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

UTE INDIAN TRIBE OF THE UINTAH & OURAY RESERVATION, UTAH, Plaintiff, v. THE STATE OF UTAH, DUCHESNE COUNTY, a political subdivision of the State of Utah; ROOSEVELT CITY, a municipal corporation; DUCHESNE CITY, a municipal corporation; MYTON, a municipal corporation; and UINTAH COUNTY, a political subdivision of the State of Utah, Defendants.	**OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS DEFENDANT UINTAH COUNTY'S AMENDED COUNTERCLAIM** Consolidated Action Civil Nos. 2:13-cv-00276 & 2:75-cv-00408-BSJ Judge Bruce S. Jenkins

UINTAH COUNTY, a political subdivision of the State of Utah, in its individual capacity and as parens patriae and/or in jus tertii, Counterclaim and Third-Party Plaintiff, v. UTE INDIAN TRIBE OF THE UINTAH & OURAY RESERVATION, UTAH; a federally recognized Indian Tribe; BUSINESS COMMITTEE FOR THE UTE INDIAN TRIBE OF THE UINTAH & OURAY RESERVATION; BRUCE IGNACIO, Chairman of the Ute Tribal Business Committee, in his official capacity; RONALD J. WOPSOCK, Vice Chairman of the Ute Tribal Business Committee, in his official capacity; GORDON HOWELL, Member of the Ute Tribal Business Committee, in his official capacity; STEWART PIKE, Member of the Ute Tribal Business Committee, in his official capacity; TONY SMALL, Member of the Ute Tribal Business Committee, in his official capacity; PHILIP CHIMBURAS, Member of the Ute Tribal Business Committee, in his official capacity; PAUL TSOSIE, Chief Judge of the Ute Tribal Court, in his official capacity; and WILLIAM REYNOLDS, Judge of the Ute Tribal Court, in his official capacity. Counterclaim and Third-Party Defendants.	

Defendant and Counterclaim/Third-Party Plaintiff Uintah County (the "County") opposes Plaintiff Ute Indian Tribe of the Uintah and Ouray Reservation's (the "Tribe") Motion to Dismiss the County's Amended Counterclaim. (Dkt. 278.) As set forth below, the Tribe's Motion should be denied.

INTRODUCTION

In the Tribe's motion to dismiss the County's Amended Counterclaim, the Tribe once again has reversed course and changed its stance on some of the key issues in this case. In the Tribe's initial motion to dismiss, the Tribe argued that it "does not claim exclusive criminal jurisdiction over roadways" and otherwise retreated from language in its Complaint and letters to the County demanding that the State and County stop patrolling roads on the Reservation. After the County filed its Amended Counterclaim, the Tribe now asserts that it in fact *does* have exclusive jurisdiction over all aspects of the Reservation and that litigation over jurisdiction is barred by res judicata because "[t]his Court has previously ruled on this exact legal issue." The Tribe's newly asserted res judicata argument is based on *Ute III* and *Ute V*, even though (as this Court knows) those cases concerned the determination of whether the Uintah and Uncompahgre Reservations had been diminished or disestablished. Significantly, the broad scope of all issues of civil, regulatory and criminal jurisdiction were not litigated in those cases, and in fact these types of jurisdictional issues are governed by a separate line of Supreme Court and federal cases, including *Montana v. United States*, 450 U.S. 544 (1981).

The County's four counterclaims fall far outside of what was addressed in *Ute III* and *Ute V*, and instead maintain that the Tribe is attempting to overreach in asserting its jurisdiction, contrary to the Court's order dismissing the *Ute* litigation, the agreements incorporated into that order, and the applicable case law pursuant to the *Montana v. United States* line of cases. Specifically, the counterclaims seek declaratory and injunctive relief related to (1) the Tribe's participation in illegal suits against County officials, (2) the Tribe's claim that the County lacks law enforcement authority on roads and rights-of-way, (3) the Tribe's illegal assertion of civil

and regulatory jurisdiction in violation of prior agreements that formed the settlement of the 1975 lawsuit in 2000 as well as federal and state law, and (4) the Tribe's illegal assertion of criminal and adjudicatory authority over non-members of the Tribe.

The Tribe has (again) moved to dismiss these counterclaims with a scattershot of legal theories. Some of these theories were raised before, including: lack of a case or controversy, lack of standing, tribal sovereign immunity, and failure to state a claim upon which relief can be granted. Although these arguments were opposed and thoroughly briefed by the County, the Tribe has again included the same arguments, without mentioning, let alone addressing, the County's rebuttals. Other arguments are new to this motion to dismiss, without any explanation as to why the Tribe did not decide to include them before. These arguments include the Tribe's assertions that the counterclaims must first be brought in Tribal Court, based on inapposite authority; and res judicata, based on the disestablishment cases of *Ute III* and *Ute V*.

But none of these theories (new or old) demonstrate that any of the counterclaims should be dismissed. Instead, contrary to the Tribe's arguments otherwise, there is an active, ripe controversy between the parties, the County has standing to assert its counterclaims, the Tribe has waived its sovereign immunity, there is no reason for the counterclaims to be brought in Tribal Court, res judicata does not apply, and all of the counterclaims state a claim upon which relief can be granted. Further, the Tribe has ignored the applicable legal standard applicable to a motion to dismiss, which is that all allegations are assumed to be true and viewed in the light most favorable to the County. For all of these reasons, the Tribe's motion to dismiss should be denied.

RESPONSE TO TRIBE'S STATEMENTS OF FACT

Because the Tribe has included a recitation of facts in its Motion to Dismiss (Dkt. 278 pp. 3-5), the County has endeavored to address the significant ones below.

Statement 1: "The counter-complaint filed by Uintah County does not identify a single non-Indian individual who has been (i) stopped, detained or cited for a criminal offense, (ii) arrested by the Tribe or incarcerated in a tribal jail, or (iii) prosecuted and convicted by the Ute Tribe in the Tribe's court. Facts such as these would exist if, as alleged by Uintah County, the Ute Tribe was asserting and exercising 'exclusive' criminal jurisdiction inside the Tribe's reservation boundaries." (Mot. at 4.)

