G. Mark Thomas (6664)
UINTAH COUNTY ATTORNEY
Jonathan A. Stearmer (11217)
CHIEF DEPUTY UINTAH COUNTY ATTORNEY—CIVIL
641 East 300 South, Suite 200
Vernal, Utah 84078
Telephone: (435) 781-5432
mark@uintahcountyattorney.org
jonathan@uintahcountyattorney.org

E. Blaine Rawson (7289)
Greggory J. Savage (5988)
Calvin R. Winder (14369)
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500
Facsimile: (801) 532-7543
brawson@rqn.com
gsavage@rqn.com
cwinder@rqn.com

Attorneys for Uintah County

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.	**DEFENDANT UINTAH COUNTY'S (1) PARTIAL MOTION FOR SUMMARY JUDGMENT AS TO THE TRIBE'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND UINTAH COUNTY'S COUNTERCLAIMS; AND (2) ALTERNATIVE MOTION TO CERTIFY ISSUES FOR INTERLOCUTORY APPEAL UNDER 28 U.S.C. § 1292(b)** 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 Plaintiff, v. UTE INDIAN TRIBE OF THE UINTAH & OURAY RESERVATION, UTAH; a federally recognized Indian Tribe. Counterclaim Defendant.	

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, DUCivR 56-1, and 18 U.S.C. § 1292(b), Defendant Uintah County respectfully submits this (1) Partial Motion for Summary Judgment as to the Tribe's Complaint for Declaratory and Injunctive Relief and Uintah County's Counterclaims; and (2) Alternative Motion to Certify Issues for Interlocutory Appeal Under 28 U.S.C. § 1292(b).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Constitutional Provisions

INTRODUCTION

As a general rule, the State of Utah ("State") and Uintah County possess criminal and civil authority within the geographic confines of Uintah County. Owing to its status as a "diminished sovereign," the Tribe faces a significant burden to establish exceptions to the general rule. Even in the few instances when the Tribe might be able to establish authority, the State and Uintah County also *still* possess criminal and civil authority within Uintah County. In fact, unless there is *express* federal law divesting the State and Uintah County of some aspect of its criminal and civil authority, or the activity to be regulated falls in the *narrow* category of Tribal self-governance—*e.g.*, determining Tribal membership and inheritance rules—the State and Uintah County possess and have the ability to exercise their criminal and civil authority within Uintah County.

With this general rule in mind, the specific instances at issue in this litigation fall outside the realm of reasonable assertions of exclusive authority by the Tribe. Rather, the Tribe's claims go beyond the criminal and civil authority it possesses. Even in instances where federal offenses—*e.g.*, violations of 18 U.S.C. § 1153—are committed, the State and Uintah County have criminal authority to conduct law enforcement activities within Indian Country, patrol State and County roads located within State and County rights-of-way, and even stop, detain, and arrest individuals for State and federal criminal offenses. Moreover, the State and Uintah County have the authority to enter Tribally-owned lands[1] to assert their plenary criminal authority over Tribal members for criminal offenses committed outside Indian Country. Even in the narrow instances where a federal statute constrains the power of a State court to hear federal criminal

[1] In this Motion, Uintah County uses the terms "Tribally-owned" and "Tribal" lands to mean both lands owned by the Tribe that are subject to taxation by Uintah County and lands held in trust by the United States for the Tribe that are exempt from taxation by Uintah County.

offenses, State courts retain the authority to determine the scope of their "criminal jurisdiction."

The Tribe is also surpassing any legitimate claim to civil authority. The Supreme Court has held that the general rule is that tribes lack civil authority over non-tribal members unless the nonmember has entered into a "consensual" relationship with the tribe or the authority is central to the tribe's exercise of its sovereign powers.

The Tribe's legal positions rely on incorrect interpretations of prior Tenth Circuit cases—which in some instances are contrary to current Supreme Court precedent—and leveraging the boundaries of Indian Country far beyond anything the Supreme Court has ever conceived. The Court must grant summary judgment in Uintah County's favor on the specific issues identified herein. But, if the Court determines it is bound by prior Tenth Circuit mandate to accept the Tribe's interpretation of those Tenth Circuit cases—which it is not—the Court should certify the issue for interlocutory appeal to the Tenth Circuit to recall the prior mandates and prevent gross injustice from continuing to occur.

BACKGROUND FACTS[2]

BACKGROUND FACT NO. 1. Uintah County is comprised of approximately 2.8 million acres (4,500 square miles) lying within the State of Utah, containing in excess of 6,500 miles of State and County roads/rights-of-way. (*See* Uintah County Sheriff Jeffrey Merrell's Decl., attached hereto as Exhibit 1, at ¶¶ 8–9; *see also* Uintah County Map, attached hereto as Exhibit 2.)

BACKGROUND FACT NO. 2. Within that geographic area, Uintah County is responsible for the health, safety, and welfare of over 32,588 citizens. (*See*

[2] It is Uintah County's position that the "Background Facts" section contains a full statement of undisputed material facts for the purpose of its motion for partial summary judgment. In an effort to comply with DUCivR 56-1, however, Uintah County has made this statement of facts here and refers back to and incorporates each and every fact contained herein in its subsequent "Statement of Elements and Undisputed Material Facts."

http://factfinder2.census.gov/faces/ tableservices/jsf/pages/product view.xhtml?pid=DEC_10_DP _DPDP1.) Of those citizens, approximately 2,509 are Native American and 557 are white/Native American. (*Id.*)

BACKGROUND FACT NO. 3. The Tribe claims to have 3,157 members, of which only approximately half live on the reservation. (*See* Tribe's Website, http://www.utetribe.com.)

BACKGROUND FACT NO. 4. Despite this, the Tribe claims to have exclusive "criminal jurisdiction" and "civil jurisdiction" over approximately seventy percent of Uintah County. (*See, e.g.*, Rasmussen Letter to Rawson, Feb. 11, 2014, attached hereto as Exhibit 3 ("Let me reiterate that the Tribe's contention is that regardless of the color or markings of a road on the County's map or anyone else's map, a road is a 'tribal road' (i.e. the Tribe has jurisdiction over the road) if it is on the Reservation as determined by Ute III or Ute V or as will be determined in this matter under the limited order of remand from Ute V. Because the Uncompahgre Reservation and the National Forest Lands are Reservation under Ute III and Ute V, the roads on them are tribal roads as we use that term."); Tribe Letter to Uintah County Commission, Aug. 29, 2011, attached hereto as Exhibit 4; Ute Bulletin, attached hereto as Exhibit 5.)

BACKGROUND FACT NO. 5. The Tribe asserts that *all* State and County roads, and even federal roads, within Indian Country—including even State highway U.S. 40—are Tribal roads. (Ex. 3, Rasmussen Letter to Rawson, Feb. 11, 2014; Ex. 4, Tribe Letter to Uintah County Commission, Aug. 29, 2011; Ex. 5, Ute Bulletin.)

BACKGROUND FACT NO. 6. In this case, the Court is being asked to make determinations as to who—*i.e.*, Uintah County and/or the Tribe—possesses criminal and/or civil authority in certain areas within the geographic confines of Uintah County, including on State

and County roads. (*See, e.g.*, Tribe's Complaint, Case No. 2:13-cv-00276, Dkt. No. 2; Uintah County's Second Amended Answer and Counterclaims, Case No. 2:75-cv-00408, Dkt. No. 431.)

BACKGROUND FACT NO. 7. Although the Tribe believes the *Ute Tribe* decisions[3] have conclusively resolved all issues related to the possession and exercise of criminal and civil authority within Uintah County, this is not the case. Currently, there exists a vital misunderstanding regarding the proper allocation of criminal and civil authority within Uintah County that is harming Uintah County. (*See, e.g.*, *id.*)

I. CONFLICTS EXIST REGARDING UINTAH COUNTY'S LAW ENFORCEMENT AND PROSECUTORIAL AUTHORITY

A. KEITH BLACKHAIR'S PROSECUTION

BACKGROUND FACT NO. 8. On September 28, 2009, the Uintah County Sheriff's Department responded to the Periette Wetlands area within Uintah County where it was reported that a male individual—later determined to be Ramos Ray Cesspooch—was lying unconscious on the side of a County road located within a County right-of-way. (B. Watkins Report, attached hereto as Exhibit 6, at 4.)

BACKGROUND FACT NO. 9. Mr. Cesspooch was partially nude, his face bloody, bleeding from both ears, unable to speak, and had distinguishable shoe prints on his head and face. (D. Nelson Report, attached hereto as Exhibit 7, at 3.)

BACKGROUND FACT NO. 10. Mr. Cesspooch was transported by ambulance to Uintah Basin Medical Center. (*Id.*)

BACKGROUND FACT NO. 11. Around this same time, Uintah County law enforcement received a call from an oil-well location about 5 miles south of the location Mr.

[3] *Ute Indian Tribe v. Utah*, 114 F.3d 1513 (10th Cir. 1997) ("*Ute V*"); *Ute Indian Tribe v. Utah*, 773 F.2d 1087 (10th Cir. 1985) (en banc) ("*Ute III*").

Cesspooch was found, reporting that there were two "Native American" males and two "Native American" females asking for a ride. (*Id.*)

BACKGROUND FACT NO. 12. Uintah County law enforcement went to the scene and discovered four people, including Mr. Blackhair. Each one bore a strong odor of alcohol. (*Id.*)

BACKGROUND FACT NO. 13. Through interviews, it was determined that Mr. Blackhair had been involved in an altercation with Mr. Cesspooch, in which Mr. Blackhair had continued to kick Mr. Cesspooch after he had lost consciousness. (*Id.* at 4.)

