

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Lynn D. Becker (b) County of Residence of First Listed Plaintiff <u>Denver, Colorado</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorneys (Firm Name, Address, and Telephone Number) Isom Law Firm PLLC; David K. Isom; 299 South Main Street; Suite 1300; Salt Lake City, Utah 84111; (801) 209 7400; david@isomlawfirm.com	DEFENDANTS Ute Indian Tribe of the Uintah and Ouray Reservation County of Residence of First Listed Defendant <u>Uintah County, Utah</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Arbitration <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District (specify)
 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332

Brief description of cause:
Action for breach of contract for failure to pay for service

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
 DEMAND \$ 75,000.00
 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 02/15/2013 SIGNATURE OF ATTORNEY OF RECORD /s/ David K. Isom

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____

Case: 2:13-cv-00123
 Assigned To : Pead, Dustin B.
 Assign. Date : 2/15/2013
 Description: Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation et al

David K. Isom (4773)
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Attorney for Plaintiff

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

<p>Lynn D. Becker, Plaintiff,</p> <p>vs.</p> <p>Ute Indian Tribe of the Uintah and Ouray Reservation, a federally chartered corporation; and Ute Energy Holding, LLC, a Delaward LLC,</p> <p>Defendants</p>	<p>COMPLAINT AND JURY DEMAND</p> <p>Civil No. _____</p>
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Plaintiff Lynn D. Becker ("Becker") alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Becker is a citizen of Colorado.
2. Defendant Ute Indian Tribe of the Uintah and Ouray Reservation ("Tribe") is a federally chartered corporation created pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. § 477. 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...." The headquarters of the Tribe are in Uintah County, Utah. The Tribe is a citizen of Utah within the meaning of 28 U.S.C. § 1332.

3. The Uintah and Ouray Tribal Business Committee ("Business Committee") of the Tribe is empowered by the Constitution and By-Laws of the Tribe to regulate the economic affairs of the Tribe.

4. Defendant Ute Energy Holding, LLC ("Holding") is a limited liability company whose sole member is the Tribe. Holding is a citizen of Utah within the meaning of 28 U.S.C. § 1332.

5. This action arises under and relates to an Independent Contractor Agreement between Becker and the Tribe effective March 1, 2004 ("Agreement") by which Becker agreed to and did provide services to the Tribe as Manager of the Tribal Energy and Minerals Department, including the implementation of the restructuring and development of the Tribal Energy and Minerals Department. By the Agreement, the Tribe promised to pay to Becker a specified monthly compensation ("Compensation") and agreed that Becker had a 2% participation right in specified revenues ("Participation Right"). The Tribe failed to pay to Becker the Compensation promised and the agreed upon percentage of the revenues as to which Becker had a Participation Right.

6. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 because this action raises substantial issues of federal law, including the following: whether the Agreement required approval by the United States Secretary of the Interior under 25 U.S.C. § 81; whether the Agreement is a Mineral Agreement within the meaning the Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101-2018; whether the Agreement required approval by the United States Secretary of the Interior under 25 U.S.C. § 2013; whether the Tribe's waiver of sovereign immunity was effective; whether the Tribe's agreement was effective that all disputes arising under or

relating to the Agreement shall be resolved in the United States District Court for the District of Utah; whether the Tribe's submission to the jurisdiction of this Court was effective; whether the Tribe's waiver of Tribal law and Tribal Court jurisdiction was effective; whether the Tribe's consent to service of process for this action was effective; and whether the Tribe's waiver of any requirement of exhaustion of remedies was effective.

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and the action is between citizens of different states.

8. This Court has personal jurisdiction over the defendants because the defendants have transacted business in the State of Utah in connection with the subject matter of this Complaint; because the defendants caused harm to Becker in the State of Utah; and because the Agreement provides that "[a]ll disputes arising under or relating to this Agreement shall be resolved in the United States District Court of the District of Utah."