County's Response: This assertion is irrelevant and misleading. The County's second and fourth counterclaims are based on the Tribe's repeated demands for the County to stop patrolling on state and county roads and its assertion of exclusive jurisdiction (with the federal government) over these roads; the Tribe's actions in illegally exercising jurisdiction over non-tribal members, including persons who have been improperly stopped, cited, and had property confiscated by Ute Tribal Officers as well as paying fines in Ute Tribal Court; and the Tribe's attempted interference with County officers acting in their official capacities in law enforcement and search and rescue operations. This assertion is also contradicted by the Tribe's subsequent argument that these counterclaims are barred by res judicata, based on the Tribe's theory that *Ute III* and *Ute V* somehow granted it exclusive jurisdiction over the Reservation. (Mot. at 16 ("Through final and unalterable orders to date, . . . the federal courts have determined that the United States and the Tribe have exclusive jurisdiction over the Uintah Valley and Uncompahgre

Reservations, *Ute V* . . . .").) As such, this assertion does nothing to support the Tribe's Motion to Dismiss.

Statement 2: "[T]he County's counter-complaint contains no allegation that the Ute tribal police: (i) conduct routine police patrols on lands outside the reservation boundaries, or (ii) conduct roadblock inspections of non-Indian motorists or regularly impound motor vehicles belonging to non-Indians, or (iii) racially profile, stop and detain, arrest, cite, and otherwise harass non-Indians when those non-Indians travel inside the Tribe's reservation boundaries." (Mot. at 3.)

County's Response: This statement is misleading and irrelevant because it is based on a mischaracterization of the counterclaims. In addition, the County has alleged that the Tribe's officers have stopped, confiscated property, and cited non-tribal members and have interfered with County officers. (Am. Countercl. ¶¶ 42-46, 96-100.) As such, this argument is meritless and contrary to the plain language of the Amended Counterclaim.

Statement 3: "The County's counterclaims do not identify a single non-Indian individual who has been subjected to an illegal act of civil, regulatory or adjudicatory jurisdiction exercised by the Ute Tribe over non-Indian individuals inside the Tribe's reservation boundaries." (Mot. at 4.)

County's Response: This statement is incorrect in that it ignores numerous allegations in the Amended Counterclaim, including the allegations concerning County officials being sued in Tribal Court based on actions taken in their official capacities, (Am. Countercl. ¶¶ 25-30), the Tribe's interference with County attempts to patrol state and county roads and conduct search and rescue operations, (*id.* ¶¶ 35-56), the Tribe's application of the UTERO Ordinance on non-

member individuals and businesses, (*id.* ¶¶ 68-90), and the Tribe's actions in stopping, citing, fining, and confiscating the property of non-member individuals, (*id.* ¶¶ 96-100).

ARGUMENT

THE TRIBE'S MOTION TO DISMISS SHOULD BE DENIED, AS THE TRIBE HAS FAILED TO DEMONSTRATE ANY REASON WHY THE COUNTY'S AMENDED COUNTERCLAIM SHOULD BE DISMISSED.

Although raising a number of legal issues, the Tribe has failed to present any reason that would require the dismissal of the Amended Counterclaim. In reviewing a motion to dismiss, the Court must "accept as true all well-pleaded factual allegations" in the counterclaim and "view them in a light most favorable" to the County. *Burnett v. Mort. Elec. Reg. Sys.*, 706 F.3d 1231, 1235 (10th Cir. 2013). "Under Rule 8(a)(2), a pleading must contain 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Id.* (quoting Fed. R. Civ. P. 8(a)(2)). "'To survive a motion to dismiss, a [counterclaim] must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (additional citations and quotations omitted)). "Although '[s]pecific facts are not necessary' to comply with Rule 8(a)(2), the complaint must 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Id.* (citations and additional quotations omitted). Because the Amended Counterclaim satisfies the requirements of Rule 8(a)(2), the Tribe's motion should be denied. Each of the Tribe's arguments is addressed below.

A. Article III Case or Controversy/Ripeness

The Tribe first asserts the Amended Counterclaim should be dismissed because "there is no Article III case or controversy," apparently due to a lack of ripeness. (Mot. at 7-9.) The

Tribe provides several arguments in support of its assertion, none of which demonstrates that any of the County's counterclaims should be dismissed.

1. Case and Controversy Requirement for Declaratory Judgments and the Ripeness Doctrine

The Counterclaim seeks only declaratory and injunctive relief, which is significant because declaratory relief has its own formulation of the case and controversy requirement. The Declaratory Judgment Act provides: "In a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). The phrase "case of actual controversy" in the Act "refers to the type of 'Cases' and 'Controversies' that are justiciable under Article III of the United States Constitution." *Columbian Fin. Corp. v. Bancinsure, Inc.*, 650 F.3d 1372, 1376 (10th Cir. 2011) (citations and additional quotations omitted). In considering whether there is an Article III case or controversy in the declaratory-judgment context, "[t]he question comes down to 'whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" *Id.* (citation and emphasis omitted); *see also Consumer Data Indus. Ass'n v. King*, 678 F.3d 898, 906 (10th Cir. 2012) ("To satisfy the 'case or controversy' requirement, a request for declaratory relief must settle 'some dispute which affects the behavior of the defendant toward the plaintiff.'" (citation omitted)).

The Tribe's motion to dismiss also appears to contend the counterclaims are not ripe. (Mot. at 7-9.) The ripeness doctrine "aims to prevent courts 'from entangling themselves in abstract disagreements' by avoiding 'premature adjudication.'" *Awad v. Ziriax*, 670 F.3d 1111,

1124 (10th Cir. 2012) (citation omitted). The ripeness inquiry focuses on "'whether the harm asserted has matured sufficiently to warrant judicial intervention.'" *Id.* (citation omitted). "'Ripeness reflects constitutional considerations that implicate Article III limitations on judicial power, as well as prudential reasons for refusing to exercise jurisdiction.'" *Id.* "'[I]f a threatened injury is sufficiently "imminent" to establish standing, the constitutional requirements of the ripeness doctrine will necessarily be satisfied.'" *Id.* (citations omitted); *see also id.* at 1120 (explaining injury is "imminent" when it is "not conjectural or hypothetical"). Prudential ripeness is analyzed by "'examining both the fitness of the issues raised . . . for judicial review and the hardship to the parties from withholding review.'" *Id.* at 1124 (citation omitted). Concerning "fitness," courts focus on "'whether determination of the merits turns upon strictly legal issues or requires facts that may not yet be sufficiently developed.'" *Id.* (citation omitted). Concerning "hardship," courts "ask 'whether the challenged action creates a direct and immediate dilemma for the parties.'" *Id.* at 1125 (citation omitted).