BACKGROUND FACT NO. 14. At that point, "there was a strong possibility that Ramos Cesspooch might not live." (Ex. 6, B. Watkins Report, at 4.)

BACKGROUND FACT NO. 15. In response to this heinous crime, Uintah County filed criminal charges against Mr. Blackhair. (Blackhair State Docket, Case No. 091800519, attached hereto as Exhibit 8, at 3.)

BACKGROUND FACT NO. 16. Subsequently, Mr. Blackhair argued that the State criminal charges should be dismissed because Mr. Blackhair asserted that he is a Tribal member and the alleged criminal offense occurred within Indian Country. (Blackhair State Motion to Dismiss, Case No. 091800519, attached hereto as Exhibit 9.)

BACKGROUND FACT NO. 17. Thereafter, a federal criminal indictment was handed down against Mr. Blackhair for a violation of 18 U.S.C. §§ 113(a)(6) and 1153(a), Assault Resulting in Serious Bodily Injury While Within Indian Country. (Blackhair Indictment, Case No. 2:10-cr-01110, attached hereto as Exhibit 10.)

BACKGROUND FACT NO. 18. In light of the federal indictment, Uintah County dismissed, without prejudice, the State criminal charges against Mr. Blackhair. (Blackhair State

Motion and Order to Dismiss, Case No. 091800519, attached hereto as Exhibit 11.)

BACKGROUND FACT NO. 19. On October 20, 2011, Mr. Blackhair filed a "Motion for Pre-Trial Determination that Alleged Offense *did not* Occur Within Indian Country" ("Blackhair Motion"). (Blackhair Motion, Case No. 2:10-cr-01110, Dkt. No. 78, attached hereto as Exhibit 12; *see also* Blackhair Federal Docket, Case No. 2:10-cr-01110, attached hereto as Exhibit 13 (emphasis added).)

BACKGROUND FACT NO. 20. Blackhair's Motion stated: "The basis for this motion is that the tribal boundaries of the Uintah and Ouray Indian Reservation and the Uncompahgre Reservation are in dispute and the alleged location is a disputed area." (Ex. 12, Blackhair Motion.)

BACKGROUND FACT NO. 21. In his subsequent Memorandum in Support, Mr. Blackhair stated as material facts:

> (1) The indictment alleges that the defendant committed an aggravated assault in Indian Country on September 28, 2009.
> (2) The government has provided certain township and range and GPS coordinates which the government claims are the location of the alleged offense or actions incidental thereto.
> (3) *The government and the Ute Tribe claim that a large portion of eastern Utah falls within the definition of Indian Country however the reality is that this area is not Indian Country*.

(Blackhair's Memo in Support, Case No. 2:10-cr-01110, Dkt. No. 83, attached hereto as Exhibit 14 (emphasis added).)

BACKGROUND FACT NO. 22. Mr. Blackhair also stated (1) "[t]he preference of the defendant would be that the element or issue of whether the alleged crime occurred in Indian Country be determined solely by the jury," and (2) "the defendant requests that if the court rules that situs is a question for the court that then the court convene an evidentiary hearing on the

issue of the actual lawful boundaries of the Ute and Oury [*sic*] and Uncompahgre Reservations and whether the alleged locations of the claimed crime is within Indian Country." (*Id.*)

BACKGROUND FACT NO. 23. In response, the United States argued that "[t]he site of the offense in th[e] case [wa]s the place where the victim was found lying on the ground badly beaten and barely conscious." (United States' Response, Case No. 2:10-cr-01110, Dkt. No. 99, attached hereto as Exhibit 15, at 10.)

BACKGROUND FACT NO. 24. Based on *this* situs, the United States argued that the charged criminal offense was committed within Indian Country, relying on the Tenth Circuit's holding in *Ute V*. (*See id.* at 6–10.)

BACKGROUND FACT NO. 25. Of note, however, is the fact that the BIA issued conflicting letters regarding whether the land where the alleged criminal offense occurred was located within Indian Country, (*see id.* at 3–4 & Exs. D, E (BIA letters stating that the crime occurred outside Indian Country (Ex. D) and within Indian Country (Ex. E))), and Mr. Blackhair had taken a contrary position—*i.e.*, Mr. Blackhair argued that the criminal offense occurred within Indian Country before the State court and that the criminal offense occurred outside Indian Country before the federal court. (*See id.* at 3).[4]

BACKGROUND FACT NO. 26. Regardless, the United States had a specific situs

[4] In fact, Mr. Blackhair, desired to use the jurisdictional status of the historic Uncompahgre Reservation—and the underlying confusion—to his advantage by attempting to avoid prosecution by *both* the United States and Uintah County. Mr. Blackhair went so far as to argue that "[t]he original Uncompahgre Reservation was disestablished by the Act of 1894" and requesting that the court so hold. (*See* Blackhair Reply, Case No. 2:10-cr-01110, attached hereto as Exhibit 16, at 4.) Moreover, Mr. Blackhair desired that the issue of the boundaries of Indian Country be decided by a jury. (*See* Ex. 14, Blackhair's Memo in Support, at 2.) That would have allowed Mr. Blackhair to use the confused status of the contours of Indian Country to his benefit. Although the Tribe would like to act as if the confines of Indian Country is a foregone conclusion after *Ute V*, in practice—as illustrated by Mr. Blackhair's case—the boundaries of Indian Country remain very much a disputed issue. But regardless, this illustrates the fact that an injunction against Uintah County will be insufficient to protect the Tribe with respect to its perceived sovereignty interests. In fact, individuals the Tribe asserts are its own members appear to fight against what the Tribe—in this litigation—sets forth as its sovereignty interests, rendering the requested injunctive relief against Uintah County impotent to protect the Tribe.

where it alleged the charged criminal offense occurred. (*See id.* at 10.) That does not mean that Mr. Blackhair did not—or could not have—committed the same or a different crime at a *different location* based on the same underlying facts.

BACKGROUND FACT NO. 27. In fact, the area where the victim was found—T9S, R18E—contains a number of School and Institutional Trust Lands Administration (SITLA) lands that are owned by the State. (*See* Supplemental Report, attached hereto as Exhibit 17, at 6.)

BACKGROUND FACT NO. 28. Moreover, the car Mr. Blackhair had been driving was discovered by law enforcement in the Four Mile Wash area, (*see* Ex. 7, D. Nelson Report, at 4), which also contains a number of SITLA lands. There was evidence that Mr. Blackhair had been drinking and driving, which likely included driving on County roads, located within County rights-of-way, across SITLA lands. (*See id.* at 3–4; Ex. 17, Supplemental Report, at 7–8.)

BACKGROUND FACT NO. 29. In his reply to the United States' Response, Mr. Blackhair stated:

> The defendant is asking this court to evaluate the decision in Ute V and make the following determinations:
>
> > 1. Defendant was not a party to Ute I through Ute V or Hagen.
> > 2. The defendant is not bound by any of the prior decisions, except Hagen.
> > 3. The decision by the Tenth Circuit in Ute V relied on the position of the parties during the litigation between those parties and did not involved [*sic*] defendant Blackhair.
> > 4. The original Uncompahgre Reservation was disestablished by the Act of 1894.
> > 5. The location alleged with respect to the charge [*sic*] offense was not with [*sic*] Indian Country as defined in 18 U.S.C. § 1151(a).

(Ex. 16, Blackhair Reply, at 4.)

BACKGROUND FACT NO. 30. After Mr. Blackhair filed his reply, the United States offered Mr. Blackhair a plea deal. (*See* Ex. 13, Blackhair Federal Docket, at Dkt. No. 125.)

BACKGROUND FACT NO. 31. Mr. Blackhair rejected the United States' plea offer, (*see id.* at Dkt. No. 132), and the court heard oral argument on his motion regarding the boundaries of Indian Country, requesting additional briefing on the issue, (*see id.* at Dkt. No. 135).

BACKGROUND FACT NO. 32. Thereafter, however, Mr. Blackhair entered a plea agreement with the United States, pleading guilty to a misdemeanor information alleging assault, in violation of 18 U.S.C. § 113(a)(4). (Blackhair Misdemeanor Information, Case No. 2:10-cr-01110, Dkt. No. 137, attached hereto as Exhibit 18.)

BACKGROUND FACT NO. 33. In his statement in advance of plea of guilty, Mr. Blackhair

> stipulate[d] and agree[d] that the following facts accurately describe[d] [his] conduct. Th[o]se facts provide[d] [the] basis for the Court to accept [his] guilty plea and for calculating the sentence in [his] case:
>
> > On September 28, 2009, during a fight which R.C. started, I assaulted R.C. with unlawful force or violence by kicking him in the back. The assault occurred within the boundaries of the Uintah and Ouray Reservation, State of Utah, and R.C. is an enrolled member of the Ute Indian Tribe.

(Blackhair Statement in Advance, Case No. 2:10-cr-01110, Dkt. No. 138, attached hereto as Exhibit 19, at 3.)

BACKGROUND FACT NO. 34. It was under these circumstances that a judgment and sentence of four months imprisonment—with credit for time served—was entered against

Mr. Blackhair. (Blackhair Criminal Judgment, Case No. 2:10-cr-01110, Dkt. No. 141, attached hereto as Exhibit 20, at 2.)