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

WAIVER OF THE TRIBE'S SOVEREIGN IMMUNITY, WAIVER OF EXHAUSTION OF TRIBAL REMEDIES AND SUBMISSION TO THIS COURT'S JURISDICTION

10. By the terms of the Agreement, the Tribe "agrees to a limited waiver of the defense of sovereign immunity ... in order that such legal proceeding be heard and decided within the terms of this Agreement." The Tribe agreed that such a "Legal Proceeding" included "any judicial ... proceeding conducted pursuant to the Agreement and relating to the interpretation, breach or enforcement of this Agreement." The Agreement also provides that the "Tribe specifically surrenders its sovereign power to

the limited extent necessary to permit the full determination of questions of fact and law and the award of appropriate remedies" in this action.

11. By the Agreement, the Tribe "unequivocally submits to the jurisdiction of ... U.S. District Court for the District of Utah...."

12. By the Agreement, the Tribe also "waives any requirement of Tribal law stating that Tribal courts have exclusive original jurisdiction over all matters involving the Tribe and waives any requirement that such Legal Proceedings be brought in Tribal Court...."

13. By the Agreement, the Tribe "waives any requirement ... that Tribal remedies be exhausted."

14. By Resolution 05-147 adopted April 27, 2005, the Business Committee was authorized to enter into the Agreement and the Chairman of the Business Committee was authorized to execute all documents necessary or appropriate to carry out the terms and intent of the Resolution.

**FIRST CLAIM FOR RELIEF
(Damages for Breach of Contract)**

15. Effective March 1, 2004, Becker and the Tribe entered into the Agreement. The Agreement is an integrated, written Independent Contractor Agreement.

16. The Agreement provides "[t]his Agreement and all disputes arising hereunder shall be subject to, governed by and construed in accordance with the laws of the State of Utah."

17. By the Agreement, the parties agreed that Becker would provide specified services to the Tribe and have the title of Land Division Manager of the Energy and Minerals Department of the Tribe ("Services").

18. The Services included the implementation of the restructuring and development of the Tribal Energy and Minerals Department.

19. The Tribe agreed to pay Becker a specified amount of compensation per month ("Compensation") during the term of the Agreement pursuant to Exhibit A of the Agreement.

20. In addition, the Tribe agreed that Becker "shall receive a beneficial interest of two percent (2%) of net revenue distributed to Ute Energy Holding, LLC from Ute Energy, LLC (and net of any administrative costs of Ute Energy Holdings)" described in Exhibit B to the Agreement ("Contractor's Interest").

21. Becker performed his duties under the Agreement until the Agreement was terminated.

22. The Tribe made some payments under the Agreement, but breached the Agreement by failing to make payments required by the Agreement.

23. The Tribe has failed to pay to Becker part of the Compensation and part of the payments due as Contractor's Interest under the Agreement.

24. The amount that the Tribe owes as Compensation and as Contractor's Interest exceeds \$75,000, exclusive of interest and costs, and the precise amount owed will be established by the accounting requested in this action and will be proven at trial.

**SECOND CLAIM FOR RELIEF
(Breach of Covenant of Good Faith and Fair Dealing)**

25. Becker incorporates the foregoing allegations.

26. A covenant of good faith and fair dealing is implied in every contract governed by Utah law.

27. The Tribe breached the implied covenant of good faith by failing to pay the amounts promised and by refusing to provide to Becker the information necessary to determine the precise amount owed as Contractor's Interest.

**THIRD CLAIM FOR RELIEF
(Accounting)**

28. Becker incorporates the foregoing allegations.

29. Defendants have exclusive custody, possession and control of the financial and other information necessary to determine the amount that is owed to Becker as his Contractor's Interest and therefore the amount of the judgment that should be entered in this action.

30. The Tribe should be ordered to provide an accounting to Becker.

PRAYER FOR RELIEF

Becker respectfully requests that the Court order defendants to provide accounting of the amount owed to Becker under the Agreement; that the Court enter judgment against the Tribe in the amount of the damages proximately caused to Becker; and for all relief that is just and proper.

JURY DEMAND

Becker requests that a jury should determine all issues that may be tried by a jury.

Dated: February 15, 2013

ISOM LAW FIRM PLLC

/s/ David K. Isom

David K. Isom

Attorney for Plaintiff Lynn D. Becker