2. Roadways Issue

First, the Tribe asserts there is no case or controversy because the Tribe is not claiming or exercising exclusive criminal jurisdiction over roadways inside the Reservation's boundaries. (Mot. at 8.) While not necessarily consistent with its earlier statements, this misses the point. The major dispute raised in the Amended Counterclaim is the County's, not the Tribe's, jurisdiction over state and county roads in the Reservation. And based on the Tribe's own Complaint, written demands, and conduct, the Tribe has failed to demonstrate either that there is no case or controversy or that this issue is not ripe for decision. Specifically, the Tribe's own Complaint alleges that the Defendants' act of patrolling within the Reservation is itself a

violation, stating, "Defendants regularly and intentionally send their law enforcement agents onto tribally owned Reservation lands, to take action which is inconsistent with the land's reservation status," including "*routine police patrolling on land owned by the United States in trust for the Tribe or a member of the Tribe*." (Compl. ¶ 22 (emphasis added).)

In addition to its own Complaint, the Tribe has also repeatedly asserted that it (and/or it and the federal government) has exclusive jurisdiction over roadways within the Reservation and Indian Country in its demand letters to the County ordering it to stop patrolling. For example, the three demand letters the Tribe has sent to the County clearly assert that the Tribe (and federal government) has exclusive jurisdiction and that the State and County Defendants do not:

- "State officers ***do not possess criminal jurisdiction*** over highways or roads running through reservation lands or alternatively lands meeting the definition of Indian Country." (Dkt. 222-1 at 4 (emphasis added).)

- "There have been ongoing problems with the Uintah County Sheriff patrolling and setting up checkpoints on [Whiterocks Road], ***on areas of exclusive Tribal and Federal Jurisdiction***." (*Id.* at 8 (emphasis added).)

- "[B]ased on the plain language of 18 U.S.C.A. § 1151 and current case law, ***State and County officers do not possess criminal jurisdiction over highways or roads running through reservation lands or alternatively lands meeting the definition of Indian country***." (*Id.* at 12 (emphasis added).)

The Tribe cannot disclaim or ignore its own clear assertions of authority, and repeated demands that the State and County Defendants stop patrolling on roads and rights-of-way within the Reservation and Indian Country, in order to now claim that there is no case or controversy between the parties or that this issue is not ripe. To the contrary, as the County has pleaded in its Amended Counterclaim, there is such an "actual controversy," in that "the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a

declaratory judgment." *Columbian Fin. Corp.*, 650 F.3d at 1376 (citation omitted). Further, because the injury alleged is imminent as opposed to hypothetical, a determination on the merits would not require facts that may have not yet been sufficiently developed, and the Tribe's actions, which are in direct conflict with the County's need to patrol in order to maintain law and order, "create[] a direct and immediate dilemma for the parties." *Awad*, 670 F.3d at 1125. Nor has the Tribe argued otherwise.[1]

Moreover, the Amended Counterclaim not only includes the Tribe's repeated assertions of exclusive jurisdiction and demands that the State and County Defendants stop their patrols, but also provides other examples of the Tribe's assertion and exercise of its jurisdiction and its attempts to prevent the State and County Defendants from exercising their jurisdiction. For example, the Amended Counterclaim alleges that tribal officers have ordered State and County law enforcement officers to stop patrolling and conducting radar surveillance on state and county roads within the Reservation and/or Indian Country as well as interfered with search and rescue operations. (Am. Countercl. ¶¶ 36-45.) It further alleges that tribal officers have also conducted stops, issued citations, and confiscated property of non-tribal members within the Reservation and/or Indian Country. (*Id.* ¶¶ 96-98.) Finally, it alleges that non-tribal members have paid fines to Ute Tribal Court. (*Id.*) Thus, based on the Tribe's Complaint, its own assertions of authority and demands, and the allegations in the Amended Counterclaim, this issue presents an actual

[1] In fact, as noted above, the Tribe's argument is contradicted by its res judicata argument based on *Ute III* and *Ute V*, which maintains that the Tribe does have exclusive jurisdiction: "Through final and unalterable orders to date, . . . the federal courts have determined that the United States and the Tribe have exclusive jurisdiction over the Uintah Valley and Uncompahgre Reservations, *Ute V* . . . ." (Mot. at 16.)

controversy that is ripe for the Court's consideration. The Tribe's motion to dismiss should be denied on this basis.

3. Tribal Court Suits Against County Officials

The Tribe generally argues that "the County has failed to allege facts showing an illegal assertion of civil and regulatory authority within the Tribe's reservation boundaries," (Mot. at 8) but otherwise fails to argue that the County's counterclaim concerning suits brought in Tribal Court against County officials is not ripe or that there is no case or controversy. As set forth in the Amended Complaint, this counterclaim is both ripe and represents a case and controversy, in that the County has alleged that the Tribe has participated in illegal suits in tribal court against County officials. (Am. Countercl. ¶¶ 25-30.)

4. UTERO Ordinance

The Tribe asserts there is no case or controversy and/or the issue is not ripe because "the enactment of UTERO Ordinance does not violate federal law and does not exceed the Tribe's civil regulatory authority." (Mot. at 8.) The Tribe's argument is apparently based on its assertion in a footnote that a Bureau of Indian Affairs official has reviewed the Ordinance and has approved it "subject to additional technical and legal review by the DOI's regional office." (*Id.* at 16 n.3.) The Tribe seems to be asserting that because the Ordinance has received conditional approval from a federal official, it cannot be the subject of a legal challenge. Unsurprisingly, the Tribe does not cite any authority in support of this novel assertion, which would apparently be a clear violation of the separation of powers doctrine, among others. Moreover, the UTERO Ordinance, as it is enacted and applied, illegally regulates non-tribal

members who are not doing business with the Tribe. Such illegal regulation exceeds the Tribe's limited authority and jurisdiction. *See Montana v. United States*, 450 U.S. 544 (1981).

Likewise, although the Tribe relies on language in the Disclaimer that states it can be terminated, (Mot. at 8 n.1), this does nothing to refute the fact that the Disclaimer was a condition of the resolution of the previous lawsuit, that it was expressly incorporated into the Court's dismissal order, and that it was relied upon as consideration for the other agreements concerning jurisdictional arrangements, as alleged in the Amended Counterclaim. In addition, regardless of the Disclaimer, the Tribe is prohibited under federal and state law from exceeding its jurisdiction as to non-members, and the County has alleged that the Tribe has done exactly this with its UTERO Ordinance. (Am. Countercl. ¶ 87.) As such, the Tribe has failed to demonstrate why this counterclaim does not present a case or controversy or is not ripe.