BACKGROUND FACT NO. 35. This plea agreement allowed the United States to avoid Mr. Blackhair's motion seeking to prove that the historic Uncompahgre Reservation had been disestablished, and Mr. Blackhair was able to receive a lenient sentence for beating a man nearly to death. (*See supra* ¶¶ 17–34.)

BACKGROUND FACT NO. 36. On June 6, 2012, because of the heinous nature of the crime and the fact that Mr. Blackhair's lenient federal sentence did not provide just deserts to deter similar future conduct within Uintah County, Uintah County brought new state charges against Mr. Blackhair. (Blackhair State Docket, Case No. 121800379, attached hereto as Exhibit 21, at 2.)

BACKGROUND FACT NO. 37. In this litigation, the Tribe has sought an injunction to prevent Uintah County's prosecution of Mr. Blackhair. (Tribe's Motion for Summary Judgment, Case No. 2:75-cv-00408, Dkt. No. 335, at 4–7, 15–17.) Mr. Blackhair's state prosecution is stayed, pending the outcome of this litigation. (Ex. 21, Blackhair State Docket, Case No. 121800379, at 6.)

B. JAYMOE TAPOOF'S PROSECUTION

BACKGROUND FACT NO. 38. On November 23, 2012, Mr. Tapoof was traveling at a high, dangerous rate of speed on State highway U.S. 40, located within a State right-of-way. Mr. Tapoof was traveling 105 mph on a main public thoroughfare within the Uintah Basin. (Tapoof Arrest Report, attached hereto as Exhibit 22, at 3 (statement of BIA Officer Jason Webb).)

BACKGROUND FACT NO. 39. After witnessing Mr. Tapoof's vehicle traveling at

an unsafe rate of speed, Uintah County law enforcement broadcast over the radio an Attempt to Locate ("ATL") a black vehicle traveling westbound on State highway U.S. 40 at a high rate of speed. (*Id.*)

BACKGROUND FACT NO. 40. BIA Officer Jason Webb received this ATL, and observed a black vehicle traveling westbound on State highway U.S. 40 at the intersection of State highway U.S. 40 and State Route 88. (*Id.*)

BACKGROUND FACT NO. 41. BIA Officer Webb attempted to make contact with the vehicle, but the vehicle began changing lanes at high speed in an unsafe manner. (*Id.*) At that point, BIA Officer Webb activated his emergency lights and sirens, eventually stopping the vehicle at approximately 3750 East 300 North, on the Whiterocks Highway just north of Eagle View Elementary School. (*See id.*; *see also* Tapoof Map, attached hereto as Exhibit 23.)

BACKGROUND FACT NO. 42. During this chase, Mr. Tapoof proceeded through approximately 2.1 miles of land that is outside the exterior boundaries of *both* the historic Uncompahgre and Uintah Valley Reservations—*i.e.*, the area where State highway U.S. 40 traverses T2S, R2E, Sections 16–20 (Uinta Meridian), also referred to as the Gilsonite Strip—and approximately 1.2 miles of fee land that the Tenth Circuit held was not part of the diminished Uintah Valley Reservation—*i.e.*, private fee land located where State highway U.S. 40 traverses portions of T2S, R1E, Sections 13–14, 16, 21, 23–24 (Uinta Meridian). (*See* Ex. 23, Tapoof Map.)

BACKGROUND FACT NO. 43. BIA Officer Webb identified the driver of the 2006 Black Mitsubishi Eclipse GT as Jaymoe Tapoof. (Ex. 22, Tapoof Arrest Report, at 3 (statement of BIA Officer Jason Webb).) BIA Officer Webb told Mr. Tapoof to stand by for Utah State

Highway Patrol Trooper Brett Hansen to arrive on the scene.[5] (*Id.*)

BACKGROUND FACT NO. 44. Trooper Hansen cited Mr. Tapoof for violations of (1) Utah Code Ann. § 41-6a-601, for speeding 105 mph in a 65 mph zone; and (2) Utah Code Ann. § 41-6a-528, for aggressive/reckless driving. (*Id.* at 1 (citation).) While Mr. Tapoof was still driving westbound on State highway U.S. 40, Uintah County Deputy Mike Lourenco had observed Mr. Tapoof's vehicle traveling 105 mph in a 65 mph zone, as verified by Deputy Lourenco's radar. (*Id.* at 5 (statement of Uintah County Deputy Mike Lourenco).)

BACKGROUND FACT NO. 45. Mr. Tapoof was arrested and his car impounded for his violations.[6] (*Id.* at 1–2 (citation and impound report).)

BACKGROUND FACT NO. 46. In this litigation, the Tribe has sought an injunction to prevent Uintah County's prosecution of Mr. Tapoof. (Tribe's Motion for Summary Judgment, Dkt. No. 335, at 9–10, 17–18.) Mr. Tapoof's State criminal case is stayed, pending the outcome of this litigation. (Tapoof Docket, Case No. 125902628, attached hereto as Exhibit 25, at 4–5.)

II. THE TRIBE HAS IMPROPERLY OBSTRUCTED UINTAH COUNTY LAW ENFORCEMENT/EMERGENCY ACTIVITIES

BACKGROUND FACT NO. 47. The Tribe has interpreted the *Ute Tribe* decisions as granting exclusive "criminal jurisdiction" and "civil jurisdiction" to the Tribe within the exterior boundaries of the historic Uintah Valley and Uncompahgre Reservations. (*See, e.g.*, Tribe's Complaint, Dkt. No. 2; Ex. 3, Rasmussen Letter to Rawson, Feb. 11, 2014; Ex. 4, Tribe Letter to

[5] BIA Officer Webb detained Mr. Tapoof for the Utah State Highway Patrol, rather than attempting to assert authority over the situation.

[6] Even in instances where a BIA officer effects an arrest within Indian Country, the BIA impounds vehicles in the State tax impound lot, sometimes with the help of local law enforcement. (*See, e.g.*, Uintah County Deputy Chase Hall Declaration, attached hereto as Exhibit 24, at ¶ 12 ("[BIA] Officer Serawop then left the scene[, after making an arrest,] and I[, *i.e.*, Deputy Hall,] performed the state tax impound. . . . I then proceeded to the BIA PD where I gave Officer Serawop the impound form and my witness statement.").)

Uintah County Commission, Aug. 29, 2011; Ex. 5, Ute Bulletin.)

BACKGROUND FACT NO. 48. Under the Tribe's interpretation, this means that the State and Uintah County have no criminal and civil authority within Indian Country, including criminal and civil authority to patrol roads within Indian Country—even on State and/or County roads located within State and/or County rights-of-way. (*See* Ex. 1, Uintah County Sheriff Jeffrey Merrell's Decl., at ¶¶ 4–12; Ex. 3, Rasmussen Letter to Rawson, Feb. 11, 2014; Ex. 4, Tribe Letter to Uintah County Commission, Aug. 29, 2011; Ex. 5, Ute Bulletin.)

BACKGROUND FACT NO. 49. In fact, the Tribe believes that there are *no* State and County roads, or even federal roads, within Indian Country, only Tribal roads. (*See* Ex. 3, Rasmussen Letter to Rawson, Feb. 11, 2014; Ex. 4, Tribe Letter to Uintah County Commission, Aug. 29, 2011; Ex. 5, Ute Bulletin.)

BACKGROUND FACT NO. 50. The Tribe has undertaken to enforce its interpretation of the *Ute Tribe* decisions, and in doing so has interfered with legitimate Uintah County law enforcement/emergency activities within Indian Country. (*See, e.g.*, Tribe's Complaint, Dkt. No. 2; *infra* ¶¶ 51–86.)

A. THE TRIBE IS OBSTRUCTING UINTAH COUNTY LAW ENFORCEMENT'S APPROPRIATE EXERCISE OF CRIMINAL AND CIVIL AUTHORITY, SUCH AS ROUTINE PATROLS ON STATE AND COUNTY ROADS LOCATED WITHIN STATE AND COUNTY RIGHTS-OF-WAY

BACKGROUND FACT NO. 51. On or about May 30, 2013, Uintah County Sheriff's Deputy Randy Nakai was sitting in his patrol vehicle in a pullout located on a State or County road located within a State or County right-of-way. Deputy Nakai was watching for individuals speeding on the State or County road, when Stewart Pike, a member of the Tribe's Business Committee pulled up and told Deputy Nakai that he lacked "jurisdiction" on that State or County

road located within a State or County right-of-way. Mr. Pike's justification was that there was Tribal land on either side of the State or County road located within a State or County right-of-way. Deputy Nakai responded that he was on a State or County road located within a State or County right-of-way and had the authority to stop individuals speeding on that State or County road. (Deputy Randy Nakai Decl., attached hereto as Exhibit 26, at ¶¶ 3–5.)

BACKGROUND FACT NO. 52. Mr. Pike told Deputy Nakai that Deputy Nakai had to leave, that Deputy Nakai was trespassing, and he was going to call the Tribe's attorney. Later, a Tribal Fish and Game Department officer came by and told Deputy Nakai that he had no "jurisdiction" to be on the State or County road located within a State or County right-of-way or check for speeders; he asked that Deputy Nakai leave. Subsequently, another Tribal Fish and Game vehicle drove past Deputy Nakai at a high-rate-of-speed and abruptly stopped just beyond Deputy Nakai for a short period before leaving the area. Finally, Deputy Nakai left the area because he felt like the Tribe was trying to set him up to pull over a Tribal member. (*Id.* at ¶¶ 5–10.)

