:

> That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated public land lying within the boundaries thereof . . . and that

> until the title therefore shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States . . .. (emphasis added).

In paragraph 29, Utah asserts that the Supreme Court must interpret the words "until the title therefore shall have been extinguished" to include a *requirement* that the United States promptly extinguishes that title. Utah further asserts that once that title is extinguished as "required" by clause 2, the provision numbered 3a (and clearly, though implicitly 3b) would cease to apply.

If the Supreme Court were to accept Utah's interpretation of the portion of Section 3 paragraph 2 that Utah quotes, Utah's next case would assert that this Court's precedential interpretation requires sale of federally owned land under clause 2. Similarly, if, as Utah currently asserts, the provision numbered 3a does not apply after the United States relinquishes title, Utah would assert that the provision placing Indian lands and people under the "absolute jurisdiction and control of the Congress of the United States" would also become obsolete.

III. Utah's challenge to federal ownership of land on the Uncompahgre Reservation and federal ownership on the Uintah Valley Reservation are contrary to the Tenth Circuit and District Court final decisions in *Ute Indian Tribe v. Utah*.

In *Ute III*, *Ute V*, and *Ute VI*, the Tenth Circuit had held, *inter alia*, that land owned in trust by the United States on the Uintah and Ouray Reservation was Indian

Country, subject to tribal and federal jurisdiction. As required by the consistent precedents of this Court, the Tenth Circuit also held that because both the Uintah Valley Reservation and the abutting Uncompahgre Reservation had been lawfully set aside for the Tribe, only an Act of Congress could remove the land from "Indian Country." This Court denied petitions for writ of certiorari, and the final appellate mandates issued.

On multiple occasions since *Ute III* was issued in 1985, the State of Utah and its subdivisions have tried various paths to defy or to overturn the final decisions by the Tenth Circuit in *Ute Indian Tribe v. Utah*.

After Judge Gorsuch's opinions in *Ute VI* and *VII*, it seemed that the State of Utah at long last understood that it is required to comply with the final orders issued in the Ute line of cases. The case entered mediation, from which it only recently emerged. *Ute Indian Tribe v. Utah*, 10th Cir. case 16-4021, Mandate (July 16, 2024).

Through its current complaint, the State of Utah seeks a new path for challenging the Tribe's Reservations. As discussed above, Utah now asserts that the United States cannot own land, either in fee or in trust, on the Tribe's Uncompahgre Reservation or the Uintah Valley Reservation, and that once federal ownership is relinquished, federal and tribal jurisdiction will also cease to exist. Proposed Compl. ¶¶ 27-29

This Court's repeated decisions that only Congress can remove land from Indian Country is based upon this Court's consistent recognition that the United States Constitution gives Congress and the Executive Branch the exclusive authority over Indian affairs.

Utah's argument is also contrary to 18 U.S.C. § 1151, which codified this Court's decisions prior decisions into the primary federal definition of "Indian Country." Indian Country includes "all lands *within the limits of any Indian reservation* under the jurisdiction of the United States Government, *notwithstanding the issuance of any patent* . . . ." 18 U.S.C. § 1151(a) (emphasis added). But, as discussed above, Utah's complaint asserts that this Court can force the United States to issue patents, and that when those patents issue, the land will cease to be Indian Country.

Utah's attempt to remove Ute land from the definition of Indian Country is contrary to the central holdings in *Ute I-Ute VII*. It yet again illustrates that Utah's "own holding fits all land" complaint is wrong. Instead, if this Court granted the motion for leave to file, this Court would have to examine all of the treaties, statutes, court decisions, and other histories applicable to each parcel of land.

IV. If the motion for leave to file is not denied, the Court should grant the Ute Indian Tribe's motion to intervene.

The four factors a court considers on a motion to intervene are: 1) is the motion timely; 2) does the movant have a sufficient interest in the proceedings; 3) may the disposition of the matter impair or impede the movant's interests; and 4) is the movant adequately represented by another party.

Here, all four factors support intervention. The Tribe's motion is timely. As discussed above, the Ute Indian Tribe has a substantial interest in this matter which

may be impaired or impeded. The State of Utah's proposed petition represents an existential threat to the Tribe and the Tribe's Reservation.

No current party to this case adequately represents the Tribe's interests. As discussed above, in the related D.C. Circuit case, Utah and the United States are both aligned *against* the Tribe. Both argue that the 1,500,000 acres of land that the United States owns on the Uncompahgre are federal public lands. Only the Tribe would make the legally correct argument that under the 1880 Act, the lands are not federal public lands. For this reason, if the Court grants Uta's motion for leave to file, the Court should grant the Ute Indian Tribe's motion to intervene.

