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IN THE UNITED STATES JUDICIAL DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

QEP FIELD SERVICES COMPANY, formerly known as QUESTAR GAS MANAGEMENT COMPANY, a Utah corporation, Plaintiff, v. UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, a federal corporation chartered under 25 U.S.C. § 476, Defendant.	**COMPLAINT** **Case No. 2:10-CV-00700-SA** **Magistrate Judge Samuel Alba**

Plaintiff QEP Field Services Company hereby complains against the Ute Indian Tribe of the Uintah and Ouray Reservation as follows:

PARTIES

1. QEP Field Services Company, formerly known as Questar Gas Management Company ("QGM"), is a Utah corporation headquartered in Denver, Colorado, and is licensed to do business in the State of Utah.

2. The Ute Indian Tribe of the Uintah and Ouray Reservation (the "Tribe") is a federal corporation and a federally recognized Indian Tribe, organized with a Constitution approved by the Secretary of the Interior under the Indian Reorganization Act of 1934, 25 U.S.C. § 476. The Tribe maintains its headquarters in Uintah County, Utah.

3. The Ute Indian Tribe has been established as a Federal Corporation, with all corporate powers to be exercised by the Uintah and Ouray Tribal Business Committee. A copy of the Tribe's Corporate Charter is attached hereto as Exhibit A. The Tribe's Corporate Charter provides that its corporate powers include the power "to sue and be sued in courts of competent jurisdiction within the United States . . . ." (Ex. A at 5, § 5(i).)

GENERAL NATURE OF THIS CASE

4. QGM owns and operates a processing facility on tribal land called the Stagecoach Processing Plant pursuant to an agreement between QGM and the Tribe called the Surface Use and Access Concession Agreement Between Questar Corporation Individually and on Behalf of Its Affiliates, and the Ute Indian Tribe of the Uintah and Ouray Reservation (the "Surface Use and Access Agreement"), effective January 1, 2005, which provides the Tribe's consent to broad

rights of access for then-existing and future facilities and an expedited process for obtaining such access. (Ex. B hereto.)

5. The Surface Use and Access Agreement was approved by the United States government, acting through the Bureau of Indian Affairs (the "BIA"), on March 8, 2005. (*See* Ex. C hereto.)

6. In March 2010, after seeking and obtaining all necessary approvals as described in detail below, QGM began construction of an expansion of the Stagecoach Processing Facility known as the Iron Horse expansion.

7. QGM is a defendant in a separate federal case entitled *United States of America v. Questar Gas Management Company*, United States District Court for the District of Utah, Case No. 2:08-cv-00167, in which the federal government has alleged violations of the federal Clean Air Act, 42 U.S.C. § 82, *et seq.*, relating to five QGM facilities other than the Stagecoach facility that are located within what the U.S. calls the Uncompahgre Reservation portion of the Uintah and Ouray Reservation (the "Clean Air Act Case").

8. In the Clean Air Act Case, QGM has asserted certain affirmative defenses concerning the diminishment of the Uncompahgre Reservation and its effect on the U.S. Environmental Protection Agency's jurisdiction to enforce the Clean Air Act.

9. In retaliation for QGM's affirmative defenses in the Clean Air Act Case, and based on a variety of other unfounded accusations against QGM, the Tribe has expelled QGM personnel and its contractors and sub-contractors from the Stagecoach facility and the Stagecoach expansion project, shutting down construction in the middle of a $75 million project. The Tribe has padlocked the access gate which provides the only practicable access to the

Stagecoach facility and the Stagecoach expansion project, and only permits two QGM employees at a time to enter the existing Stagecoach processing facility for maintenance and operations.

10. Instead of seeking an injunction against QGM or submitting its allegations against QGM to arbitration as specified in the Surface Use and Access Agreement, the Tribe engaged in the unauthorized and arbitrary "self-help" remedies of physically removing QGM, its contractors and its subcontractors from QGM's facilities and physically denying them access to such facilities by padlocking access both in and out of the Stagecoach Processing Plant and the Iron Horse expansion of the plant, in violation of the Surface Use and Access Agreement, creating significant health and safety risks.

11. The BIA has authorized the construction of the Stagecoach expansion and issued the necessary approvals in the form of modifications to the existing Stagecoach Plant Facilities Lease, which it also approved, but the Tribe has taken the position that the BIA's approvals are ineffective unless "signed off by the Tribe." The Tribe has unreasonably refused to cooperate with QGM, refused to meet and conduct inspections the Tribe claims are necessary to facilitate its approval, and has refused to issue requested permits the Tribe claims are required, all to falsely manufacture a justification for the Tribe's illegal denial of access.

12. After expelling QGM and padlocking the gate, the Tribe then sought and obtained an injunction in tribal court barring QGM from continuing construction of the Iron Horse expansion, based on the Tribe's unfounded allegations that QGM had breached various federal laws, including but not limited to the federal Clean Air Act, 42 U.S.C. § 82, *et seq.*, the National

Environmental Policy Act, 42 U.S.C. § 4321, *et seq.*, and 25 U.S.C. §§ 323-328 and the accompanying right of way regulations at 25 C.F.R. Part 169.

13. The Tribe has threatened QGM that it will effectively confiscate QGM's significant oil and gas facilities located on the Uintah and Ouray Reservation by "banishing" QGM from the reservation in retaliation for QGM's attempts to enforce its rights under the Surface Use and Access Agreement and for promoting the defenses QGM advances in the Clean Air Act Case..

14. The Preamble to the Constitution and By-Laws of the Tribe state that its power to "certain rights of home rule" shall not be "inconsistent with the Federal, State and local laws."

15. Article VI, Section 1 of the Constitution and By-Laws of the Tribe enumerates powers to the Tribal Business committee "subject to any limitations imposed by the statutes or the Constitution of the United States."

16. The Tribe is seeking to avoid the clear and unambiguous provisions of the Surface Use and Access Agreement by the exercise of self help based on misguided reliance on federal law, including the federal Clean Air Act, 42 U.S.C. § 82, *et seq.*, the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.*, the right of way provisions of 25 U.S.C. §§ 323-328 and the accompanying regulations at 25 C.F.R. Part 169.

17. QGM needs the assistance of the federal courts to protect its rights under the United States Constitution and federal law, as well as the life and liberty of its employees, and to avoid the taking of its property without just compensation.