B. THE TRIBE'S LEGAL POSITIONS INCENTIVIZE TRIBAL MEMBERS TO RECKLESSLY FLEE TO INDIAN COUNTRY, PLACING THE LARGER PUBLIC IN HARM'S WAY

BACKGROUND FACT NO. 53. The Tribe's extreme and legally unsupportable "jurisdictional" position, (*see* Ex. 3, Rasmussen Letter to Rawson, Feb. 11, 2014; Ex. 4, Tribe Letter to Uintah County Commission, Aug. 29, 2011; Ex. 5, Ute Bulletin), has conveyed the (wrong) impression that the land within the exterior boundaries of the historic Uintah Valley and Uncompahgre Reservations is a "safe haven" for criminal activities, (*see, e.g.*, *infra* ¶¶ 54–58).

BACKGROUND FACT NO. 54. In the Tapoof case, relied on by the Tribe in its Motion for Partial Summary Judgment, (Tribe's Motion for Summary Judgment, Dkt. No. 335,

at 9–10), Mr. Tapoof was observed traveling 105 mph in a 65 mph zone on a State highway located within a State right-of-way on land outside Indian Country—*i.e.*, the Gilsonite Strip. But, rather than pulling over, Mr. Tapoof led law enforcement—in this case, the BIA—on a high-speed chase through the small town of Gusher and ending near an elementary school on a small parcel of land that Mr. Tapoof must have known to be Tribal land. (*See supra* ¶¶ 38–46.)

BACKGROUND FACT NO. 55. In another case, Deputy Troy Slaugh observed a vehicle—lacking both front and rear license plates—whose driver appeared to be intoxicated, driving on a State or County road located within a State or County right-of-way outside Indian Country. Deputy Slaugh turned around to stop the vehicle and activated his emergency lights to initiate the stop. (Deputy Troy Slaugh Decl., attached hereto as Exhibit 27, at ¶¶ 3–4.)

BACKGROUND FACT NO. 56. In response, the vehicle turned around, drove past Deputy Slaugh—in the direction the vehicle had initially come from—and attempted to elude Deputy Slaugh. The vehicle only stopped when it had pulled off the State or County road located within a State or County right-of-way and onto a parcel of land where a foundation had been poured for a home under construction. The driver then "rolled" out of the vehicle in an intoxicated manner, smelling badly of alcohol. (*Id.* at ¶ 4.)

BACKGROUND FACT NO. 57. Deputy Slaugh confirmed that the driver, Waylon Wash, had revoked driving privileges, had an alcohol-restricted driving limitation, and was required to have an ignition-interlock device installed on any vehicle that he operated. A preliminary breath test (PBT) showed that Mr. Wash's breath alcohol content was 0.188, indicating Mr. Wash's blood alcohol level was more than twice the legal limit. Although Mr. Wash committed a criminal offense outside Indian Country, he fled pursuit and did not stop until within Indian Country—Mr. Wash's perceived "safe haven." (*Id.* at ¶¶ 5–8.)

BACKGROUND FACT NO. 58. The Tribe has reinforced this "safe haven" mentality by refusing to arrest/prosecute tribal members for any criminal offense involving a Uintah County law enforcement officer. In the Wash case, *supra*, Deputy Slaugh spoke with BIA Officer Serawop who indicated that "the Ute Tribe prosecutors were dismissing any case that involved Uintah County deputies." (*Id.* at ¶ 7.) So, despite the fact that Mr. Wash admitted to drinking "a lot of tequila," and his breath alcohol content was 0.188, Officer Serawop refused to arrest Mr. Wash for his criminal offense of driving under the influence. Rather, Officer Serawop only arrested Mr. Wash for the lesser criminal offense of intoxication—the only criminal offense that Officer Serawop personally observed. (*Id.* at ¶¶ 6–10.)

C. TRIBAL REPRESENTATIVES HAVE OBSTRUCTED UINTAH COUNTY'S ABILITY TO PERFORM SEARCH AND RESCUE OPERATIONS, PLACING LIVES IN DANGER

BACKGROUND FACT NO. 59. The Tribe's unsupportable "jurisdictional" position, (*see, e.g.*, Ex. 3, Rasmussen Letter to Rawson, Feb. 11, 2014; Ex. 4, Tribe Letter to Uintah County Commission, Aug. 29, 2011; Ex. 5, Ute Bulletin), also jeopardizes Uintah County's ability to "respond[] to medical calls or accidents which require immediate response to provide lifesaving actions to individuals." (*See* Ex. 1, Uintah County Sheriff Jeffrey Merrell's Decl., at ¶ 15.) The Uintah County Sheriff has stated: "Having our response unjustifiably slowed or prohibited before tribal status can be determined puts not only the individual's life in jeopardy but also the other residents within the County." (*Id.*)

BACKGROUND FACT NO. 60. On June 29, 2007, a wildfire that originated on Tribal land spread into the community of Farm Creek, located within Uintah County. (Keith Campbell Decl., attached hereto as Exhibit 28, at ¶¶ 4–5.) The wildfire resulted in the deaths of three individuals (non-Tribal members), prompting the emergency evacuation of all residents in

the communities of Farm Creek and Whiterocks. (*Id.* at ¶¶ 6–7.) The severity of the situation required that a Federal Type-One Response Team be called to manage the incident. (*Id.* at ¶ 10.) "[T]here was imminent concern that the communities of Farm Creek and Whiterocks would be damaged by the fire and personal safety of the residents became [the emergency personnel's] number one concern." (*Id.* at ¶ 12.) Despite this emergency, the Tribe's Search and Rescue unit tried to obstruct Uintah County search and rescue operations, asserting that it was the only federally recognized search and rescue crew, and thus, the only crew with "jurisdiction" to perform a search and rescue operation. (*Id.* at ¶¶ 15–19; Travis Mitchell Decl., attached hereto as Exhibit 29, at ¶¶ 4–9; David Boren Decl., attached hereto as Exhibit 30, at ¶¶ 10–13.)

III. UINTAH COUNTY IS PROPERLY EXERCISING CRIMINAL AUTHORITY

BACKGROUND FACT NO. 61. The Tribe believes that Uintah County is prosecuting Tribal members in bad faith, *i.e.*, prosecuting in instances where the Uintah County Attorney knows that there is no State "criminal jurisdiction." (*See, e.g.*, Tribe's Complaint, Dkt. No. 2; Tribe's Motion for Summary Judgment, Dkt. No. 335.) This is not the case.

BACKGROUND FACT NO. 62. "[I]t is impossible, for all intents and purposes, to easily identify the exact land status of any given parcel because of the checkerboard pattern left by *Ute V*." (Ex. 1, Uintah County Sheriff Jeffrey Merrell's Decl., at ¶ 8.) Moreover, "the question of [criminal] jurisdiction involves a consideration of where the offense took place, as well as the status of the victim and perpetrator." (*Id.* at ¶ 7.)

BACKGROUND FACT NO. 63. For example, in the case of Helene Secakuku, a Tribal member mentioned by the Tribe in its Second Renewed Motion for Preliminary Injunction, (Tribe's Second Renewed Preliminary Injunction Motion, Case No. 2:75-cv-00408, Dkt. No. 361, at v, ¶ 19), an initial review of Uintah County maps indicated that Ms. Secakuku's

criminal offense was committed outside Indian Country. (Mark Thomas Decl., attached hereto as Exhibit 31, at ¶ 6.)

BACKGROUND FACT NO. 64. After the Tribe's counsel raised the issue, further research was performed, requiring the Uintah County Attorney to pull the original land patent. (*Id.* at ¶¶ 8–10.) The land patent revealed that the charged criminal offense was committed on land that originally was an Indian allotment that long ago passed into non-Indian owned fee status. (*Id.* at ¶ 9.)

BACKGROUND FACT NO. 65. Based on the United States Supreme Court's decision in *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008), the Uintah County Attorney believed that the State, and therefore Uintah County, had authority to prosecute Ms. Secakuku's criminal offense in State court because the allotted land had been alienated to non-Indian owned fee. (Ex. 31, Mark Thomas Decl., at ¶ 10.) But, under the Tribe's interpretation of *Ute V*, Ms. Secakuku's criminal offense is considered to have been committed within Indian Country because the Tribe contends that if land was ever "allotted," it remains within the Tribe's "jurisdiction" forever. (*Id.* at ¶¶ 9–10.)

BACKGROUND FACT NO. 66. Out of an abundance of caution, the case was dismissed by Uintah County, despite superseding Supreme Court precedent (*Plains Commerce*) holding to the contrary. (*Id.* at ¶ 11; Secakuku Dismissal, Case No. 131900202, attached hereto as Exhibit 32.)

BACKGROUND FACT NO. 67. Generally speaking, when the Uintah County Attorney's office determines that a criminal offense was unquestionably committed by an Indian on Tribally-owned land, it dismisses the case. For instance, in another case relied on by the Tribe, upon additional investigation Uintah County determined that BIA law enforcement's

"jurisdictional" determination was mistaken and that the criminal offense Maria Jenkins was charged with in State court had, in fact, occurred on Indian trust lands, *i.e.*, on land that is indisputably within Indian Country. On the basis of that information, Uintah County voluntarily dismissed the charges against Ms. Jenkins. (Jenkins Dismissal, Case No. 121800714, attached hereto as Exhibit 33.)

