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*Attorneys for Defendant,  
The Ute Indian Tribe of the Uintah and Ouray Reservation*

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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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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.

**SPECIAL APPEARANCE TO  
CHALLENGE JURISDICTION**

Civil Case No. 2:10-CV-00700-TC

District Judge Tena Campbell

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The Ute Indian Tribe, by and through undersigned counsel, enters this special appearance to challenge the jurisdiction of the Court, and to object to the Court's requirement that the Tribe's attorneys appear at a status conference this afternoon. It is the Tribe's position that the Court lacks personal jurisdiction over the Tribe at this time,

and lacking such jurisdiction, the Tribe's attorneys should not be ordered to attend a conference today.

At this time there has been no service of process on the Tribe, and the Tribe has not authorized its attorneys to accept service of process on the Tribe's behalf.

Further, the complaint names the wrong party as a defendant. The Concession Agreement, attached to the QEP complaint as Exhibit B, is between Questar Corporation and "THE UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION" in the Tribe's capacity as "a Federally-recognized Indian tribe." Although the Concession Agreement is between Questar and the Ute Tribe's governmental entity, the QEP complaint names the Tribe in its capacity as a federally-charted corporation. See QEP complaint, ¶ 3. The Tribe's federally-charted corporation is defunct and has been for many years.

The Ute Tribe is a governmental entity organized under 25 U.S.C. § 476 (hereinafter referred to as Section 16), a fact the Court may judicially notice. The Tribe's Constitution and By-Laws have been a matter of public record since 1937 and are available on-line through the National Indian Law Library, <http://www.narf.org/nill/Constitutions/uteconst/uteconst.htm>.

The Certification of Adoption, approved by Secretary of the interior Harold L. Ickes in 1937, recites that the Tribe's Constitution and By-laws were ratified by the Tribe's membership pursuant to the Indian Reorganization Act ("IRA"). The Ute Tribe also has created a corporation organized under 25 U.S.C. § 477 (hereinafter referred to as Section 17) of the IRA. However the Tribe's Section 17 corporation—like the Section

17 corporations of many IRA tribes—has been inactive since its creation. As pertinent here, no Ute tribal assets have been transferred to the Tribe's Section 17 corporation, and specifically not the tribal lands involved in QEP's dispute with the Tribe at issue in this case.

Thus, at present this Court does not have personal jurisdiction over the Ute Tribe in its governmental capacity, and it will not have jurisdiction over the Tribe until a complaint naming the Tribe in its governmental capacity is filed with the Court and served with process upon the Tribe.

A court's action taken in the absence of either personal or subject matter jurisdiction is generally void *ab initio* and a complete nullity, subject to attack at any time by any party. See, e.g., *Capron v. Van Noorden*, 2 Cranch 126, 2 L.Ed. 229 (1804) (even a plaintiff can challenge jurisdiction in the very tribunal of the plaintiff's choosing). "A judgment is void if the court that enters it lacks jurisdiction over either the subject matter of the action or the parties to the action." *Cunningham v. BHP Petroleum Gr. Brit. PLC*, 427 F.3d 1238,1245 (10th Cir. 2005) (vacating all of the district court's post-removal orders because the orders were void for lack of jurisdiction); *Morris v. City of Hobart*, 39 F.3d 1105, 1112 (10th Cir. 1994) (remanding the case to the district court with instructions to vacate the judgment and dismiss the case for lack of subject-matter jurisdiction).

As the Supreme Court once explained so eloquently:

Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist . . . [or does not exist initially] . . . the only function remaining to the court is that of

announcing the fact and dismissing the cause. *And this is not less clear upon authority than upon principle.* (emphasis added)

*Ex Parte McCardle*, 74 U.S. 506, 514 (1868).

Because this Court lacks personal jurisdiction at this time, the Tribe does not believe that Federal Rule 12(g)(2) has been triggered. Once the Tribe has been properly served with sufficient process, the Tribe intends to move immediately for dismissal of the complaint under Rule 12(b)(1) for lack of subject matter jurisdiction, 12(b)(6) for failure to state a claim, 12(b)(7) for failure to join the United States as an indispensable party, and any other ground for dismissal available under Rule 12 or at law.

Because the Court currently lacks personal jurisdiction, attorneys for the Tribe object to being required to attend the conference scheduled today by the Court. If ordered to appear, the Tribe's attorneys wish to state expressly that they are appearing under objection and without waiving any defenses available to the Tribe under Rule 12 or at law.

Respectfully submitted this 29th day of July.

LAW OFFICE OF KIMBERLY D. WASHBURN, P.C.

/s/ Kimberly D. Washburn

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**CERTIFICATE OF SERVICE**

On the 29TH day of July, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record as follows:

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