JURISDICTION AND VENUE

18. This Court has jurisdiction over the subject matter of this case under 28 U.S.C. § 1331 because it raises substantial federal questions as to the scope of the Tribal Court's jurisdiction (*Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 852 (1985)), as well as substantial federal questions regarding the Tribe's inability to cancel a lease or right-of-way approved by the U.S. Department of the Interior, Bureau of Indian Affairs, under 25 C.F.R. §§ 162.619(a)(1) and 169.20, regarding compliance with the federal Clean Air Act, 42 U.S.C. § 82, *et seq.* and the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.*, regarding compliance with the right of way provisions of 25 U.S.C. §§ 323-328 and the accompanying regulations at 25 C.F.R. Part 169, regarding Occupational Safety and Health Regulations at 29 C.F.R. §§ 1910.36 and 1926.34, regarding the Indian Civil Rights Act, 25 U.S.C. § 1302, and regarding the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

19. This Court has personal jurisdiction over the Tribe because it has transacted business in the State of Utah in connection with the subject matter of this Complaint and because it has caused harm to QGM in the State of Utah.

20. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

WAIVER OF THE TRIBE'S SOVEREIGN IMMUNITY

21. On February 24, 2005, the Tribe adopted a resolution acknowledging that the Tribe had agreed to a limited waiver of sovereign immunity in the Surface Use and Access Agreement and adopting the Surface Use and Access Agreement.

22. The Tribal resolution specifically provides that "the Business Committee is of the opinion that the Concession Agreement, including the granting of a limited waiver of the Tribe's sovereign immunity, is in the best interest of the Tribe." (Ex. B.)

23. By unambiguous provisions in the Surface Use and Access Agreement, the Tribe expressly granted "a limited waiver of Tribal sovereign immunity for the limited purpose of adjudicating any and all claims, disputes or causes of action arising out of or relating to" the Surface Use and Access Agreement. (Ex. B at 18, ¶ 17.1 (emphasis added).)

24. Paragraph 17.2 of the Surface Use and Access Agreement provides as follows:

> If any dispute or claim is not settled or cured within the thirty-day (30-day) period contemplated in Section 17.1, either Party may seek a resolution of the dispute by arbitration in accordance with the procedures set forth herein. The Tribe expressly grants a limited waiver of Tribal sovereign immunity for the limited purpose of adjudicating any and all claims, disputes or causes of action arising out of or relating to this Concession Agreement and consents to arbitration and suit solely for such limited purposes.

(Ex. B at 18, ¶ 17.2 (emphasis added).)

25. The Surface Use and Access Agreement further provides with respect to the Tribe's waiver of sovereign immunity as follows:

> The Parties agree that they shall have as a first recourse for the enforcement of this Article 17 to the United States District Court for the District of Utah and appellate courts therefrom. Should the United States District Court for the District of Utah not have jurisdiction, the Parties agree that an action for enforcement of this Article 17 may be brought in the state courts of the State of Utah. The Tribe makes its limited waiver of sovereign immunity for purposes of any action by Questar to enforce this Concession Agreement, and agrees to forego any right or claim or right to seek or require exhaustion of Tribal court remedies as a prerequisite to any action by Questar to enforce this Concession Agreement.

(Ex. B at 20, ¶ 17.5 (emphasis added).)

26. The Surface Use and Access Agreement further provides that:

> The undersigned representatives of the Tribe and Questar hereby warrant that they have full power, authority and legal right, and have obtained all approvals necessary, and are authorized to execute, deliver, and perform all actions required herein. A tribal resolution confirming that this Agreement provides the consent required under federal law for the easements and rights of way over tribal lands pursuant to the terms hereof, is attached as Exhibit F.

(Ex. B at 20, ¶ 17.6.)

27. Given the unambiguous language of the Tribal resolution adopting the Surface Use and Access Agreement, and the language of the Surface Use and Access Agreement, the Tribe's waiver of sovereign immunity is clear.

EXHAUSTION OF TRIBAL REMEDIES

28. Although the Ute Rules of Civil Procedure purport to provide for an appeal of the Tribal Court's injunctive order, exhaustion of tribal remedies is not required in this case for several reasons.

29. To begin with, the Tribal Court action is patently violative of express jurisdictional prohibitions, particularly those contained in the Surface Use and Access Agreement. (*See* Ex. B, Article 14 and ¶ 17.5.) The plain language of Article 14 renders tribal law subordinate when it conflicts with the terms of the Surface Use and Access Agreement, and Paragraph 17.5 confirms QGM has no obligation to exhaust Tribal Court remedies before advancing any other action to enforce the Surface Use and Access Agreement.

30. The Tribe, by contract, has agreed to adhere to certain dispute resolution procedures.

31. Article 17 of the Surface Use and Access Agreement, entitled "Resolution of Disputes," deprives the Tribal Court of adjudicatory authority because the Tribe agreed to submit any disputes to federal or state court and private arbitration, and specifically disclaimed any right

or requirement that such disputes be submitted to Tribal Court. The Surface Use and Access Agreement, therefore, cannot support a consensual relationship under *Montana v. United States*, 450 U.S. 544 (1981).

32. The Tribe voluntarily disclaimed any right to or requirement of Tribal Court exhaustion in the Surface Use and Access Agreement, and it is, therefore, clear that the Tribal Court lacks jurisdiction and requiring exhaustion would serve no purpose other than delay. *Strate v. A-1 Contractors*, 520 U.S. 438, 459 n.14 (1997).

33. Additionally, the Tribe's assertion of Tribal Court jurisdiction is motivated by a desire to harass and is conducted in bad faith.

34. Furthermore, exhaustion would be futile because of the lack of an adequate opportunity to challenge the Tribal Court's jurisdiction. QGM is informed and believes and on that basis alleges that the Tribe does not have a functional appellate court.

GENERAL ALLEGATIONS

I. THE SURFACE USE AND ACCESS AGREEMENT

35. QGM and the Tribe entered into the Surface Use and Access Agreement effective January 1, 2005. (Ex. B at 1.)

36. The Parties need the federal court to determine how federal law impacts the parties' rights and obligations under the Surface Use and Access Agreement and declare the parties' respective rights and obligations under that agreement.