BACKGROUND FACT NO. 68. In the Blake Nez case, the criminal offense was committed outside Indian Country. (*See* Blake Nez BIA Land Verification II, attached hereto as Exhibit 34; *see also* Tribe's Second Renewed Preliminary Injunction Motion, Dkt. No. 361.) Originally, the BIA land status verification had shown that the location of the criminal offense was within Indian Country, based on the address provided by the arresting officer. (*See* Blake Nez BIA Land Verification I, attached hereto as Exhibit 35; Blake Nez Letter, Nov. 1, 2013, attached hereto as Exhibit 36.) Subsequently, however, the BIA "learned that [its] roads projection layer [wa]s not projecting the correct address locations and [incorrectly] list[ed] Hwy 40 as 200 North, [because it] w[as] using the older outdated layer in [its] GPS Office." (David Murray Decl., attached hereto as Exhibit 37, at ¶ 4.)

BACKGROUND FACT NO. 69. By substituting the accurate GPS coordinates for the address previously provided by the arresting officer, the BIA was able to correctly determine that Mr. Nez committed his criminal offense outside Indian Country and remedied its faulty map. (*Id.*; Ex. 36, Blake Nez Letter, Nov. 1, 2013.) Despite this, the Tribe continues to contend that Uintah County was without "criminal jurisdiction." And, eventually, the Uintah County Justice Court dismissed the charges against Mr. Nez for lack of "criminal jurisdiction" because Uintah County failed to "prove by a preponderance of the evidence that the offenses occurred [outside]

Indian Country," by only proving that the criminal offense was committed within the State.[7] (Blake Nez Hearing Minutes, Case No. 135901479, attached hereto as Exhibit 38, at 2.)

IV. THE TRIBE IS ASSERTING "JURISDICTION" BEYOND ITS PROPER AUTHORITY

BACKGROUND FACT NO. 70. Outside its efforts to hamper Uintah County's proper exercise of authority, based on its misconception of the *Ute Tribe* decisions, the Tribe is asserting authority *ultra vires*. (*See infra* ¶¶ 71–86.)

A. THE TRIBE IS ACTING BEYOND ITS AUTHORITY BY IMPROPERLY ASSERTING AUTHORITY OVER STATE AND COUNTY ROADS AND COUNTY EMPLOYEES' ACTIVITIES WITHIN STATE AND COUNTY RIGHTS-OF-WAY

BACKGROUND FACT NO. 71. On January 23, 2013, Jeff Ellis, a Uintah County Roads Department employee was sent to inspect a pipeline crossing located on a County road within a County right-of-way. (Jeff Ellis Decl., attached hereto as Exhibit 39, at ¶ 3.) On his way to perform the required inspection, Mr. Ellis was improperly stopped by a Tribal Compliance Officer who informed Mr. Ellis that he was on a Tribal road and was required to turn around. (*Id.* at ¶ 4.) Mr. Ellis showed the Tribal officer on a GPS unit that they were on a County road located within a County right-of-way, but the Tribal officer was adamant that Mr. Ellis was trespassing and required to leave. (*Id.*) Mr. Ellis also noticed that two Uintah County road signs had been improperly removed from the area, which was located within a County right-of-way. (*Id.*) Later, on April 1, 2013, Mr. Ellis was returning to the area to replace the missing

[7] Uintah County disagrees with the Uintah County Justice Court's interpretation of the law governing the State's burden. Uintah County believes that it must only prove that the criminal offense was committed within the State, and then the burden shifts to the defendant to prove that the criminal offense is outside the State's "criminal jurisdiction." *See State v. Clark*, 2010 UT App. 301 (Utah Ct. App. 2010) (unpublished); *see also State v. Verdugo*, 901 P.2d 1165, 1167–69 (Ariz. Ct. App. 1995) ("[A] defendant bears the burden to show facts that would establish an exception to the state court's jurisdiction under the Indian Country Crimes Act. . . . [T]he state . . . meet[s its] initial burden [by] proving that the offense occurred within th[e] state."). Uintah County also believes that the court ignored the undisputed evidence that the criminal offense occurred outside Indian Country. (*See supra* Background ¶¶ 68–69.) Uintah County has appealed this decision to the State district court.

Uintah County road signs that had been located within a County right-of-way, when he observed a Ute Indian Tribe road closure sign on a County road located within a County right-of-way. (*Id.* at ¶ 5.)

BACKGROUND FACT NO. 72. In another instance, another Uintah County Roads Department employee, Harold Morris, was in a Uintah County grader when a Ute Indian Tribe vehicle pulled up behind the grader. (Harold Morris Decl., attached hereto as Exhibit 40, at ¶ 3.) The Tribal officer exited the vehicle, photographed Mr. Morris and the grader, and told Mr. Morris that he was trespassing and asked for his driver's license, despite the fact that Mr. Morris informed the Tribal officer that he was located within a County right-of-way. (*Id.*)

BACKGROUND FACT NO. 73. There have been other similar incidents. (*See, e.g.*, Clark Barker Decl., attached hereto as Exhibit 41; Shane Labrum Decl., attached hereto as Exhibit 42.) Clearly a conflict exists over Uintah County's rights to operate and maintain County roads within the historic boundaries of the former Uncompahgre Reservation.

B. THE TRIBE IS ACTING BEYONG ITS AUTHORITY BY IMPROPERLY STOPPING NON-INDIANS AND CONFISCATING THEIR PERSONAL PROPERTY

BACKGROUND FACT NO. 74. On October 13, 2011, Larry Anderton and his two sons were hunting on private, non-Indian property owned by Grant Cook. (Larry Anderton Decl., attached hereto as Exhibit 43, at ¶ 3.) As they were leaving Grant Cook's property, on their way home, Mr. Anderton and his sons were stopped by BIA Fish and Game Officers on the sole access road leading to Grant Cook's property. (*Id.*) The BIA officers told Mr. Anderton and his sons that they had stopped them because they had been driving ATVs on Tribal land. (*Id.* at ¶ 5.) Mr. Anderton and his sons responded that they had been hunting on private land owned by Grant Cook, and Max Cook came out to explain this to the BIA officers. (*Id.* at 6–7.)

BACKGROUND FACT NO. 75. The BIA Officers instructed Max Cook to either leave or be arrested, and then proceeded to issue trespass citations to Mr. Anderton and his sons. (*Id.* at 8.) While Mr. Anderton and his sons were talking outside their vehicle, one of the BIA Officers opened the door to the Anderton's vehicle and confiscated three rifles without permission. (*Id.* at ¶ 9.) The BIA Officer responded that the rifles would be returned upon payment of the trespass citations. (*Id.* at 10.) On or about October 17, 2011, Mr. Anderton went to the Tribal courthouse and paid the fines ($100.00 for each of three trespass citations, totaling $300.00; and $200.00 for each of three rifles, for a grand total of $900.00). (*Id.* at ¶¶ 11–12.)

BACKGROUND FACT NO. 76. Other unlawful stops have occurred. For example, on November 17, 2012, Albert Kettle was driving on a County road located within a County right-of-way when he was stopped by a Tribal Fish and Wildlife Officer. (Albert Kettle Decl., attached hereto as Exhibit 44, at ¶¶ 2–4.) The Tribal officer requested Mr. Kettle's driver's license, vehicle information, and employment information. (*Id.* at ¶ 5.) The Tribal officer contacted Mr. Kettle's employer, cited Mr. Kettle for trespassing, and told Mr. Kettle to leave the area. (*Id.* at ¶ 6–8.) The Tribal officer escorted Mr. Kettle down the County road located within a County right-of-way, again activated emergency lights, and after stopping Mr. Kettle a second time, took a picture of Mr. Kettle's vehicle before completing the escort of Mr. Kettle from the area. (*Id.* at ¶ 8.) Mr. Kettle was required to pay a $100.00 fine to the Tribal Court for his citation. (*Id.* at ¶ 9.)

C. THE TRIBE IS ACTING BEYOND ITS AUTHORITY BY EXPANDING ITS CIVIL AUTHORITY, THROUGH THE UTERO ORDINANCE, TO INDIVIDUALS AND ACTIVITIES WHOLLY DIVORCED FROM THE TRIBE

BACKGROUND FACT NO. 77. The Tribe is applying its Ute Tribal Employment Rights Office ("UTERO") Ordinance far beyond its civil authority. For example, Ryan Harvey

owns Rocks Off, Inc. ("Rocks Off"), a company that owns or leases a gravel pit on private fee land located within Uintah County. (Ryan Harvey Decl., attached hereto as Exhibit 45, at ¶¶ 3–5.) Rocks Off supplies sand and gravel to companies operating in the local oilfields. (*Id.* at ¶ 6.) Rocks Off has no contractual relationship with the Tribe. (*See id.*) Rocks Off conducts all of its operations on private fee land outside the boundaries of the reservation and all of its products are removed from Rocks Off's location by the buyers, who then move the products to their respective operations. (*Id.* at ¶¶ 16–19.) Moreover, Rocks Off is not even required to access or travel through Tribal land as part of its operation. (*Id.* at ¶ 18.)

BACKGROUND FACT NO. 78. Despite this, Mr. Harvey was repeatedly threatened to be shut down by the UTERO Commission, even after Mr. Harvey paid for and obtained a Tribe business license, UTERO license, and access permit that he did not need. (*See, e.g.*, *id.* at ¶¶ 12–68.) Finally, after Mr. Harvey refused to pay Commissioner Cesspooch—because he "sure needed a good riding horse"—the UTERO Commission accused Mr. Harvey of engaging in fraudulent activities and notified all oil and gas companies operating within what the UTERO Commission considered Indian Country, that if they used any of Mr. Harvey's services/products they would be faced with penalties/sanctions. (*Id.* at ¶¶ 37–48.) Since that time, Mr. Harvey has been unable to obtain any business, based on the action of the UTERO Commission. (*Id.* at ¶¶ 49–52.)