5. Tribe's Illegal Assertion of Criminal and Adjudicatory Authority

Apart from the Tribe's conclusory assertion that it is not claiming or exercising exclusive criminal jurisdiction in the Reservation, (Mot. at 8), the Tribe does not argue that the County's counterclaim concerning the Tribe's improper exercise of criminal and adjudicatory authority is not ripe or does not otherwise present a case or controversy. This is because this counterclaim is the very mirror image of the Tribe's own request for relief, all of which concern which sovereigns have jurisdiction—where, over whom, and under what circumstances. This counterclaim alleges that the Tribe has exceeded its jurisdiction by stopping, citing, and charging in Ute Tribal Court non-members of the Tribe over whom the Tribe does not have jurisdiction. (Am. Countercl. ¶¶ 96-104.) It is in all respects both ripe and an active case and controversy, as is demonstrated by the Tribe's own assertion that injunctive relief is needed because Defendants

"are violating federal law by exercising criminal jurisdiction over members of the Ute Tribe for offenses" occurring within the Reservation. (Mot. to Alter, Dkt. 286, at 3.) The Tribe's same actions against non-tribal members likewise constitute a ripe controversy.

B. Standing

The Tribe next asserts the Amended Counterclaim should be dismissed because the County lacks standing, both constitutional and prudential, to assert its claims. (Mot. at 9-13.) This argument also lacks merit.

1. Constitutional Standing

To satisfy constitutional standing requirements, a party must satisfy three requirements. First, it must show it has suffered an "injury in fact" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *S. Utah Wilderness Alliance v. Palma*, 707 F.3d 1143, 1153 (10th Cir. 2013) (citation and quotations omitted). In addition, the injury must be "fairly traceable to the challenged action of the defendant." *Id.* (citation and quotations omitted). Finally, the party must show that "it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* (citation and quotations omitted). "When evaluating a plaintiff's standing at the stage of a motion to dismiss on the pleadings, '. . . courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party.'" *Id.* at 1152 (citation omitted). In addition, "[a]t the pleading stage, 'general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" *Id.* (citations and quotations omitted).

a. *Injury-in-Fact*

All four claims in the Amended Counterclaim meet the injury-in-fact requirement, in that they allege injuries that are both "concrete and particularized" and "actual or imminent." *Id.* at 1153. Regarding the Tribe's interference with County business by suing County officers in Tribal Court, the County has been injured, and continues to be injured, by these lawsuits, in ways that are both "concrete and particularized" and "actual or imminent." Specifically, the County has alleged these suits are based on the County's officers performing their official duties and are intended to harass these officials and interfere with their performance of official duties. (Am. Countercl. ¶¶ 25-30.) If the County's employees are unable to perform their official obligations, including, as alleged, its judges, its County Clerk-Auditor, and its Community Development Director, this directly injures the County's ability to conduct its business and protect the safety and welfare of its citizens. The County has also alleged that the Tribe, through its court system, participates in this harassment, which has injured the County, and seeks declaratory and injunctive relief holding that the Ute Tribal Courts do not have jurisdiction over County officials in the performance of their official duties. (*Id.* ¶¶ 27-30.) As such, the County has alleged a sufficient injury-in-fact.

Regarding the issue of jurisdiction over roads and rights-of-way, the County has a "concrete and particularized" and "actual or imminent" injury based on the Tribe's demands that the County stop patrolling and its assertion of exclusive jurisdiction. It is the County's obligation to protect the safety and welfare of its citizens and to maintain peace and order within the County, and it has alleged that it can and should patrol state and county roads within the

County, including pulling over those who are speeding or intoxicated. (*Id.* ¶ 54.)[2] The County has alleged that the Tribe has repeatedly demanded that the County stop its patrols in the Reservation and Indian Country, (*id.* ¶¶ 36-40), and that the Tribe has threatened to take action against County businesses and individuals if the County did not accept the Tribe's illegal assertion of exclusive criminal and regulatory jurisdiction, (*id.* ¶ 37). In addition, the County has alleged that the Tribe has taken actions to further interfere with and injure the County's obligation and ability to maintain the peace and order in the County and protect the safety of its citizens, including by actively interfering with County officers who are patrolling or conducting radar surveillance on state and county roads and with search and rescue operations in the County. (*Id*. ¶¶ 42-46.) These allegations demonstrate an injury-in-fact.

Concerning the third counterclaim, regarding the Tribe's unlawful exercise of civil and regulatory authority, the County has adequately alleged injury that is "concrete and particularized" and "actual or imminent." First, the County has alleged it was a party to the three agreements, including the Disclaimer, that were entered into in order to resolve the 1975 litigation. (*Id.* ¶¶ 62-64.) The County has alleged that in the Disclaimer, the Tribe expressly disclaimed all of its civil and regulatory authority over lands owned by non-members of the Tribe in Indian Country, in exchange for agreements with the County and others to refer misdemeanor arrests of Tribe members on non-Indian lands to Tribal Court. (*Id.* ¶¶ 64-65.) The fact the Tribe has now claimed to terminate the Disclaimer and has begun to exercise civil and regulatory jurisdiction over non-member County citizens is a breach of the agreement with the County, which was necessary to and incorporated in the 2000 resolution of the 1975 litigation.

[2] *See also* Declaration of Jeffery Paul Merrell, Uintah County Sheriff, at Dkt. 217-2 (setting forth the Sheriff's responsibilities and issues that have arisen with the Tribe).

(*Id.* ¶¶ 62-67.) In addition, the County has alleged that the Tribe's actions have exceeded its jurisdiction under federal and state law. (*Id.* ¶¶ 68, 87.) Thus, there is a "concrete and particularized" and "actual or imminent" injury for both the County itself and its duties to protect its citizens and the businesses that operate there, several of which have been damaged by the Tribe's enforcement of its UTERO Ordinance outside of the Tribe's lawful jurisdiction and in breach of the Disclaimer. (*Id.* ¶¶ 66-93.) These allegations demonstrate an injury-in-fact.[3]

Finally, regarding the County's fourth counterclaim, the County has set forth allegations that the Tribe has exceeded its criminal and adjudicatory authority by stopping, citing, and charging in Ute Tribal Court non-members over whom the Tribe has no jurisdiction. (*Id.* ¶¶ 96-103.) It is the County's obligation to protect the safety and welfare of its citizens and to maintain peace and order within the County, and the Tribe's unlawful acts with respect to non-tribal members injure the County's ability to keep the peace. *See, e.g.*, Utah Code Ann. § 17-22-2 (outlining duties required of county sheriff, including preserving the peace, making lawful arrests, and managing search and rescue operations). Thus, the County has adequately alleged an injury-in-fact as to this counterclaim as well.