37. The Surface Use and Access Agreement is a fully integrated contract that was negotiated at arm's length by independent and sophisticated counsel. At the time of execution, the Tribe was represented by Davis Graham & Stubbs, LLP, a Denver-based law firm comprised

of approximately 135 attorneys with partners who are specialized in the areas of oil and gas and Indian law. The Surface Use and Access Agreement was approved by both the Tribe's Business Committee as well as the United States Bureau of Indian Affairs ("BIA") as being in the best interest of the Tribe. (Ex. B at 24 and Resolution No. 05.075.)

38. In its approval of the Surface Use and Access Agreement, the United States through the Bureau of Indian Affairs stated that "[i]t has been determined that approval of this document is not such a major federal action significantly affecting the quality of the human environment as to require the preparation of an environmental impact statement . . . ." (Ex. B at 24.)

39. Pursuant to its terms, the Surface Use and Access Agreement "shall remain in full force and effect for a term of twenty (20) years from and after the Effect Date, and, upon the end of such primary term, shall be automatically renewed for an additional twenty (20) year period." (Ex. B at 17, Article 13.)

40. The Surface Use and Access Agreement also provides that "[s]hould any conflict arise between Tribal laws and regulations and this Concession Agreement, Tribal laws and regulations shall not control over the specific provisions in the Concession Agreement." (Ex. B at 17, Article 14.) QGM has at all times complied with the provisions of the Surface Use and Access Agreement. The Tribe's attempt to impose tribal laws and ordinances on QGM to create a justification for its self-help actions is contrary to this express provision in the Surface Use and Access Agreement.

41. The parties have operated under the Surface Use and Access Agreement since its inception in 2005. QGM has built and operated facilities under the Surface Use and Access

Agreement, and pursuant to Article 7 thereof has timely tendered the annual payments, which the Tribe has continually accepted without objection, from 2005 through 2010. In 2005, 2006 and 2007 annual payments were timely made by QGM in the original amount of $275,000 each year. In 2008, 2009, and 2010 annual payments were timely made by QGM, based on the payment calculation provision of the Surface Use and Access Agreement, in the amount of $324,631 each year.

42. The Tribe owns or controls the surface of certain lands within the area described in Exhibit A to the Surface Use and Access Agreement as "Concession Area 1," certain lands outside Concession Area 1 where Transportation Pipelines are located ("Existing Pipeline Corridors"), and certain lands where Distribution Facilities are located ("Existing Distribution Corridors"). (Ex. B, Recitals A-C.)

43. QGM owns certain valid and subsisting rights and interests in, to and under the oil and gas leasehold estates, rights-of-way, easements, surface use agreements, and other agreements and related wells, pipelines, distribution systems, compressors, dehydrators, plants, storage facilities and other facilities in Concession Area 1, Existing Pipeline Corridors, and the Existing Distribution Corridors. (Ex. B, Recital D.)

44. Under the Surface Use and Access Agreement, QGM and the Tribe have reached an "omnibus agreement for rights-of-way, easements, access, surface use, surface damages and all other necessary agreements associated with QGM's existing business activities in Concession Area 1, the Existing Pipeline Corridors, and the Existing Distribution Corridors and for [QGM's] future development and operations in Concession Area 1, the Existing Pipeline Corridors, and the Existing Distribution Corridors." (Ex. B, Recital D.)

45. The Surface Use and Access Agreement constitutes a "complete grant of access by the Tribe to [QGM], its employees, representatives, and contractors for the purposes outlined [therein]." (Ex. B at 4, ¶ 2.1.) That is, the Surface Use and Access Agreement is itself a present and vested grant of access for the enumerated purposes, and also provides the Tribe's advance consent to applications for rights-of-way and leases to be later issued by the U.S. Bureau of Indian Affairs.

46. The Surface Use and Access Agreement provides a procedure for QGM to apply for and obtain rights-of-way for future oil and gas activities and the right to proceed with the use "applied for" in the absence of specific objection from the Tribe, whether or not the right-of-way has yet been issued.

47. As to any proposed new surface uses, QGM "will file appropriate right-of-way applications with the Tribe and the BIA and provide notice under Article 11. Upon expiration of the [7-day] notice period, [QGM] may use and access the surface applied for unless notified in writing by the Tribe of an objection to the proposed use based on reasons of the health and safety of the Tribe." (Ex. B at 15, ¶ 10.4 (emphasis added).) Absent the referenced timely written objection from the Tribe, QGM may proceed with construction without obtaining a right-of-way so long as it was "applied for." (*Id.*) If the Tribe does object within the notice period, the Tribe is obligated to diligently provide an alternative location for the proposed use and QGM is afforded the opportunity to challenge the Tribe's objection pursuant to the dispute resolution procedures provided Article 17 of the Surface Use and Access Agreement. (Ex. B at 6-7, ¶ 4.3.) The right to proceed after applying absent a timely written objection to the proposed location based on health and safety is coupled with the Tribe's affirmative obligation to assist QGM so

that any proposed rights-of-way be immediately granted to Questar by the BIA and also by resolving any issues that arise during the review of rights of way by the BIA. (Ex. B at Recital H.)

48. As to the requirement for notice of intention to commence construction, QGM "shall use commercially reasonable efforts to provide at least seven (7) days' prior written notice to the Tribe . . .," but commits no breach if lesser notice or no notice is given "unless such repeated failure demonstrates that Questar is not using commercially reasonable efforts to give notice . . . ." (Ex. B at 16, Article 11.)

49. The Surface Use and Access Agreement sets forth at Article 17 a detailed procedure for the resolution of any disputes that arise under the Surface Use and Access Agreement.

50. First, "[n]o breach shall be subject to a claim until the Party alleged to be in breach is given at least thirty (30) days' prior written notice describing such dispute or claim . . . ." (Ex. B at 18, ¶ 17.1.)

51. If the "dispute or claim is not settled or cured within the thirty-day (30-day) period ... either Party may seek a resolution of the dispute by arbitration in accordance with the procedures set forth" in the Surface Use and Access Agreement. (Ex. B at 18, ¶ 17.2.)