BACKGROUND FACT NO. 79. Other unlawful applications of the UTERO Ordinance have occurred, (*see id.* at ¶¶ 53–58; Justin Justice Decl., attached hereto as Exhibit 46, at ¶¶ 3–36), improperly usurping the State's and Uintah County's authority to regulate business within Uintah County.

D. THE TRIBE IS ASSERTING AUTHORITY OVER LAND FAR EXCEEDING THE HOLDING IN *UTE V*

BACKGROUND FACT NO. 80. In February 2013, the Tribe entered into a cooperative agreement with the Utah Department of Transportation ("UDOT") for UDOT to install signs indicating the boundaries of Indian Country and the area of the Tribe's exclusive authority. (UDOT Cooperative Agreement, attached hereto as Exhibit 47.)

BACKGROUND FACT NO. 81. In conjunction with this, the Tribe provided UDOT with a map depicting what the Tribe asserts is the boundaries of Indian Country. (*See* Tribe's Map to UDOT, attached hereto as Exhibit 48.)

BACKGROUND FACT NO. 82. The Tribe's map does not show that the historic Uintah Valley Reservation has been diminished, as recognized by *Ute V* and *Hagen*. (*Compare*, *id.*, *with*, Presumptive Map, attached hereto as Exhibit 49.)

BACKGROUND FACT NO. 83. In fact, this map shows that the Tribe claims *continuous exclusive criminal and civil authority* along State highway U.S. 40 from essentially Daniels Summit, outside of Heber City, Utah, all the way to the Colorado border. (*See* Ex. 48, Tribe's Map to UDOT; Ex. 3, Rasmussen Letter to Rawson, Feb. 11, 2014; Ex. 4, Tribe Letter to Uintah County Commission, Aug. 29, 2011; Ex. 5, Ute Bulletin.)

BACKGROUND FACT NO. 84. The Tribe, itself, is asserting authority far beyond the mandate in *Ute V*. (*Compare*, *e.g.*, Ex. 48, Tribe's Map to UDOT, *with*, *e.g.*, Ex. 49, Presumptive Map.)

E. THE TRIBE IS ASSERTING AUTHORITY OVER LAND IN CONFLICT WITH SUPREME COURT PRECEDENT

BACKGROUND FACT NO. 85. The Tribe is asserting authority over land, in conflict with superseding United States Supreme Court precedent, as well as *Hagen v. Utah*, 510

U.S. 399 (1994). For example, in the Helene Secakuku case, the Tribe asserted that Uintah County lacked "criminal jurisdiction," even though the land where Ms. Secakuku committed her criminal offense was originally an Indian allotment that has long since passed into non-Indian fee status. (*See* Ex. 31, Mark Thomas Decl., at ¶¶ 9–10.)

BACKGROUND FACT NO. 86. In another instance, the Tribe objected to the lawful eviction of a foreclosed property located on land originally apportioned to the Mixed Blood Utes under the Ute Partition Act of 1954. (*See* Stearmer Letter, Sept. 20, 2013, attached hereto as Exhibit 50; Bassett Letter, Sept. 20, 2013, attached hereto as Exhibit 51.)

STATEMENT OF ELEMENTS AND UNDISPUTED MATERIAL FACTS[8]

Pursuant to DUCivR 56-1(b)(ii), Uintah County offers the following Statement of Elements and Undisputed Material Facts:

I. DECLARATORY JUDGMENT

Both the Tribe in its Complaint, (Tribe's Complaint, Dkt. No. 2), and Uintah County in its Second Amended Answer and Counterclaim, (Uintah County's Second Amended Answer and Counterclaims, Dkt. No. 431), have brought claims for declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202. 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); *see also Columbian Fin. Corp. v. BancInsure, Inc.*, 650 F.3d 1372, 1376 (10th Cir. 2011) (citing 28

[8] Unlike cases involving contract or tort claims, which have specifically defined legal elements that are easily separable allowing a straight-forward assignment of facts as contemplated by DUCivR 56-1(b)(ii), the declaratory relief sought by Uintah County resists such clear definition. Although the elements of the Declaratory Judgment Act are clear, the underlying questions presented to the Court are largely broad legal questions. As such, Uintah County has attempted to comply with DUCivR 56-1(b)(ii) to the greatest extent possible.

U.S.C. § 2201(a)).

The necessary legal elements, and corresponding statements of material facts, are as follows:

A. CASE OF ACTUAL CONTROVERSY

The Declaratory Judgment Act's "case of actual controversy" requirement "refers to the type of 'Cases' and 'Controversies' that are justiciable under Article III" of the United States Constitution. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007); *see also Columbian Financial*, 650 F.3d at 1376. The Article III "Case or Controversy" requirement is satisfied where:

> The controversy [is] definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.

Columbian Financial, 650 F.3d at 1376 (emphasis omitted) (quoting *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240–41 (1937)). This issue reduces down to "whether under 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." *MedImmune*, 549 U.S. at 127.

UNDISPUTED MATERIAL FACT NO. 1. A significant, immediate controversy over the proper allocation of criminal and civil authority within Uintah County exists. (*See, e.g.*, Tribe's Complaint, Dkt. No. 2; Uintah County's Second Amended Answer and Counterclaims, Dkt. No. 431; *see also supra* Background ¶¶ 1–86.)

B. WITHIN THE COURT'S JURISDICTION

The Declaratory Judgment Act requires that the "case of actual controversy" brought

before a court of the United States be "within its jurisdiction." 28 U.S.C. § 2201(a). "[A]ll civil actions arising under the Constitution, laws, or treaties of the United States" are within the Court's jurisdiction. 28 U.S.C. § 1331. "[A]ll civil actions, brought by an Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States" are within the Court's jurisdiction. 28 U.S.C. § 1362. "[I]n any civil action of which [the Court has] original jurisdiction, . . . all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution" are within the Court's jurisdiction. 28 U.S.C. § 1367.

UNDISPUTED MATERIAL FACT NO. 2. The dispute between the Tribe and Uintah County arises from the proper allocation of criminal and civil authority within Uintah County, located within the geographic boundaries of the State of Utah. (*See supra* Background ¶¶ 1–7; *see also id.* ¶¶ 1–86.)

C. UPON THE FILING OF AN APPROPRIATE PLEADING

The Declaratory Judgment Act requires that the request for declaratory judgment be made "upon the filing of an appropriate pleading." 28 U.S.C. § 2201(a). Federal Rule of Civil Procedure 7 provides that a complaint and an answer to a complaint are proper pleadings. Fed. R. Civ. P. 7(a).

UNDISPUTED MATERIAL FACT NO. 3. The Tribe has filed a complaint seeking declaratory relief, and Uintah County has filed counterclaims seeking declaratory relief. (*See supra* Background ¶¶ 6; Tribe's Complaint, Dkt. No. 2; Uintah County's Second Amended Answer and Counterclaims, Dkt. No. 431.)

D. DECLARE THE RIGHTS AND OTHER LEGAL RELATIONS OF ANY INTERESTED PARTY SEEKING SUCH DECLARATION

The Declaratory Judgment Act allows the Court to "declare the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. § 2201(a). Thus, the specific declarations—and injunctive relief—requested by the Tribe and Uintah County must be considered:

1. *Tribe's Complaint*

The Tribe has requested that the Court declare: (1) "[T]he Uncompahgre Reservation, as defined by Executive Order on January 5, 1882, was lawfully created and has not subsequently been disestablished or diminished, and that all lands within the Uncompahgre Reservation remain Reservation land as that term is used in 18 U.S.C. § 1151(a) and remain Indian Country as that term is used in 18 U.S.C. § 1151"; and (2) "[T]he 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 established under the ruling of the Tenth Circuit in *Ute V*." (Tribe's Complaint, Dkt. No. 2, at 9.) The Tribe also desires that the Court enjoin Uintah County from: "Asserting in any court, administrative forum or other law-applying forum that" (1) "the Uncompahgre Reservation has been disestablished or diminished"; (2) "the Uintah Valley Reservation has been disestablished[, for] any land recognized as remaining part of the Uintah Valley Reservation in [*Ute III*] as modified by [*Ute V*] and in subsequent orders of this Court upon remand [and 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)"; (3) "the [Tribe] lacks any power of a sovereign Indian Tribe over any part of the Uintah Valley Reservation"; or (4) "[s]eeking, 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 [in *Ute III*], as modified in [*Ute V*]"; and (5) "[t]aking any other action inconsistent with the mandate issued [in *Ute III*], as modified in [*Ute V*]." (Tribe's Complaint, Dkt. No. 2, at 9–10.)

UNDISPUTED MATERIAL FACT NO. 4. The Tribe is requesting that the Court interpret the Tenth Circuit's prior holdings in *Ute III* and *Ute V* as conveying *exclusive* criminal and civil authority—*i.e.*, a declaration that the State and Uintah County have absolutely no authority—within Indian Country geographically present in Uintah County. (*See, e.g.*, Ex. 3, Rasmussen Letter to Rawson, Feb. 11, 2014; Ex. 4, Tribe Letter to Uintah County Commission, Aug. 29, 2011; Ex. 5, Ute Bulletin; Tribe's Complaint, Dkt. No. 2.)

