



District Court, District of Utah, Case No. 75-cv-00408-BSJ, filed October 15, 1975, dismissed March 28, 2000, reopened on April 22, 2013 (hereinafter the 1975 suit), and now consolidated with a separately filed alternative complaint in Ute Indian Tribe v. Utah, U.S. District Court, District of Utah, Case No. 2:13-cv-276.

### **JURISDICTION and VENUE**

2. This is a civil action brought by an Indian tribe with a body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, and treaties of the United States. The Court has jurisdiction over the action under 28 U.S.C. §§ 1331 and 1362.

3. This is an action in which the State Defendants are exercising jurisdiction reserved exclusively to the federal government and the Ute Tribe under the laws and treaties of the United States.

4. This is an action for declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202 for the purpose of determining a question of actual controversy between the parties and for providing equitable relief as requested and described herein.

5. Venue is proper in this district under 28 U.S.C. § 1291(b) because, as set forth herein, this matter arose on lands on the Uintah Valley Indian Reservation within the district and because this matter seeks declarations related to that reservation.

### **PARTIES**

6. The Ute Indian Tribe is 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. See 77 Fed. Reg. 47868, 47872 (Aug 10, 2012). The

Tribe occupies the Uintah and Ouray Indian Reservation (“U&O Reservation”) in the Uintah Basin of Utah.

7. The Tribe operates its own tribal government including the Ute Indian Tribal Court. The Tribal Court exercises civil and criminal jurisdiction over both members of the Ute Tribe and non-member Indians residing on the U&O Reservation.

8. The Tribe brings this action on its own behalf to protect the Tribe’s sovereign interests in its tribal territory, and as *parens patriae* on behalf of its tribal members and residents.

9. Defendant State of Utah is a sovereign state in the United States.

10. Defendant Wasatch County is a political subdivision of the State of Utah.

11. Defendant Gary Herbert is the Governor of the State of Utah.

12. Defendant John Swallow is the Attorney General for the State of Utah.

13. Defendant Scott Sweat is the County Attorney for Wasatch County.

14. Defendant Tyler J. Berg is the Assistant County Attorney for Wasatch County.

15. Plaintiff and the State of Utah were parties to the 1975 suit.

#### FACTUAL BASIS FOR CLAIMS

16. The Tribe has existed since before the United States or the State of Utah came into existence. From time immemorial, the Tribe lived in an area that included parts of present day Utah, Colorado, Wyoming, and New Mexico.

17. The Tribe reserved the lands that later became the Uintah Valley and Uncompahgre Reservations through treaties with the United States on December 30, 1849, 9 Stats., 984; October 7, 1863, 13 Stat., 673; and March 2, 1868, 15 Stats., 619.

18. On October 3, 1861, President Lincoln issued an executive order creating the Uintah Valley Reservation on a portion of the Tribe's reserved lands. In 1864, Congress ratified the creation of the Uintah Valley Reservation, 13 Stat. 63.

19. President Arthur created the Uncompahgre Reservation by Executive Order on January 5, 1882. In 1948, Congress enlarged the Tribe's reservations, 62 Stat. 72.

20. In the 1975 suit, the Tribe and defendants litigated the question of whether the Uintah Valley or Uncompahgre Reservations had been diminished or disestablished. The 1975 suit resulted in multiple orders and decisions of this Court, the United States Court of Appeals for the Tenth Circuit, and the United States Supreme Court. Included within these are five reported decisions from the District Court and Court of Appeals, commonly referred to as:

Ute I: 521 F. Supp. 1072 (D. Utah 1981)

Ute II: 716 F.2d 1298 (10th Cir. 1983)

Ute III: 773 F.2d 1087 (10th Cir. 1985), cert denied, 479 U.S. 994 (1986).

Ute IV: 935 F. Supp. 1473 (D. Utah 1996)

Ute V: 114 F.3d 1513 (10th Cir. 1997), cert. denied, 522 U.S. 1034 (1998).

21. As relates to the Uintah Valley Reservation, the result of the 1975 suit was that the Uintah Valley Reservation was not disestablished, but was diminished by

specified lands that were opened to non-Indian settlers in the early 1900s. Ute III as modified by Ute V.