II. THE CLEAN AIR ACT LITIGATION AND QGM'S AFFIRMATIVE DEFENSES

52. In February 2008, the United States filed suit against QGM alleging that five of QGM's natural gas compression facilities[1] are in violation of the Clean Air Act (the "CAA"),

[1] The five facilities are QGM's Wonsits Valley, Coyote Wash, Chapita, Island, and River Bend natural gas compressor stations (the "QGM Facilities").

entitled *United States of America v. Questar Gas Management Company*, United States District Court for the District of Utah Case No. 2:08-cv-00167. QGM denies the United States' allegations. The United States further alleges that it has jurisdiction to enforce the Environmental Protection Agency's ("EPA") own CAA regulations regarding QGM's facilities – rather than those of the State of Utah – and that the EPA has had jurisdiction to permit those facilities – rather than the State of Utah – because those facilities are located in "Indian Country." QGM denies this allegation as well, and asserts several affirmative defenses to the United States' claims relating to the "Indian Country" issue, including an affirmative defense asserting that the alleged portion of the Uintah and Ouray Reservation on which the Questar Facilities are located (the Uncompahgre portion) was disestablished by acts of Congress more than one hundred years ago, and that, regardless, the Tribe disclaimed its civil and regulatory authority over the lands upon which some of the facilities are located to the State of Utah more than ten years ago in settlement of previous jurisdictional litigation.[2]

53. The Tribe successfully moved to intervene in the matter between the United States and QGM in October 2009, alleging common law nuisance claims against QGM.

54. The Tribe has made it clear that the Tribe will do whatever it takes to force QGM to drop its jurisdictional defenses to the United States' CAA claims. For example, on April 15, 2010, the Tribe's Business Committee sent a letter to QGM threatening to remove QGM and its affiliates from the lands covered by the Surface Use and Access Agreement. The letter states:

[2] The United States alleges that QGM's Facilities are located within the Uintah and Ouray Reservation, which is made up of the Uintah Valley Reservation (the northern half) and the Uncompahgre Reservation (the southern half). QGM's facilities are alleged to be located within the Uncompahgre portion of the Uintah and Ouray Reservation.

> Until QGM comes into compliance, and ceases its fight to disestablish the Reservation, the Tribe feels that it is in the best interests of the Tribe to cease all further business with Questar Corporation and its affiliates, including QGM. To the extent that QGM continues its battle against the Tribe in this regard, the Tribe will seek to pursue every legal avenue possible to remove Questar Corporation and its affiliates from the Reservation.

A copy of this letter, from Curtis Cesspooch of the Tribe's Business Committee to QGM, attached hereto as Exhibit D.

55. On June 18, 2010, in the CAA litigation, QGM submitted the expert report of Weber State University professor Kathryn MacKay, QGM's expert on the "jurisdictional status" of the Uncompahgre Reservation, to the Tribe and to the United States. In her report, Dr. MacKay concludes that the Uncompahgre Reservation was disestablished by legislative process. Four days later, on June 22, 2010 the Tribe physically denied QGM and its construction contractors access to its facilities.

III. THE STAGECOACH FACILITY

56. On March 22, 2007, the Tribe and the BIA approved QGM's application for a Facilities Lease, #6SF0005612, for the Stagecoach Processing Plant, a natural gas processing facility, covering approximately 13.42 acres. The Letter of Authority for Construction & Lease containing the Tribe's approval is attached hereto as Exhibit E. In its approval of the project, the BIA found that the construction of the Stagecoach facility was not "a major federal action" that significantly affected the "quality of the human environment." (Ex. E at 5.)

57. On January 12, 2009, QGM submitted a Modification To Facilities Lease on Tribal Lands for an expansion of the surface use area to expand the pad at the Stagecoach Processing Plant by approximately 1.23 acres for the identified purpose of adding additional processing capacity referred to as Iron Horse. This document is attached hereto as Exhibit F.

The Tribe did not object to the modification. Therefore, pursuant to the terms of the Surface Use and Access Agreement, the Tribe approved the modification.

58. On July 9, 2009, QGM received authorization from the BIA to proceed with the construction for "expansion of your facilities lease" involving the pad expansion at the Stagecoach Processing Plant by approximately 1.23 acres. The BIA's Letter of Authorization for Construction & Modification is attached hereto as Exhibit G.

59. On November 3, 2009, QGM submitted an application for Modification To Facilities Lease on Tribal Lands for an expansion of the surface use area under the 2007 Facilities Lease for the Iron Horse Turn Around at the Stagecoach Processing Plant. That document is attached hereto as Exhibit H. The Tribe did not object to the modification. Therefore, pursuant to the terms of the Surface Use and Access Agreement, the Tribe approved the modification.

60. On December 10, 2009, QGM received authorization from the BIA to proceed with the construction of the Iron Horse Turn Around at the Stagecoach Processing Plant by adding 0.994 acres, more or less, to the 2007 Facilities Lease for purposes of constructing a vehicle turn-around route. The BIA's Letter of Authorization for Construction & Modification is attached hereto as Exhibit I.

61. On January 28, 2010, QGM provided the Tribe with notice of its intent to construct the Iron Horse Turn Around; which provided vehicular access to the expansion of the Stagecoach Processing Plant. QGM's Notice is attached hereto as Exhibit J. The Tribe did not object to QGM's notice of its intent to construct the Iron Horse Turn Around.

62. On February 22, 2010, QGM provided the Tribe with notice of its intent to construct the expansion at the Stagecoach Processing Plant which expanded the existing plant Facilities Lease by approximately 1.23 acres. QGM's Notice is attached hereto as Exhibit K. The Tribe did not object to QGM's notice of its intent to construct the plant expansion.

63. On March 1, 2010, pursuant to Articles 10 and 11 of the Agreement, construction of the Stagecoach expansion projects began.

64. On May 11, 2010, QGM submitted to the Tribe and the BIA a Notice of Surface Access and Application for Right of Way pursuant to Articles 4 and 11 of the Surface Use and Access Agreement. The proposed activity included the construction of three 14.4/24.9kV transmission lines that were needed as part of the expansion to the Stagecoach Processing Plant. A copy of QGM's Notice is attached hereto as Exhibit L. The Tribe did not object verbally or in writing to the Notice of Surface Access and Application for Right of Way. The Tribe had previously granted QGM the right to survey the route on November 3, 2009. The Tribe's approval of QGM's right to survey the route is attached hereto as Exhibit M.