LEGAL ELEMENT NO. 1. Supreme Court precedent addresses these issues. *See, e.g.*, *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008); *Nevada v. Hicks*, 533 U.S. 353 (2001); *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Montana v. United States*, 450 U.S. 544 (1981); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). This precedent is counter to the Tribe's positions in this litigation.

LEGAL ELEMENT NO.2. Supreme Court case law establishes that as a general rule—and presumption—the State and Uintah County have exclusive criminal and civil authority within Uintah County—including Indian Country. *See, e.g., Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008); *Nevada v. Hicks*, 533 U.S. 353 (2001); *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Montana v. United States*, 450 U.S. 544 (1981); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

LEGAL ELEMENT NO.3. Supreme Court case law establishes that the Tribe bears the burden of establishing that in a specific situation it possesses authority. *See, e.g., Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008); *Nevada v. Hicks*, 533

U.S. 353 (2001); *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Montana v. United States*, 450 U.S. 544 (1981); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

2. *Uintah County's Counterclaims*

For purposes of this motion for summary judgment, Uintah County has requested that the Court declare: (1) "That the [Tribe] does not have exclusive criminal jurisdiction over state and county roads and rights of way within Indian Country"; (2) "Uintah County has the lawful right to patrol and enforce the law on state and county roads and rights of way within Indian Country"; (3) "Uintah County has the lawful right to operate and maintain county roads and rights of way within Indian Country"; (4) "[T]he [Tribe's] UTERO Ordinance exceeds the scope of the [Tribe's] authority when applied to off-Reservation businesses that are conducting business in the areas where the Ute Tribe disclaimed civil and regulatory authority"; (5) "[T]he [Tribe's] exercise of criminal and adjudicatory jurisdiction exceeds the scope of the [Tribe's] authority when applied to non-[T]ribal members"; (6) "[T]he [Tribe's] exercise of criminal and adjudicatory jurisdiction over non-Tribal members violates state law and federal law, including federal common law." (Uintah County's Second Amended Answer and Counterclaims, Dkt. No. 431, at 18, 26, 28–30.)

UNDISPUTED MATERIAL FACT NO. 5. The Tribe is asserting criminal and civil authority within Indian Country *ultra vires*. (*See supra* Background ¶¶ 1–7, 47–86.)

UNDISPUTED MATERIAL FACT NO. 6. The Tribe is improperly obstructing Uintah County law enforcement/emergency activities, including on State and County roads located within State and County rights of way. (*See id.* ¶¶ 47–60.)

UNDISPUTED MATERIAL FACT NO. 7. Uintah County is properly asserting criminal authority within Uintah County, including Indian Country. (*See id.* ¶¶ 8–46, 61–69.)

UNDISPUTED MATERIAL FACT NO. 8. The Tribe is improperly asserting civil authority over State and County roads and rights-of-way, and non-Indians, including through the enforcement of its UTERO Ordinance. (*See id.* ¶¶ 70–79.)

UNDISPUTED MATERIAL FACT NO. 9. The Tribe is asserting authority in direct conflict with *Ute V* and Supreme Court precedent. (*See id.* ¶¶ 80–86; Ex. 48, Tribe's Map to UDOT.)

LEGAL ELEMENT NO. 1. The general rule—and presumption—is that the State and Uintah County have criminal and civil authority within Uintah County—including Indian Country. *See, e.g.*, *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008); *Nevada v. Hicks*, 533 U.S. 353 (2001); *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Montana v. United States*, 450 U.S. 544 (1981); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

LEGAL ELEMENT NO. 2. The Tribe bears the burden of establishing that in a specific situation it possesses authority. *See, e.g.*, *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008); *Nevada v. Hicks*, 533 U.S. 353 (2001); *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Montana v. United States*, 450 U.S. 544 (1981); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

LEGAL ELEMENT NO. 3. The Tribe can establish no exception allowing it to obstruct Uintah County law enforcement/emergency activities, particularly on State and County roads located within State and County rights of way. *See, e.g.*, *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008); *Nevada v. Hicks*, 533 U.S. 353 (2001); *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Montana v. United States*, 450 U.S. 544 (1981); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

LEGAL ELEMENT NO. 4. Uintah County is properly asserting criminal authority within Uintah County, including Indian Country. *See, e.g., Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008); *Nevada v. Hicks*, 533 U.S. 353 (2001); *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Montana v. United States*, 450 U.S. 544 (1981); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

LEGAL ELEMENT NO. 5. The Tribe can establish no exception allowing it to assert civil authority over State and County roads and rights-of-way, and non-Indians, including through the enforcement of its UTERO Ordinance. *See, e.g., Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008); *Nevada v. Hicks*, 533 U.S. 353 (2001); *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Montana v. United States*, 450 U.S. 544 (1981); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

LEGAL ELEMENT NO. 6. The Tribe is asserting authority in direct conflict with *Ute V* and Supreme Court precedent. *See, e.g., Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008); *Nevada v. Hicks*, 533 U.S. 353 (2001); *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Montana v. United States*, 450 U.S. 544 (1981); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978); *Ute Indian Tribe v. Utah*, 114 F.3d 1513 (10th Cir. 1997) ("*Ute V*").

II. INJUNCTIVE RELIEF

The Tribe in its Complaint, (Tribe's Complaint, Dkt. No. 2), has brought claims for injunctive relief.

The Tribe desires that the Court enjoin Uintah County from: "Asserting in any court, administrative forum or other law-applying forum that" (1) "the Uncompahgre Reservation has been disestablished or diminished"; (2) "the Uintah Valley Reservation has been disestablished[, for] any land recognized as remaining part of the Uintah Valley Reservation in [*Ute III*] as

modified by [*Ute V*] and in subsequent orders of this Court upon remand [and 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)"; (3) "the [Tribe] lacks any power of a sovereign Indian Tribe over any part of the Uintah Valley Reservation"; or (4) "[s]eeking, 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 [in *Ute III*], as modified in [*Ute V*]"; and (5) "[t]aking any other action inconsistent with the mandate issued [in *Ute III*], as modified in [*Ute V*]." (Tribe's Complaint, Dkt. No. 2, at 9–10.)

"A party requesting a permanent injunction bears the burden of showing: (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) the injunction, if issued, will not adversely affect the public interest." *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1180 (10th Cir. 2003). Failure to establish any one of the four required elements is fatal to a party's request for injunctive relief. *See Sierra Club, Inc. v. Bostick*, No. 12-6201, 2013 WL 5539633, at *2 (10th Cir. Oct. 9, 2013) (unpublished) (citing *Conestoga Wood Specialties Corp. v. Sec'y of U.S. Dep't of Health & Human Servs.*, 724 F.3d 377, 382 (3d Cir. 2013)).

The necessary legal elements, and corresponding statement of material facts, are as follows:

A. ACTUAL SUCCESS ON THE MERITS

To obtain a permanent injunction, the party requesting such relief must show "actual success on the merits." *Fisher*, 335 F.3d at 1180.

UNDISPUTED MATERIAL FACT NO. 10. The Tribe is requesting that the Court

interpret the Tenth Circuit's prior holdings in *Ute III* and *Ute V* as conveying *exclusive* criminal and civil authority—*i.e.*, that the State and Uintah County have absolutely no authority—within Indian Country geographically present in Uintah County, and enjoin Uintah County from exercising *any* criminal and civil authority within Indian Country. (*See, e.g.*, Ex. 3, Rasmussen Letter to Rawson, Feb. 11, 2014; Ex. 4, Tribe Letter to Uintah County Commission, Aug. 29, 2011; Ex. 5, Ute Bulletin; Tribe's Complaint, Dkt. No. 2.)

LEGAL ELEMENT NO. 1. The Tribe does not have exclusive criminal and civil authority within Indian Country. *See, e.g., Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008); *Nevada v. Hicks*, 533 U.S. 353 (2001); *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Montana v. United States*, 450 U.S. 544 (1981); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

LEGAL ELEMENT NO. 2. The general rule—and presumption—is that the State and Uintah County have exclusive criminal and civil authority within Uintah County—including Indian Country. *See, e.g., Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008); *Nevada v. Hicks*, 533 U.S. 353 (2001); *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Montana v. United States*, 450 U.S. 544 (1981); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

LEGAL ELEMENT NO. 3. The Tribe bears the burden of establishing that in a specific situation it possesses authority. *See, e.g., Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008); *Nevada v. Hicks*, 533 U.S. 353 (2001); *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Montana v. United States*, 450 U.S. 544 (1981); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

B. IRREPARABLE HARM UNLESS THE INJUNCTION IS ISSUED

To obtain a permanent injunction, the party requesting such relief must show "irreparable harm unless the injunction is issued." *Fisher*, 335 F.3d at 1180.

UNDISPUTED MATERIAL FACT NO. 11. The undisputed facts demonstrate the Tribe cannot establish irreparable harm. (*See supra* Background ¶¶ 1–86.)

C. THREATENED INJURY OUTWEIGHS THE HARM THAT THE INJUNCTION MAY CAUSE THE OPPOSING PARTY

To obtain a permanent injunction, the party requesting such relief must show "the threatened injury outweighs the harm that the injunction may cause the opposing party." *Fisher*, 335 F.3d at 1180.

UNDISPUTED MATERIAL FACT NO. 12. An injunction would disproportionately harm Uintah County. (*See supra* Background ¶¶ 1–4; *see also id.* ¶¶ 1–86.)

D. INJUNCTION, IF ISSUED, WILL NOT ADVERSELY AFFECT THE PUBLIC INTEREST

To obtain a permanent injunction, the party requesting such relief must show the "injunction, if issued, will not adversely affect the public interest." *Fisher*, 335 F.3d at 1180.