[3] Although the Tribe relies on language in the Disclaimer that states it can be terminated, this does nothing to refute the fact that the Disclaimer was a condition of the resolution of the previous lawsuit, that it was expressly incorporated into the dismissal order, and that it was relied upon as consideration for the other agreements concerning jurisdictional arrangements. In addition, regardless of the Disclaimer, the Tribe is prohibited under federal and state law from exceeding its jurisdiction as to non-members, and the County has alleged that the Tribe has done exactly this with its UTERO Ordinance. (*Id.* ¶ 87.) Thus, contrary to the Tribe's argument, this language in the Disclaimer does not present any reason to dismiss any of the County's counterclaims.

b. *Traceability*

The counterclaims also meet the traceability element. "'The element of traceability requires the plaintiff to show that the defendant is responsible for the injury, rather than some other party not before the court.'" *Palma*, 707 F.3d at 1153 (citation omitted). First, the County alleges that the Tribe has provided financial support for, and otherwise assisted in, the lawsuits against County officials in tribal court. (Am. Countercl. ¶¶ 26-27.) Thus, the County has adequately asserted the Tribe, and not some other party, is responsible for the County's injury.

Concerning the second counterclaim, the County alleges that the Tribe has asserted that it, not the State and County Defendants, has exclusive jurisdiction over state and county roads in the Reservation and Indian Country, has repeatedly demanded that the County stop patrolling in these areas, and has interfered with County law enforcement efforts. (*Id.* ¶¶ 41-43.) As such, the County has adequately alleged that the Tribe is the cause of the County's injury. Regarding the third counterclaim, the County has alleged that the Tribe, and not some other party, has exceeded the scope of its permissible civil and regulatory jurisdiction. (*Id.* ¶¶ 66-90.) And finally, regarding the fourth counterclaim, the County has alleged that the Tribe is the entity that is improperly exerting criminal and adjudicatory authority over non-tribal members. (*Id.* ¶¶ 96-100.) Thus, the traceability element is met with regard to this claim as well.

c. *Redressability*

The Amended Counterclaim also meets the redressability requirement. "'[T]he requirement of redressability ensures that the injury can likely be ameliorated by a favorable decision.'" *Palma*, 707 F.3d at 1153 (citation omitted). This is true for all four claims.

First, with a favorable decision from this Court, the injury to the County caused by the Tribe's support of unlawful lawsuits against County officials would cease as the Tribe would no longer be able to financially support and encourage such lawsuits. While this would not absolutely guarantee that such a lawsuit would never again occur, the lack of the Tribe's support and assistance would significantly help to end the practice, which is sufficient to meet the redressability element: "The Supreme Court has rejected interpretations of the rule that demand complete redressability, stressing that a plaintiff need show only that a favorable decision would redress '*an* injury,' not '*every* injury.'" *Consumer Data Indus. Ass'n*, 678 F.3d at 903 (holding redressability element was met; "even if [plaintiff]'s members would not be out of the woods, a favorable decision would relieve their problem 'to some extent,' which is all the law requires").

Second, a favorable decision from this Court declaring that the County has jurisdiction to patrol state and county roads within the Reservation and Indian Country and enjoining the Tribe from preventing the County from doing so would redress the County's injury with respect to the roads counterclaim. Third, a decision from this Court declaring that the Tribe's civil and regulatory jurisdiction is limited to its members, and those with whom the Tribe does business, and that the Tribe had exceeded its jurisdiction with respect to the UTERO Ordinance would redress the County's injury with respect to the Tribe's illegal acts in breaching the Disclaimer and unlawfully extending its jurisdiction to County citizens and businesses. Finally, a decision from this Court declaring that the Tribe cannot exercise criminal and adjudicatory jurisdiction over non-members would redress the County's injury with respect to the Tribe's actions against the County's citizens and the County's obligation to keep the peace within the County.

2. Prudential Standing

Prudential standing "encompasses 'the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked.'" *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 12 (2004) (citation omitted).

Here, the Tribe argues the County does not have prudential standing because it cannot sue as *parens patriae*. (Mot. at 12.) This argument fails, however, for several reasons. First, the allegations in the Amended Counterclaim make it clear that the County is enforcing its own legal rights and thus has prudential standing. Regarding the first counterclaim, the County has alleged that the Tribe's actions in suing County officials have interfered with the County's ability to conduct its official business. As to its second and fourth counterclaims, the County has alleged that the Tribe's actions challenge the County's ability and obligation to maintain peace and order within the County and the safety of its citizens. Finally, as to its third counterclaim, the County has alleged that the Tribe's attempted termination of the Disclaimer was a breach of the three agreements that comprised the reason for the settlement of the 1975 litigation, that the Disclaimer was incorporated into the judicial termination of this lawsuit, and that the County was a party to these agreements and judicial resolution. In addition, the County has alleged it has been injured by the Tribe's illegal acts in breaching the Disclaimer and unlawfully extending its jurisdiction to County citizens and businesses, which have negatively impacted the County. As such, the County has established it has prudential standing on its own accord.

Even if the Court were to find the County did not itself have prudential standing on any of the counterclaims, the County nevertheless would have third-party standing to assert those claims, apart from the doctrine of *parens patriae*. "Under the doctrine of 'third-party' or '*jus tertii*' standing, Plaintiffs may assert the rights of others not before the court if they can 'make two additional showings.'" *Aid for Women v. Foulston*, 441 F.3d 1101, 1111 (10th Cir. 2006). "First, Plaintiffs must show that 'the party asserting the right has a close relationship with the person who possesses the right,'" and second, "Plaintiffs must show that 'there is a hindrance to the possessor's ability to protect his own interests.'" *Id.* at 1111-12 (citations and additional quotations omitted).[4]

Here, the County satisfies the first requirement of a close relationship, where the inquiry concerns whether the County "'can reasonably be expected to properly frame the issues and present them with the necessary adversarial zeal.'" *Id.* at 1113 (citation omitted). It is beyond dispute that the County has an obligation to protect the safety and welfare of its citizens, including their right to have the County protect their physical safety, property interests, and ability to conduct business. *See id.* (holding plaintiffs satisfied the "close relationship" element where their interests "align[ed] with those of their minor patients, such that they can provide proper representation of those rights").