65. On June 22, 2010, QGM's contractor, Anderson & Wood ("A&W"), arrived at the construction site for the transmission line project to continue work that had commenced on June 10, 2010. That same day, only four days after the Tribe received Dr. MacKay's expert report in the CAA litigation, which concluded that the Uncompahgre Reservation had been disestablished, a representative of the Tribe removed A&W from the site, claiming that A&W did not possess a valid tribal access permit, business permit, or right-of-way for the related activity.

66. Later that day, the Tribe sent a letter to QGM stating that the Tribe would "prevent [QGM], its affiliate companies, subcontractors, and any other contractors working on [QGM's] behalf from access, ongoing construction or expansion to [the Stagecoach Processing Plant], and use of the site." A copy this letter from Curtis Cesspooch, Chairman Tribe's Business Committee to QGM is attached hereto as Exhibit N.

67. The purported reason for the June 22, 2010 denial of access was that QGM had allegedly breached the Surface Use and Access Agreement by failing to have a valid tribal access permit, business permit, or right-of-way for the related activity. (*Id.*) Mr. Cesspooch also stated in his letter that QGM "has repeatedly attempted to circumvent the Tribe's authority," in reference to the ongoing litigation between QGM and the United States and QGM's jurisdictional defenses.

68. In-house counsel for QGM promptly responded, informing the Tribe's counsel that A&W had valid permits and licenses, and that

> in accordance with Article 11 of [the Agreement], [QGM] put the Tribe, Bureau of Indian Affairs, and the Energy and Minerals Department on notice of its power line construction activity on May 11, 2010. While the Tribe had an opportunity to object to [QGM's] specific activity pursuant to the requirements of Article 11, the Tribe made no such objection. . . . [QGM] anticipates receiving the related right-of-way in due course but, as you know, Article 11 allows construction to proceed without a right of way in the absence of the written rejection required by Article 10.4.

A copy of this letter, from Cris Castillo of QGM to Tom Fredericks, counsel for Tribe, is attached hereto as Exhibit O. Further, in-house counsel for QGM also put the Tribe on notice that QGM would recommence its authorized construction activity, with valid permits and authorizations in hand available for inspection by the Tribe, the following morning. (*Id.*)

69. On June 23, 2010, consistent with Mr. Castillo's letter to Mr. Fredericks, A&W contractors and QGM representatives Matt Hacking and Brad Mitchell arrived at the transmission line project site to resume construction. Tribal technician Audie Appawoo arrived shortly thereafter, and again shut down the work. Mr. Appawoo informed Mr. Hacking and Mr. Mitchell that QGM would not be able to work on any new projects on Tribal properties and indicated that the shut down was related to the ongoing litigation. Mr. Appawoo rejected QGM representatives' offer and tender of appropriate documentation for the construction work. When offered the documentation, Mr. Appawoo responded that the paperwork did not matter, that the project was shut down and that QGM representatives and contractors were to vacate the construction site. Mr. Appawoo also called Tribal police after using his vehicle to block Mr. Hacking's, Mr. Mitchell's, and the A&W crew's exit from the property, which he had just demanded. The Tribal officer who responded confiscated a tape from Mr. Mitchell's video camera, which contained video of the incident. He also instructed Mr. Hacking and Mr. Mitchell that their access permits had been revoked.

70. Later that morning, consistent with Mr. Appawoo's statement at the transmission line project site, two Tribe members entered the office of Ira Massey, Chief Construction Inspector for QGM, at the Stagecoach Processing Plant expansion project and directed him to have everyone involved in the new construction (the processing plant expansion and the Iron Horse "turn-around") at that site leave. The result was that more than 100 construction workers then on location were forced to leave work that day.

IV. THE FEDERAL COURT RESTRAINING ORDER

71. On June 30, 2010, QGM filed a counterclaim in the Clean Air Act Case, raising the same claims as this Complaint, together with a Motion for Temporary Restraining Order requesting that the Tribe be enjoined from denying QGM access to the sites referenced above.

72. On July 1, 2010, the United States District Court of the District of Utah, Judge Dale A. Kimball presiding, issued a Memorandum Decision and Order Granting Preliminary Injunction, ordering that the Tribe was "restrained and enjoined, pending resolution of an arbitrator, from all activities which prevent Questar's and its construction contractors' access to the Stagecoach Processing Plant, the Stagecoach Processing Plant expansion project known as Iron Horse, and the related transmission line project sites." (Ex. P at 8-9.)

73. The July 1, 2010 preliminary injunction order further ordered the Tribe "pending resolution by an arbitrator, to allow Questar and its construction contractors to resume surface access to the Stagecoach Processing Plant, the Stagecoach Processing Plant expansion project known as Iron Horse, and the related transmission line project sites." (Ex. P at 9.)

74. On July 7 and 8, 2010, the Tribe again interfered with QGM's access to the Iron Horse project by ordering certain QGM subcontractors off the Iron Horse site and telling them they were trespassing because they did not have valid "access permits." On July 8, 2010, when QGM provided a representative of the Tribe with a copy of the federal court's preliminary injunction order restoring access to the construction site, he said "This ain't valid."

75. After QGM apprised the federal district court of the Tribe's actions, on July 13, 2010, the federal district court ordered the Tribe to show cause why it should not be held in contempt of the federal district court's July 1, 2010 preliminary injunction order.

76. On July 15, 2006, the Tribe filed a motion to vacate the federal court's preliminary injunction order based on lack of subject matter jurisdiction.

77. Counsel for the Tribe argued that state court was the proper jurisdiction for this dispute because it was a court of general jurisdiction.

78. Following the federal court's order to show cause hearing held on July 16, 2010, the federal district court vacated its July 1, 2010 preliminary injunction order based on its determination that it lacked federal subject matter jurisdiction over QGM's counterclaims, which were the premise of QGM's request for injunctive relief.

79. The federal district court order vacating the preliminary injunction was served on the parties through the federal court's electronic filing system (via e-mail) at 4:20 p.m.

80. At approximately 6:00 p.m., the Tribe expelled QGM and its subcontractors from the Stagecoach Processing Plant expansion project, and padlocked the entrance to QGM's facility, permitting only two QGM employees at a time in and out of the operational Stagecoach natural gas processing facility, creating a serious health and safety issue contrary to federal health and safety statutes and regulations, including but not limited to 29 C.F.R. §§ 1910.36 and 1926.34.