22. In Ute III, the Tenth Circuit said the evidence was “clear” that Congress “did not intend to extinguish the forest lands of the Uintah Reservation.” The Court thus ruled that the forest lands remain a part of the Uintah Valley Reservation. 773 F.2d at 1090.

23. Eleven years later, in Ute V, the Tenth Circuit reaffirmed its Ute III ruling that the national forest lands remain within the boundary of the Uintah Valley Reservation. 114 F.3d at 1528-29.

24. In the 1975 suit, the parties agreed to maps that presumptively define the specific lands that were part of the Uintah Valley Reservation as defined by the 1864 and 1948 congressional acts, but that are no longer Reservation land, as that term is used in 18 U.S.C. § 1151(a). By order dated March 28, 2000, this Court held: “the basic issues in this case have been determined and the parties have agreed to accept the decision and not seek to further litigate the boundaries of the Reservation.” 1975 suit, Pacer Dkt.145. See also 1975 suit, Pacer Dkt. 100. With agreement of the parties, the Court approved the map depicting presumed Reservation/non-Reservation land status (“*Jurisdictional Map*”) of the Uintah Valley Reservation. Based upon the parties’ agreement and the prior federal court decisions in this matter, the Court then dismissed the suit.

25. Lesa Ann Jenkins is an enrolled member of the Ute Indian Tribe.

26. On July 27, 2013, Ms. Jenkins was cited by a Utah State Highway Trooper

for alleged traffic offenses that occurred on State Road 35, Mile Post 23, inside the boundary of the Uintah Valley Reservation.

27. The Utah Highway Patrol impounded Ms. Jenkins' vehicle.

28. The location of Ms. Jenkins' alleged offenses is within the national forest lands of the Uintah Valley Reservation; it is thus within the area designated as "Indian Country" under the 1997 Uintah Valley Indian Reservation *Jurisdiction Map*, to which the State of Utah stipulated in 1998. See Dkt. 99, Case No. 75-cv-408.

29. On October 29, 2013, the Ute Tribe's general counsel sent a letter to the Utah Attorney General's Office and the Wasatch County Prosecutor, asking the State to dismiss charges against Lesa Jenkins for lack of criminal jurisdiction over Ms. Jenkins.

30. To date, the State of Utah and the Wasatch County Prosecutor have neither responded to the letter from the Tribe's attorney, nor dismissed the charges against Lesa Jenkins. The State's prosecution of Ms. Jenkins is proceeding with court hearings scheduled in the case for January 28, 2013, *State of Utah v. Lesa Ann Jenkins*, Wasatch County Justice Court, Case No. 135402644.

31. The Defendants' prosecution of Ms. Jenkins violates federal law.

32. The Tribe has no adequate remedy at law.

### **COUNT I**

#### **DECLARATORY JUDGMENT, 28 U.S.C. § 2201**

33. The Tribe realleges paragraphs 1 through 32 and incorporates them by reference.

34. The Tribe requests a declaration under the Declaratory Judgment Act, 28

U.S.C. §§ 2201, *et seq.*, that the State Defendants lack criminal jurisdiction over Lesa Ann Jenkins as a matter of federal law.

35. The Tribe requests a judicial declaration that the State Defendants' prosecution of Ms. Jenkins violates both federal law and the Ute Tribe's sovereignty over its tribal territory and its tribal members.

## **COUNT II**

### **WRIT OF PROHIBITORY INJUNCTION, 28 U.S.C. §2202**

36. The Tribe realleges paragraphs 1 through 35 and incorporates them by reference.

37. To obtain a permanent injunction a party must prove (1) actual success on the merits, (2) irreparable harm unless the injunction is issued, (3) the threatened injury outweighs the harm that the injunction may cause the opposing party, and (4) that the injunction, if issued, will not adversely affect the public interest. *Prairie Band Potawatomi Nation v. Wagon*, 476 F.3d 818, 822 (10th Cir. 2007).