CONCLUSION

For all of the above reasons, the Court should deny the Motion for Leave to File a Complaint; or in the alternative, the Court should grant the Ute Indian Tribe's Motion to Intervene.

Respectfully submitted,

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APPENDIX

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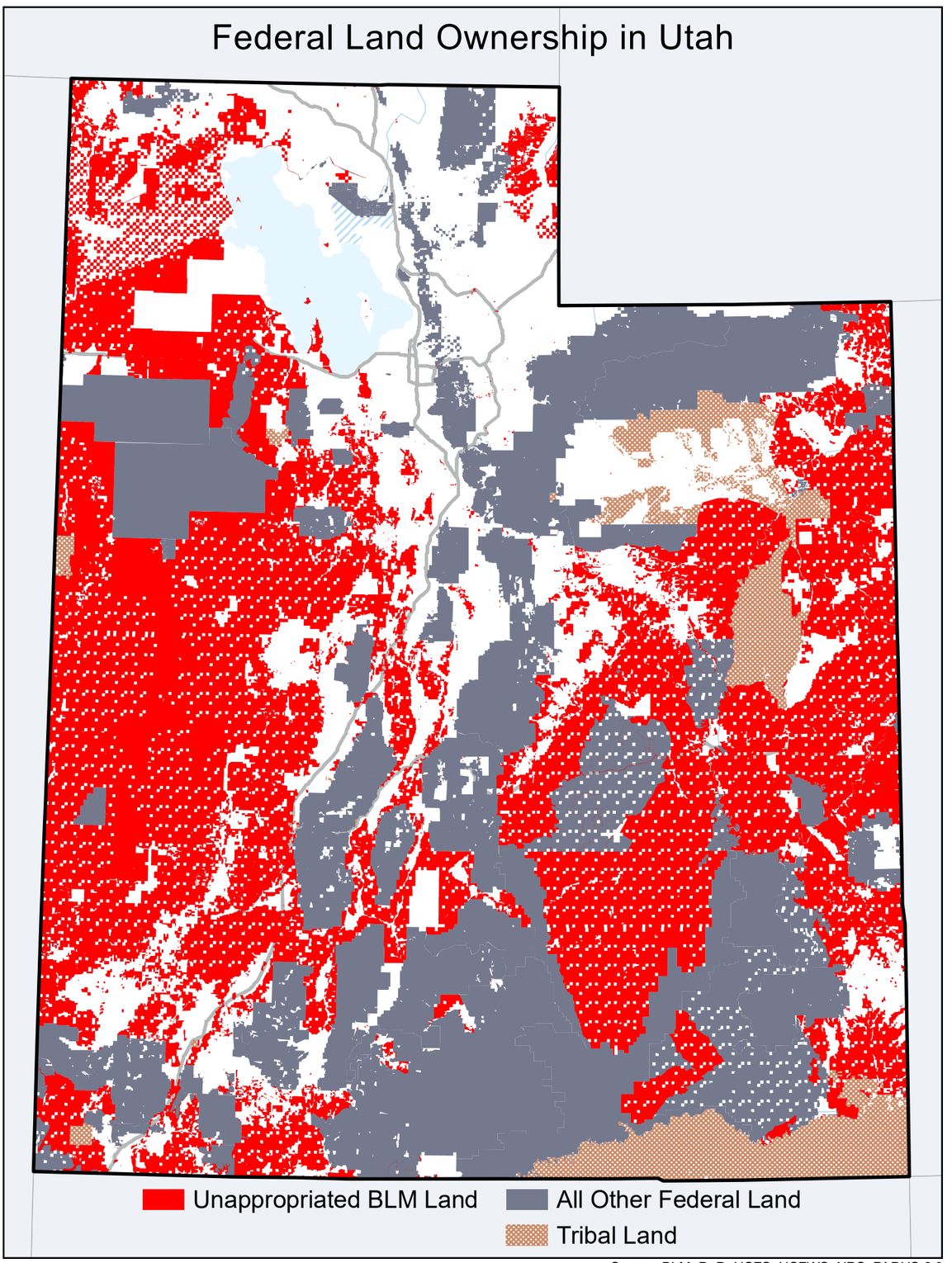
Federal Land Ownership in Utah
Unappropriated BLM Land
All Other Federal Land
Tribal Land
Source: BLM, DoD, USFS, USFWS, NPS, PADUS 3.0