V. THE TRIBAL COURT ACTION

81. On July 19, 2010, after it had already engaged in self-help by removing QGM and its contractors from the Stagecoach Processing Plant expansion project, and padlocked the entrance to QGM's facility, the Tribe filed a Complaint in Tribal Court against QGM for trespass and at the same time requested a temporary retraining order and preliminary injunction ratifying the lockout.

82. In its Memorandum in Support of Motion for TRO and Preliminary Injunction, the Tribe argued that QGM had failed to comply with federal right of way statutes and regulations at 25 U.S.C. §§ 323-328 and 25 C.F.R. Part 169. (Ex. Q at 7.) The Tribe further argued that the Stagecoach expansion had the potential to violate the Clean Air Act, 42 U.S.C. § 82, *et seq.*, (Ex. Q hereto at 12), and that QGM had violated the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* (Ex. Q at 18.)

83. On July 23, 2010, the Tribal Court, without proper jurisdiction, granted the Tribe's request, purporting to enjoin further construction of the Stagecoach Processing Plant expansion project.

84. On July 23, 2010, the Tribe sent QGM a letter re: "Request for Documentation and Banishment Proceedings," essentially threatening to confiscate QGM's substantial assets on the reservation by "banishing" QGM from the reservation. (Ex. R hereto.)

FIRST CAUSE OF ACTION

(Declaratory Relief – No Tribal Court Jurisdiction)

85. QGM incorporates by reference the allegations contained in the preceding paragraphs 1 through 84, above.

86. An existing and actual controversy within this Court's jurisdiction exists between QGM and the Tribe concerning the Tribal Court's jurisdiction over QGM and the controversies between QGM and the Tribe.

87. The Tribal Court lacked subject matter jurisdiction over this dispute because the Tribe had expressly agreed to the jurisdiction of federal courts, state courts and private arbitration to resolve disputes arising out of or relating to the Surface Use and Access

Agreement, not tribal courts. Because the Tribal Court had no adjudicatory authority over the dispute, the Tribal Court's July 23, 2010 Memorandum Decision and Order is invalid.

88. The Tribal Court lacked subject matter jurisdiction because the Tribe's trespass claim in the Tribal Court action was wholly premised on allegations that QGM had violated federal law, including the federal Clean Air Act, 42 U.S.C. § 82, *et seq.*, (Ex. Q hereto at 12), the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* (Ex. Q hereto at 18), and the right-of-way provision of 25 U.S.C. §§ 323-328 and the accompanying regulations at 25 C.F.R. Part 169, *et seq.* (Ex. Q hereto at 7.)

89. The Tribal Court also erroneously exercised jurisdiction by finding that QGM was subject to its jurisdiction under *Montana v. United States*, 450 U.S. 544 (1981), and other authorities, based on its conclusion that the Surface Use and Access Agreement represented a "consensual private commercial agreement" with the Tribe. This reasoning is erroneous because the Surface Use and Access Agreement merely grants property rights and specifically disclaims any consent to Tribal Court because it provides that all disputes will be resolved by non-tribal forums, specifically by carefully structured arbitration with remedial authority exclusively in federal and state courts, not tribal courts.

90. The Tribal Court also erroneously concluded that its exercise of jurisdiction under *Montana* was proper because there was no demonstrably serious impact or threat to the political integrity, economic security or health or welfare of the Tribe.

91. By this Complaint, QGM seeks a declaration under 28 U.S.C. § 2201 that the Tribal Court lacked subject matter jurisdiction over the dispute in *Ute Indian Tribe v. Questar Gas Management Company and Affiliates*, Ute Tribal Court Case No. CV10-337, and that the

Tribal Court's July 23, 2010 Memorandum Decision and Order is therefore invalid, and an injunction barring the Tribe from pursuing any claim outside of arbitration pursuant to the Surface Use and Access Agreement.

SECOND CAUSE OF ACTION

(Declaratory Relief – Right of Way Statutes and Regulations at 25 U.S.C. §§ 323-328 and 25 C.F.R. Part 169)

92. QGM incorporates by reference the allegations contained in the preceding paragraphs 1 through 91, above.

93. An existing and actual controversy within this Court's jurisdiction exists between QGM and the Tribe concerning QGM's compliance with 25 U.S.C. §§ 323-328 and 25 C.F.R. Part 169, relating to valid rights-of-way.

94. By this Complaint, QGM seeks a declaration under 28 U.S.C. § 2201 that it has complied with 25 U.S.C. §§ 323-328 and 25 C.F.R. Part 169.

THIRD CAUSE OF ACTION

(Declaratory Relief – National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.*)

95. QGM incorporates by reference the allegations contained in the preceding paragraphs 1 through 94, above.

96. An existing and actual controversy within this Court's jurisdiction exists between QGM and the Tribe concerning QGM's compliance with the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321, *et seq.*

97. QGM contends that BIA has approved modifications to the lease applicable to the Stagecoach facility and the expansion of that facility, stating that "[i]t has been determined that approval of this document is not such a major federal action significantly affecting the quality of

the human environment as to require the preparation of an environmental impact statement under Section 10-3(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. §4332(s)(c)." (Ex. C.)

98. The Tribe, on the other hand, contends that QGM has failed to comply with NEPA with respect to the Stagecoach expansion project. (Ex. Q hereto at 18.)

99. By this Complaint, QGM seeks a declaration under 28 U.S.C. § 2201 that all NEPA requirements have been satisfied by the relevant agencies with respect to the Stagecoach expansion project and that if the Tribe disputes the BIA's finding of no "major federal action" then its remedy is to sue the United States.

FOURTH CAUSE OF ACTION

(Declaratory Relief – Clean Air Act, 42 U.S.C. § 82, *et seq.*)

100. QGM incorporates by reference the allegations contained in the preceding paragraphs 1 through 99, above.

101. An existing and actual controversy within this Court's jurisdiction exists between QGM and the Tribe concerning the Tribe's ability to enforce the Clean Air Act ("CAA"), 42 U.S.C. § 82, *et seq.*, through the self-help actions described above or through the courts.