The County also satisfies the second requirement, which is "'a hindrance or inability of the third party to pursue his or her own claims.'" *Id.* (citation omitted). Here, the County has

[4] *See also Essence, Inc. v. City of Fed. Heights*, 285 F.3d 1272 (10th Cir. 2002) ("A well-established exception to the bar against third-party standing is when the exercise of rights by the third party is intertwined with the litigant's activities."). This description of the doctrine also applies here, where both the County's own officers and the County's citizens have been affected by the Tribe's actions.

alleged in its Amended Counterclaim that County citizens have been stopped, cited, and had property confiscated by tribal officers and have paid fines to tribal court, as well as subjected to the UTERO Ordinance. Individual citizens likely would have difficulty in litigating against the Tribe due to the Tribe's general sovereign immunity and the corresponding inability to recover money damages. Likewise, County citizens and businesses are wary of coming forward due to legitimate fears that they will face retaliation from the Tribe. In fact, in a recent radio advertisement broadcast throughout the County, one of the Tribe's Business Committee members warned County businesses that they should not cooperate with County officials. (*See* Radio Message Transcript, attached as Exhibit A.) For these reasons, County citizens and businesses are hindered or otherwise unable to pursue their own claims against the Tribe, and thus the County has third-party standing to assert their claims.[5]

C. Failure to Exhaust Tribal Remedies

In a new argument, the Tribe claims that the County's counterclaims must be dismissed because they should have been brought in Tribal Court. (Mot. at 13-14.) Unsurprisingly, the Tribe only makes conclusory statements and does not explain why any of the counterclaims should have first been brought in Tribal Court, or why the Tribal Court would even be the proper

[5] Significantly, although the Tribe argues that the County does not have standing as *parens patriae*, it fails to argue that the County does not have standing under the *jus tertii* doctrine, even though this doctrine was addressed in the County's previously filed opposition. (*See* Mot. at 12-13.) And while not necessary to address at this point, the law is unsettled as to whether a county may sue as *parens patriae*. *Compare Coal. of Arizona/New Mexico Counties for Stable Econ. Growth v. DOI*, No. 94-CV-1058, 1997 U.S. Dist. LEXIS 4212, at *12 (D.N.M. Mar. 11, 1997) (discussing the requirements for a county to sue as *parens patriae*); *Orange Env't v. Cnty. of Orange*, 817 F. Supp. 1051, 1054 (S.D.N.Y. 1993) (recognizing that the county was acting as in its capacity as *parens patriae*), *with Rohnert Park v. Harris*, 601 F.2d 1040, 1044 (9th Cir. 1979) (holding that a county may not sue as *parens patriae* because the power of a county is derivative and not sovereign); *Prince George's Cnty. v. Levi*, 79 F.R.D. 1, 4 (D. Md. 1977) (denying county rights to sue as *parens patriae*).

forum. As is clear from the four counterclaims, the County is seeking declaratory and injunctive relief with regard to (1) lawsuits unlawfully filed in Tribal Court against County officials, (2) tribal efforts to prevent the County from exercising its jurisdiction on areas and persons within the Reservation and Indian Country, (3) the Tribe's UTERO Ordinance and its unlawful application to non-tribal individuals and businesses, contrary to the Tribe's agreements with the County, federal and state law, and the prior judicial resolution of this matter, and (4) the Tribe's detentions, confiscations, and prosecutions of non-tribal members, in breach of the County's duties to keep the peace and enforce the law within the County. There is no reason why any of these claims should be brought in tribal court, nor does the Tribe give any explanation or argument demonstrating otherwise, let alone any supporting authority. Instead, the Tribe cites to inapposite authorities that only apply when a case is first brought in Tribal Court and concern the scope of tribal court jurisdiction, which is not the situation here. *See, e.g.*, *Nat'l Farmers Union Ins. v. Crow Tribe*, 471 U.S. 845 (1985) (concerning federal court injunction to enjoin proceedings brought in trial court); *Iowa Mut. Ins. v. LaPlante*, 480 U.S. 9 (1987) (concerning action brought in federal court while proceedings involving same parties and same dispute already were pending before Blackfeet Tribal Court).

D. Sovereign Immunity

The Tribe also argues the Counterclaim should be dismissed because the Tribe has sovereign immunity. (Mot. at 15.) The Tribe's argument fails for several reasons.

1. Contractual Waivers of Immunity

First, the Tribe has expressly waived its sovereign immunity. Specifically, in each of the three agreements signed by the Tribe, all of which were expressly incorporated into this Court's

order dismissing this litigation,[6] the Tribe waived its sovereign immunity. First, the Disclaimer of Civil/Regulatory Authority, attached hereto as Exhibit B, provides, "Original jurisdiction to hear and decide any dispute or litigation arising under or as a result of this Disclaimer shall be in the United States District Court of the District of Utah." (*Id.* at 3.) Second, the Cooperative Agreement to Refer Tribal Members Charged with Misdemeanor Offenses to Tribal Court for Prosecution, attached hereto as Exhibit C, provides, "Original jurisdiction to hear and decide any dispute or litigation arising under or as a result of this Agreement shall be in the United States District Court of the District of Utah." (*Id.* at 10.) The Cooperative Agreement for Mutual Assistance in Law Enforcement, attached hereto as Exhibit D, contains the same language. (*See id.* at 11.) It is well settled that once a tribe has contractually consented to jurisdiction in a particular court, it has waived its immunity. *See, e.g.*, C&L *Enters. v. Citizen Band Potawatomi Tribe of Okla.*, 532 U.S. 411, 420 (2001) (holding tribe had agreed in contract to dispute resolution procedures that including enforcement in Oklahoma state courts, and thus had waived its sovereign immunity).

As set forth above, all three of these agreements were expressly incorporated into this Court's Order dismissing this case with prejudice. The Order specifically stated that "questions of jurisdiction on the various categories of land within the original boundaries of the Uintah and Ouray Reservation have been determined by the decisions of the United States Supreme Court and the Tenth Circuit Court of Appeals, *as modified by the agreements between the parties*, which are referred to above and are appended hereto." (Dkt. 145 (emphasis added).)