38. The Tribe will prevail on the merits because the State Defendants lack criminal jurisdiction over Ms. Jenkins.

39. If the State's prosecution of Lesa Ann Jenkins is not enjoined, the Ute Tribe will suffer irreparable injury because Indian tribes are irreparably harmed by unlawful deprivations of their jurisdictional authority. *E.g., Comanche Nation v. United States*, 393 F. Supp. 2d 1196, 1205-06, 1210-11 (W.D. Okla. 2005).

40. The Tenth Circuit has "repeatedly stated" that enforcing state criminal jurisdiction on Indian land is an "invasion of tribal sovereignty" constituting irreparable

injury. *Wyandotte Nation v. Sebelius*, 443 F.3d 1247, 1255-56 (10th Cir. 2006). State encroachments on tribal sovereignty constitute an irreparable injury because the harm to tribal self-government is “not easily subject to valuation,” and because “monetary relief might not be available because of the state’s sovereign immunity.” *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2001); *see also Choctaw Nation of Oklahoma v. State of Oklahoma*, 724 F. Supp. 2d 1182, 1187 (W.D. Okla. 2010) (remedies at law are inadequate to remedy illegal assertions of state jurisdiction in Indian Country); *Winnebago Tribe of Nebraska v. Stovall*, 205 F. Supp. 2d 1217, 1222 (D. Kansas 2002) (monetary damages are not sufficient “to undo the damage” caused by illegal seizures of property and encroachments on tribal sovereignty).

41. The public interest and the balance of equities require that the State Defendants’ prosecution of Lesa Ann Jenkins be enjoined. *See e.g., United Keetoowah Band of Cherokee Indians v. State of Oklahoma*, 927 F.2d 1170, 1182 (10th Cir. 1991) (affirming a permanent injunction enjoining the Tulsa County District Attorney from exercising criminal jurisdiction over a single Indian allotment in Tulsa County).

#### PRAYER FOR RELIEF

Based upon the allegations above, the Tribe prays that the Court:

1. Declare that the Uintah Valley Reservation, as defined by 13 Stat. 63 and 62 Stat. 72 was lawfully created and has not subsequently been disestablished; and that it has not been diminished beyond that expressly provided for by the ruling of the Tenth Circuit in *Ute V.*

2. Enjoin the Defendants from:



- a) Prosecuting Lesa Ann Jenkins in *State of Utah v. Lesa Ann Jenkins*, Wasatch County Justice Court, Case No. 135402644.
- b) Prosecuting any Native Americans for criminal offenses committed inside the Tribe's Uintah Valley Indian Reservation and Uncompahgre Indian Reservation.
- c) Asserting in any court, administrative forum or other law applying forum that the Uintah Valley Reservation has been disestablished. For any land recognized as remaining part of the Uintah Valley Reservation in Ute Tribe of Indians of the Uintah and Ouray Reservation v. State of Utah, 773 F.2d 1298 (10th Cir. 1985) (Ute III), as modified by Ute Tribe of Indians of the Uintah and Ouray Reservation v. State of Utah, 114 F.3d 1513 (10th Cir. 1993) (Ute V), and in subsequent orders of this Court upon remand, asserting in any court, administrative forum or other law applying forum that such land is not part of the Uintah and Ouray Reservation or is not part of an Indian Reservation as that term is defined in 18 U.S.C. § 1151(a).
- d) Asserting in any court, administrative forum, or other law-applying forum that the Ute Tribe lacks any power of a sovereign Indian Tribe over any part of the Uintah Valley Reservation.
- e) Seeking, obeying, carrying out, issuing, enforcing, or otherwise treating as having any lawful force or effect, any order of any court which is inconsistent with the mandate issued by the United States Court of Appeals for the Tenth Circuit in Ute III, as modified in Ute V or the orders of this Court after remand.

f) Taking any other action inconsistent with the mandate issued by the United States Court of Appeals for the Tenth Circuit in Ute III, as modified in Ute V or the judgment of this Court.

g) Provide such other relief as the Court determines is appropriate.

DATED this 3rd day of December, 2013.

J. PRESTON STIEFF LAW OFFICES

/s/ J. Preston Stieff  
J. PRESTON STIEFF  
136 East South Temple, Suite 2400  
Salt Lake City, Utah 84111

Attorney for Plaintiff Ute Indian Tribe