102. Additionally, an existing and actual controversy within this Court's jurisdiction exists between QGM and the Tribe concerning QGM's compliance with the CAA, in particular the Tribe's claim that QGM has failed to obtain a Title V permit and QGM's contention that such a permit is not required until operation of the new facility commences.

103. By this Complaint, QGM seeks a declaration under 28 U.S.C. § 2201 that the Tribe has not been delegated permitting or regulatory authority under the CAA and cannot act in

a governmental capacity to enforce the CAA and QGM's contention that it has followed and remains in compliance with federal Title V permitting regulations, to the extent they are applicable.

FIFTH CAUSE OF ACTION

(Declaratory Relief – Termination of QGM's Lease)

104. QGM incorporates by reference the allegations contained in the preceding paragraphs 1 through 103, above.

105. An existing and actual controversy within this Court's jurisdiction exists between QGM and the Tribe concerning the Tribe's threat to unilaterally banish QGM from the reservation, thus terminating its lease and essentially confiscating QGM's facilities located on the reservation.

106. The Tribe has refused to allow access to the Stagecoach facility, specifically by denying QGM and its contractors access to the site, including but not limited to padlocking the access gate to the Stagecoach facility.

107. Although the Tribe contends that it has the authority to banish Questar under its sovereign authority, 25 C.F.R. §§ 162.620 and 169.20 state that only the Department of the Interior has the authority to terminate such leases and rights-of-way.

108. The Tribal Defendants' actions constitute a unilateral termination of the Stagecoach Facilities lease, which is void for lack of BIA approval.

109. By this Complaint, QGM seeks a declaration under 28 U.S.C. § 2201 that the Tribe cannot unilaterally terminate QGM's leases and rights of way.

SIXTH CAUSE OF ACTION

(Declaratory Relief – Indian Civil Rights Act, 25 U.S.C. § 1302)

110. QGM incorporates by reference the allegations contained in the preceding paragraphs 1 through 109, above.

111. The Indian Civil Rights Act, 25 U.S.C. § 1302, provides that "[n]o Indian tribe exercising powers of self-government shall . . . (5) take any private property for a public use without just compensation" or "(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law."

112. An existing and actual controversy within this Court's jurisdiction exists between QGM and the Tribe concerning the Tribe's violations of QGM's rights under this statute. The Tribe shut down construction of the Stagecoach expansion project unilaterally in violation of QGM's due process rights, and has taken certain of QGM's private property without just compensation, and threatens to take all of QGM's property located on the reservation through "banishment" without just compensation.

113. By this Complaint, QGM seeks a declaration under 28 U.S.C. § 2201 that, pursuant to 25 U.S.C. § 1302(5) and (8), the Tribe cannot "banish" QGM or take its property without just compensation.

SEVENTH CAUSE OF ACTION

(Declaratory Relief – Occupational Safety and Health)

114. QGM incorporates by reference the allegations contained in the preceding paragraphs 1 through 113, above.

115. An existing and actual controversy within this Court's jurisdiction exists between QGM and the Tribe concerning the Tribe's padlocking of the Stagecoach Processing Plant under 29 C.F.R. §§ 1910.36 and 1926.34, which prohibit obstruction of exit routes from regulated facilities.

116. By this Complaint, QGM seeks a declaration under 28 U.S.C. § 2201 that, the Tribe's actions have violated 29 C.F.R. §§ 1910.36 and 1926.34.

EIGHTH CAUSE OF ACTION

(Breach of Contract)

117. QGM incorporates by reference the allegations contained in the preceding paragraphs 1 through 116, above.

118. Effective as of January 1, 2005, QGM and the Tribe entered into the Surface Use and Access Agreement.

119. The Surface Use and Access Agreement was approved by the federal government through the BIA on March 8, 2005.

120. Article 17 of the Surface Use and Access Agreement sets forth the procedure that must be followed for resolution of any disputes arising under the Surface Use and Access Agreement.

121. As described in detail above, the Tribe has breached the Surface Use and Access Agreement by resorting to self-help as a remedy to resolve a dispute or claim arising under the Surface Use and Access Agreement.

122. Under Article 17.1 of the Surface Use and Access Agreement, the parties agreed that they would "seek to resolve any disputes or claims arising between them in connection with

[the Surface Use and Access Agreement] amicably." The Tribe's June 22, 2010 letter to QGM alleged that QGM had breached the Surface Use and Access Agreement, and stated that the Tribe intended to "immediately bar [QGM] from access to either the Stagecoach Processing Plant Expansion Project or the Iron Horse facility." (Ex. N.) The Tribe's failure to provide QGM with "at least thirty days' prior written notice describing such dispute or claim," and instead resorting to self-help by physically barring QGM from QGM's facilities is a breach of Article 17.1 of the Surface Use and Access Agreement. Moreover, the Tribe's refusal to allow QGM to "cure" the alleged breach by producing the requested paperwork reflecting its authorization to conduct construction activity is also a breach of Article 17.1 of the Surface Use and Access Agreement.

123. Under Article 17.2 of the Surface Use and Access Agreement, "if any dispute or claim is not settled or cured within the thirty-day (30-day) period ... either Party may seek a resolution of the dispute by arbitration." In resorting to self-help by barring QGM access to QGM's facilities, the Tribe breached Article 17.2 of the Surface Use and Access Agreement by not seeking resolution of the alleged breaches identified in its June 22, 2010 letter first through amicable resolution and then through arbitration, and the Tribe further breached the Surface Use and Access Agreement by denying QGM its right to seek resolution of the Tribe's alleged breaches through arbitration.

124. Under Article 17.2 of the Surface Use and Access Agreement, "if any dispute or claim is not settled or cured within the thirty-day (30-day) period ... either Party may seek a resolution of the dispute by arbitration." (emphasis added). On June 23, 2010, QGM attempted to cure the alleged deficiencies mentioned in the Tribe's June 22, 2010 letter by tendering a valid tribal access permit, a valid tribal business license, and valid documentation for the May 11,

2010 notice of intended construction and right-of-way application to Tribal representatives. The Tribe breached Article 17.2 of the Surface Use and Access Agreement by refusing to allow QGM the opportunity to cure the Tribe's "dispute or claim."