[6] All three agreements are attached to the Court's Stipulated Order found at Dkt. 96, and all three were then incorporated into this Court's stipulated Order dated March 28, 2000, found at Dkt. 145.

Significantly, the claims now raised by the County fall within these waivers of immunity. The issue of jurisdiction over county and state roads and rights of way, and the issues of civil, criminal, and regulatory jurisdiction, were addressed in the three agreements and made a part of this Court's Order. Likewise, the County's claims concerning the Tribe's participation in tribal suits against County officials and its other efforts to expand its civil and regulatory jurisdiction, including the UTERO Ordinance, are in clear violation of the Disclaimer. In fact, the Tribe expressly waived its sovereign immunity in the UTERO Ordinance: "The Tribe hereby agrees to waive its sovereign immunity for the sole and limited purpose of enforcement of the terms of this Ordinance. This waiver is expressly limited to injunctive and/or declaratory relief with respect to the enforcement of this Ordinance and does not include monetary damages." (UTERO Ordinance § 13.3, Dkt. 162-3 p.25.) Therefore, the County's counterclaims fall within the Tribe's express waivers of its sovereign immunity.[7]

2. The Tribe Does Not Have Sovereign Immunity Because the Claims In the Counterclaim Are Recoupment Actions Falling Within the Scope of the Tribe's Complaint

The Tribe's sovereign immunity argument also fails because the Tribe has waived its immunity by filing suit and the County's counterclaims sound in recoupment. "[W]hen a tribe files suit it waives its immunity as to counterclaims of the defendant that sound in recoupment." *Berrey v. Asarco Inc.*, 439 F.3d 636, 643 (10th Cir. 2006). "The waiver of sovereign immunity is predicated on the rationale that 'recoupment is in the nature of a defense arising out of some feature of the transaction upon which the [sovereign's] action is grounded.'" *Id.* (citation omitted). "Claims in recoupment arise out of the same transaction or occurrence, seek the same

[7] Although the County raised this argument in its opposition to the Tribe's first motion to dismiss, the Tribe failed to address it in its second motion to dismiss.

kind of relief as the plaintiff, and do not seek an amount in excess of that sought by the plaintiff." *Id.* Here, all of the claims asserted in the Counterclaim sound in recoupment.[8]

a. The County's counterclaims arise from the same transaction or occurrence

First, the County's counterclaims arise from the same transaction or occurrence as the Tribe's claims. "Counterclaims arise from the same transaction or occurrence if they are compulsory counterclaims under Rule 13(a) of the Federal Rules of Civil Procedure." *Id.* at 645. A counterclaim is compulsory if (1) the issues of fact and law raised in the claim and counterclaim are largely the same, (2) res judicata would bar a subsequent suit on the defendant's claim, (3) the same evidence supports or refutes the principal claim and the counterclaim, and (4) there is a logical relationship between the claim and counterclaim. *See id.*

The Tribe's Complaint alleges that the Defendants (including the County) have violated prior court decisions concerning the parties' respective jurisdictions and that the Defendants "regularly and intentionally send their law enforcement agents onto tribally owned Reservation lands, to take action which is inconsistent with the land's reservation status," including "routine police patrolling on land owned by the United States in trust for the Tribe or a member of the Tribe." (Compl. ¶ 22.) It also complains about Defendants' actions in stopping tribal members for alleged violations of state law and detaining, searching, and arresting tribal members "for matters which are outside the scope of state jurisdiction under the holdings from the 1975 suit." (*Id.*) The Tribe also complains about Defendants' actions in bringing criminal actions against tribal members in state court. (*Id.* ¶ 29.) These allegations concern issues of fact and law, and

[8] Again, although the County raised this argument in its opposition to the Tribe's first motion to dismiss, the Tribe inexplicably failed to address it in its second motion to dismiss.

involve the same evidence, as those raised in the County's counterclaims, specifically, the issue of which entities have jurisdiction over roads and rights-of-way in Reservations and Indian Country, the issue of the Tribe assisting with suits against County officials, and the Tribe's exercise of jurisdiction outside of the scope of the agreements that settled the 1975 litigation and that are otherwise inconsistent with the Tribe's jurisdiction under federal and state law. Because the County's claims qualify as compulsory counterclaims, they are considered to arise from the same transaction or occurrence as the Tribe's claims for purposes of recoupment. *See Berrey*, 439 F.3d at 643.

The counterclaims also meet the other two recoupment factors. Both the Complaint and the Counterclaim seek "the same kind of relief," *id.*, in that they both are actions for injunctive and declaratory relief. And the final factor, for the counterclaim to not seek "an amount in excess of that sought by the plaintiff," *id.*, is inapplicable here because neither party is seeking money damages. Therefore, because the County's counterclaims properly sound in recoupment, the Tribe's sovereign immunity is waived for purposes of the County's counterclaims. *See id.* at 643; *see also Rupp v. Omaha Indian Tribe*, 45 F.3d 1241, 1245 (8th Cir. 1995) ("By requesting equitable relief, the Tribe consented to the district court exercising its equitable discretion to resolve the status of the disputed lands. To hold that the district court could exercise its discretion to quiet title in favor of the plaintiff (the Tribe) but not the defendant (Rupp and Henderson) would be anomalous and contrary to the court's broad equitable powers.").

3. The Tribe Does Not Have Sovereign Immunity Because the Amended Counterclaim Seeks Relief Against Tribal Officials

The Tribe also lacks sovereign immunity in this litigation because of the *Ex parte Young* doctrine. In that case, "the Supreme Court carved out an exception to Eleventh Amendment

immunity for suits against state officials seeking to enjoin alleged ongoing violations of federal law." *Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140, 1154 (10th Cir. 2011) (citing *Ex parte Young*, 209 U.S. 123 (1908)). "The *Ex parte Young* exception proceeds on the fiction that an action against a state official seeking only prospective injunctive relief is not an action against the state and, as a result, is not subject to the doctrine of sovereign immunity." *Id.* *Ex parte Young* has been recognized by the Tenth Circuit (and other circuits) as an exemption to tribal sovereign immunity. *See id.* Furthermore, the Tenth Circuit has held that the *Ex parte Young* doctrine may be applied to "enjoin a violation of federal common law," including the "unlawful exercise of tribal court jurisdiction." *Id.* at 1155. In fact, the court in *Crowe* explained that "there is an established 'federal right to be protected against the unlawful exercise of Tribal Court judicial power,'" *id.* at 1156 (citation omitted), and the same analysis would logically apply to other unlawful exercises of tribal jurisdiction.

Here, in the Amended Counterclaim, not only has the County named all of the members of the Tribe's Business Committee in their official capacities, but it also has named all of the tribal judges. (Am. Countercl. ¶¶ 8-15, 18.) Further, the Amended Counterclaim alleges that the Tribe and the tribal court have unlawfully exercised criminal, civil, and regulatory jurisdiction, (*see id.* ¶¶ 1, 20, 27, 37, 39, 41-46, 58, 66-69, 78-90, 94, 96-101), and that such actions constitute violations of federal common law, (*see id.* ¶¶ 68, 71, 74, 78, 80, 87, 90, 100). As such, under the Tenth Circuit's holding in *Crowe*, the Tribe does not have sovereign immunity as against the County's counterclaims, all of which seek prospective, injunctive relief.[9]

[9] Although the Tribe argues that these tribal officers have not yet been served, (Mot. at 16 n.2), the County has sent waivers to them and expects to have service accomplished soon. To date, Bruce Ignacio has agreed to waive service of process. In addition, counsel for the Tribe has

E. Res Judicata

The Tribe argues that because "the core element of Uintah County's complaint is merely another attempt to relitigate the issues that it lost in *Ute III* and/or *Ute V*," the County's counterclaims are barred by res judicata. (Mot. at 17-18.) The Tribe's arguments fail for several reasons. First, the Tribe is careful to not explain how the County's counterclaims are somehow barred by the *Ute III* and *Ute V* decisions, which, as this Court is well aware, concerned whether the Uintah and Uncompahgre Reservations had been diminished and/or disestablished. In fact, the Tribe did not even raise this argument in its initial motion to dismiss, making it even more surprising for the Tribe to now claim that "[t]his Court previously ruled on this exact legal issue." (*Id.* at 18.)

Further, nothing in the *Ute III* or *Ute V* decision precludes any of the four counterclaims the County has brought. These prior rulings addressed the existence of the Reservations and their boundaries but did not resolve the issues of civil, regulatory, and criminal jurisdiction raised here; instead, these jurisdictional issues are governed by lines of Supreme Court and federal court precedent that are different from those concerning the determination of whether a reservation has been disestablished or diminished. *See Nevada v. Hicks*, 533 U.S. 353, 361 (2001) ("Our cases make clear that the Indians' right to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation. Though tribes are often referred to as 'sovereign' entities, it was 'long ago' that 'the Court departed from Chief Justice Marshall's view that the laws of [a State] can have no force within reservation boundaries."); *see also Strate v. A-1 Contractors*, 520 U.S. 438, 454-55 (1997) (public highways); *Montana v.*

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stated that "the Ute Tribe's Business Committee has agreed to waive service of process for the County's third-party complaint" and will "provide . . . signed copies of the waiver forms."

United States, 450 U.S. 544 (1981) (the seminal jurisdiction case stating that tribal powers may be limited to "what is necessary to protect tribal self-government or to control internal relations").[10] To put an even finer point on the issue, the *Ute* decisions did *not* reach issues such as which entities have jurisdiction on roads and rights-of-ways and under what circumstances, whether the Tribe could regulate non-member businesses that do not do business with the Tribe, whether Tribal courts could entertain lawsuits against County officials for actions taken in their official capacities, and whether the Tribe could stop non-members, issue them citations, confiscate their property, and require them to pay fines to Tribal Court. Thus, res judicata does not require the dismissal of any of the counterclaims.

F. The Counterclaim States a Claim Upon Which Relief Can Be Granted

The Tribe's final argument—that the County's Counterclaim fails to state a claim upon which relief can be granted—also fails to demonstrate that any counterclaim should be dismissed. The Tribe primarily argues that the Court cannot determine which entities have jurisdiction over roads and rights-of-way because Congress has plenary power over Indian tribes, citing statutes concerning the designation of federal rights-of-ways. (Mot. at 21.) This issue is inapposite however, to the determination of what entities may exercise jurisdiction on the Reservation, including state and county roads in the Reservation, and under what circumstances, which are clearly issues for the courts. *See, e.g.*, *Nevada v. Hicks*, 533 U.S. 353, 361 (2001); *Strate v. A-1 Contractors*, 520 U.S. 438, 454-55 (1997); *Montana v. United States*, 450 U.S. 544 (1981). For the same reason, the Tribe's related argument that the United States is an

[10] Although the *Ute* litigation did in some ways address jurisdiction, it did not address the issues raised here, nor did it examine any jurisdictional issues in depth. Rather, those years of litigation concerned the questions of whether the two reservations had been diminished or disestablished.

indispensable party fails because even under the Tribe's own reasoning, this would only apply to a suit "brought to establish an interest in Indian trust land," (Mot. at 21), as this is not the relief sought in any of the counterclaims. In any event, now that the United States has voluntarily entered this case as an amicus, this issue is moot. (*See* Dkt. 261, 263.)

Finally, to the extent the Tribe argues that the County has insufficiently pleaded its counterclaims by failing to allege instances where the Tribe "has illegally exercised criminal jurisdiction over the County" or "exceeded its civil and regulatory authority over the County," or failed to properly allege a "violation of the right to travel," (Mot. at 20-21), these arguments are red herrings, in that such allegations are not necessary, and because the County has adequately pleaded a claim upon which relief can be granted in all four counterclaims, as has been previously addressed above. Moreover, the counterclaims do not need to include specific allegations to satisfy Rule 8(a)(2). Instead, the County need only allege a short and plain statement showing an entitlement to relief that provides the Tribe with "fair notice of what the . . . claim is and the grounds upon which it rests." *Burnett*, 706 F.3d at 1235.[11] As set forth in detail above and in the Amended Counterclaim itself, the County has met this standard, and the Tribe's conclusory arguments otherwise fail to demonstrate that any of the four counterclaims fails to state a claim upon which relief can be granted.

CONCLUSION

Based on the foregoing, the County respectfully requests that the Court deny the Tribe's Motion to Dismiss Uintah County's Amended Counterclaim.

[11] Contrary to the Tribe's arguments, the appropriate place for detailed information to be disclosed and pursued is in discovery. For example, the County has already submitted its Rule 26 initial disclosures to the Tribe; these disclosures contain names of numerous witnesses and outline a number of relevant incidents. (*See* Initial Disclosures, attached as Exhibit E.)

DATED this 26th day of August, 2013.

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