125. Under Article 17.3.3 of the Surface Use and Access Agreement, "[t]he decision of the Neutral Arbitrator shall be rendered in writing and signed by the Neutral Arbitrator and shall be final and binding on the Parties hereto as to any questions so submitted...." The Tribe resorted to self-help by barring QGM access to QGM's facilities. The Tribe, therefore, breached Article 17.3.3 of the Surface Use and Access Agreement by not seeking resolution of the alleged breaches identified in its June 22, 2010 letter through a final and binding decision rendered by a Neutral Arbitrator.

126. The Tribe has breached the Surface Use and Access Agreement by (1) resorting to self-help by physically denying QGM and its construction contractors access to its facilities, (2) refusing to resolve the claims arising between the parties amicably, (3) failing to seek resolution of the claim or dispute through arbitration, and denying QGM its right to seek resolution of the Tribe's claim or dispute through arbitration, (4) refusing to allow QGM the opportunity to "cure" the alleged breaches, and (5) failing to seek resolution of the claim through a final and binding decision rendered by a Neutral Arbitrator.

127. QGM has been damaged by the Tribe's breach. QGM has incurred substantial costs and attorneys' fees in reacting to and responding to the Tribe's breach, and every day that QGM's construction contractors are denied access to its facilities it continues to accrue contractor stand-by costs and loses substantial amounts of revenue due to delayed completion of the project.

128. The Tribe's breach of the Article 17 provisions of the Surface Use and Access Agreement entitles QGM to injunctive and declaratory relief, pending final resolution by an arbitrator, including an injunction prohibiting the Tribe from all activities which prevent QGM's and its construction contractors access to the Stagecoach Processing Plant, the Stagecoach Processing Plant expansion project and the related transmission line project site, as well as prohibiting the Tribe from taking any action to terminate the relevant leases or contracts or "banish" QGM from the reservation as threatened.

PRAYER FOR RELIEF

WHEREFORE, QGM prays for judgment in its favor and against the Tribe, and asks that this Court order as follows:

1. A declaration under 28 U.S.C. § 2201 that the Tribal Court improperly exercised jurisdiction in *Ute Indian Tribe v. Questar Gas Management Company and Affiliates*, Ute Tribal Court Case No. CV10-337, and that the Tribal Court's July 23, 2010 Memorandum Decision and Order is therefore invalid, and an injunction barring the Tribe from pursuing any claim outside of arbitration pursuant to the Surface Use and Access Agreement.

2. A declaration under 28 U.S.C. § 2201 that QGM has the right to continued use of and access to the Stagecoach facility and the Stagecoach expansion projects in accordance with the terms of the Surface Use and Access Agreement.

3. A declaration under 28 U.S.C. § 2201 that QGM has complied with 25 U.S.C. §§ 323-328 and 25 C.F.R. Part 169.

4. A declaration under 28 U.S.C. § 2201 that all NEPA requirements have been satisfied with respect to the Stagecoach expansion projects.

5. A declaration under 28 U.S.C. § 2201 that the Tribe has not been delegated permitting or regulatory authority under the CAA and cannot act in a governmental capacity to enforce the CAA and that QGM has obtained the necessary permits with respect to the Stagecoach expansion project.

6. A declaration under 28 U.S.C. § 2201 that only the U.S. Department of the Interior, and not the Tribe, can terminate QGM's leases and rights of way or otherwise "banish" QGM from the reservation in violation of its contractual rights.

7. A declaration under 28 U.S.C. § 2201 that the Tribe's denial of access to the Stagecoach Facilities constitutes an improper, unilateral termination of the Stagecoach Facilities lease, and is void for lack of BIA approval.

8. A declaration under 28 U.S.C. § 2201 that, pursuant to 25 U.S.C. § 1302(5) and (8), the Tribe cannot "banish" QGM or take its property without just compensation.

9. An order requiring the Tribe, pending resolution by an arbitrator, to allow QGM and its construction contractors surface access to the Stagecoach Processing Plant, the Stagecoach Processing Plant expansion projects known as Iron Horse, and the related transmission line construction sites, pursuant to Articles 4, 10, and 11 of the Surface Use and Access Agreement.

8. A declaration under 28 U.S.C. § 2201 that, the Tribe's actions have violated 29 C.F.R. §§ 1910.36 and 1926.34.

9. An order requiring the Tribe to submit all of its disputes arising out of or relating to the Surface Use and Access Agreement to arbitration, including all disputes raised in the Tribal Court action.

10. An order enjoining the Tribe from interfering with or attempting to prevent QGM's access to the Stagecoach Processing Plant, the Stagecoach Processing Plant Expansion Project, and the related transmission line project sites.

RESPECTFULLY SUBMITTED this 27th day of July, 2010.

HOLME ROBERTS & OWEN LLP

/s/ George M. Haley
George M. Haley
E. Blaine Rawson
J. Andrew Sjoblom,
Plaintiff, QEP Field Services Company,
formerly known as Questar Gas
Management Company, a Utah corporation

Plaintiff's Address
180 East 100 South
P.O. Box 45601
Salt Lake City, Utah 84145

EXHIBITS TO COMPLAINT

Exhibit A – Ute Tribe Corporate Charter

Exhibit B – Surface Use Access Agreement

Exhibit C – BIA Approval of SUA

Exhibit D – April Tribe's Notice of Breach

Exhibit E – March 22, 2007, Stagecoach Processing Plant Easement

Exhibit F – January 12, 2009, Modification Expansion

Exhibit G – July 9, 2009, Approved Modification

Exhibit H – November 3, 2009, Modification of Iron Horse Turn Around

Exhibit I – December 12, 2009, Approved Iron Horse Turn Around

Exhibit J – January 28, 2010, Notice of Intent to Construct

Exhibit K – February 22, 2010, Notice of Intent to Construct

Exhibit L – May 11, 2010, Plan of Development and QGM Power Lines

Exhibit M – November 3, 2009, Permission to Survey

Exhibit N – June 22, 2010, Curtis Cesspooch Letter

Exhibit O – June 22, 1010, Letter from Cris Castillo to Tom Fredericks

Exhibit P – July 1, 2010, Order Granting QGM's Motion for TRO

Exhibit Q – July 19, 2010, Tribe's Memo in Support of TRO and Preliminary Injunction

Exhibit R – July 22, 2010, Letter to Questar Corp. CEO Re: Request for Documentation and Banishment Proceedings