UNDISPUTED MATERIAL FACT NO. 13. An injunction would be adverse to the public interest. (*See id.* ¶¶ 1–4; *see also id.* ¶¶ 1–86.)

ARGUMENT

I. SUMMARY JUDGMENT STANDARD

Pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment . . . ." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). "[T]he substantive law will identify which facts are material," and "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id.* at 248. There is only a genuine dispute over such material facts when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

As the moving party, Uintah County bears the initial burden of informing the Court of the basis of its motion. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once Uintah County has satisfied its burden—which it has here—the nonmoving party, the Tribe, must set forth specific facts demonstrating there is a dispute about a genuine issue of material fact and may not simply "rely solely on its pleadings but must set forth specific facts showing that there is a genuine issue for trial with regard to those dispositive matters for which it carries the burden of proof." *Mincin v. Vail Holdings, Inc.*, 308 F.3d 1105, 1108 (10th Cir. 2002) (citing *Celotex*, 477 U.S. at 324). This, the Tribe cannot do.

II. THE COURT SHOULD ENTER PARTIAL SUMMARY JUDGMENT AGAINST THE TRIBE ON ITS "JURISDICTIONAL" CLAIMS AND FOR UINTAH COUNTY ON ITS COUNTERCLAIMS SEEKING DECLARATORY RELIEF AS DETAILED HEREIN

The *Ute Tribe* litigation dealt only with the narrow issue of whether the historic Uintah Valley and Uncompahgre Reservations had been either disestablished or diminished. *See Ute V*, 114 F.3d 1513 (10th Cir. 1997); *Ute III*, 773 F.2d 1087 (10th Cir. 1985) (en banc). This narrow issue is but one small piece of the puzzle that, if fully organized, would display the proper allocation of "jurisdiction" amongst Uintah County and the Tribe. *See, e.g.*, 18 U.S.C. §§ 1151–53; *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 327–30 (2008) ("[T]he sovereignty that the Indian tribes retain is of a unique and limited character."); *Nevada v. Hicks*, 533 U.S. 353, 361–65 (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. State sovereignty does not end at a reservation's border."); *Strate v. A-1 Contractors*, 520 U.S. 438, 454–59 (1997); *Montana v. United States*, 450 U.S. 544, 563–67 (1981) (holding that because tribes "have lost many of the attributes of sovereignty," "exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation"). The *Ute Tribe* litigation did not resolve all "jurisdictional" issues between the Tribe, state, and local governments.

The task the Court now faces is determining the appropriate allocation of "jurisdiction," both criminal *and* civil in nature, between Uintah County and the Tribe. This task necessitates an inquiry far more searching than anything the Court or the Tenth Circuit has ever been required

to engage in since the *Ute Tribe* litigation never advanced past the boundary issue.[9]

A. THE *UTE TRIBE* LITIGATION NEVER DECIDED THE SPECIFIC ISSUES NECESSARY TO ALLOCATE CRIMINAL AUTHORITY WITHIN UINTAH COUNTY

Neither the Court nor the Tenth Circuit has ever decided the proper allocation of criminal authority within Uintah County, other than the three agreements previously incorporated in this Court's Order, which the Tribe has now repudiated and rejected.[10] The following are specific issues that Uintah County and the Tribe have identified over the course of this litigation, requiring resolution by the Court, and for which the Court should grant summary judgment.

1. *The State and Uintah County possess criminal authority to conduct law enforcement activities on State and County roads located within State and County rights-of-way within Indian Country.*

The Tribe has asserted that State and local law enforcement officials lack any authority to conduct law enforcement activities on State and County roads within Indian Country.[11] (*See, e.g.*, Ex. 3, Rasmussen Letter to Rawson, Feb. 11, 2014; Ex. 4, Tribe Letter to Uintah County Commission, Aug. 29, 2011; Ex. 5, Ute Bulletin; Tribe's Complaint, Dkt. No. 2.) To the contrary, Uintah County law enforcement is affirmatively required to conduct law enforcement

[9] This is illustrated by the actions of the Court and the parties on remand after *Ute V*, where three jurisdictional agreements were entered into by the parties—dealing with some of the specific issues now before the Court—to illusively conclude this tortured litigation. (*See* Order, Case No. 2:75-cv-00408, Dkt. No. 145, at 3 ("[Q]uestions 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 Tenth Circuit Court of Appeals, as modified by the agreements between the parties . . . .").) The stipulated entry of jurisdictional agreements previously rendered analysis of these issues unnecessary. It is only now that the Tribe has cast these agreements aside that it becomes necessary for the Court to finally consider these issues and conclusively allocate "jurisdiction," regarding issues both criminal *and* civil in nature, within Uintah County.

[10] Again, although Uintah County characterizes certain law enforcement activities as "criminal in nature" does not mean that such activities should be confused with "criminal jurisdiction," which as a matter of law, *only* applies to courts and references a court's power to hear a specific case.

[11] The Tribe's interpretation would put its own officers and BIA officers at risk. If the State and Uintah County lack all authority within Indian Country, its agents—including law enforcement officers—could not enter Indian Country, even if a Tribal or BIA officer were in a life-threatening situation and desperately calling for help. In the Tribe's world view, Uintah County would have to turn from a BIA officer's calls for help, to potentially deadly consequences.

activities *throughout the full extent* of Uintah County. *See* Utah Code Ann. § 17-22-1; *see also, e.g.*, § 17-22-1(a) ("The sheriff shall preserve the peace."); § 17-22-1(b) ("The sheriff shall make all lawful arrests."); § 17-22-1(k) ("The sheriff shall serve all process and notices as prescribed by law."); §§ 72-3-103(1), (4) ("The county governing body exercises sole jurisdiction and control of county roads within the county," including "all public highways, roads, and streets within the state that (a) are situated outside of incorporated municipalities and not designated as state highways; (b) have been designated as county roads; or (c) are located on property under the control of a federal agency and constructed or maintained by the county under agreement with the appropriate federal agency."); § 72-3-105(4) ("The county governing body exercises sole jurisdiction and control of class D roads within the county.").

Moreover, the incredibility of the Tribe's position can only be fully comprehended by gaining some sense of the impact it would have if it were to be realized. Uintah County is comprised of approximately 2.8 million acres (4,500 square miles), containing in excess of 6,500 miles of public roads. (*See* Ex. 1, Uintah County Sheriff Jeffrey Merrell's Decl., at ¶¶ 8–9.) Within that expansive area, Uintah County is responsible for the health, safety, and welfare of over 32,588 citizens. (*See* http://factfinder2.census.gov/faces/ tableservices/jsf/pages/ product view.xhtml?pid=DEC_10_DP _DPDP1.) Of those individuals, approximately 2,509 are Native American and 557 are white/Native American. (*Id.*) The Tribe claims to have 3,157 members, of which only approximately half live on the reservation. (*See* Tribe's Website, http://www.utetribe.com.) The Tribe's incredible claim of exclusive authority would mean that State and local law enforcement officials would be unable to enter approximately *seventy percent* of Uintah County. The vast majority of the citizens living within that area of Uintah County are not Tribal members and would be unable to rely on Uintah County to provide law enforcement,

emergency services, and other governmental services. (*See, e.g.*, *supra* Background ¶¶ 47–69.) The Tribe's position would create an untenable and dangerous legal void.

a. State courts have "criminal jurisdiction" over certain criminal offenses committed within Indian Country, and state and local law enforcement have the corollary right to enter Indian Country to enforce the law within the "criminal jurisdiction" of state courts.

Contrary to the Tribe's position, the law is clear that State and local law enforcement officials possess criminal authority within Uintah County and can conduct law enforcement activities on State and County roads located within State and County rights-of-way within Indian Country. *See* Utah Code Ann. § 17-22-1; *see also, e.g.*, § 72-3-103; § 72-3-105.

The well-settled general rule is that State courts have "criminal jurisdiction" over criminal offenses committed within Uintah County. *See* Utah Code Ann. § 76-1-201(1). Where a Tribal member satisfies the burden of establishing that the criminal offense is exclusively federal, *see* 18 U.S.C. §§ 1151–53, 3231, a State court is potentially stripped of "criminal jurisdiction." *See* Utah Code Ann. §§ 76-1-201(5), (6); *see also Draper v. United States*, 164 U.S. 240 (1896); *United States v. McBratney*, 104 U.S. 621 (1881); *United States v. Patch*, 114 F.3d 131, 133 (9th Cir. 1997) (citing *Duro v. Reina*, 495 U.S. 676, 680 n.1 (1990)); *see also* U.S. Dep't of Justice, Criminal Resource Manual § 689(A), *available at* http://justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00689.htm (last visited Feb. 7, 2014) (hereinafter "Criminal Resource Manual"). Moreover, State courts have exclusive "criminal jurisdiction" over crimes committed by non-Indians within Indian Country and the victim is either (1) non-Indian or (2) the crime was victimless. *See* 18 U.S.C. §§ 1152–53; Criminal Resource Manual § 689(A). With respect to these criminal offenses over which State courts possess exclusive "criminal jurisdiction," the Tribe's position regarding Uintah County's criminal authority, would

create a void in the criminal law, a risk the Supreme Court has stated is not purely hypothetical. *Hicks*, 533 U.S. at 364 n.6. In *Hicks*, the Supreme Court, stated:

> While it is not entirely clear from our precedent whether the last mentioned authority[, to prosecute Indians for crimes committed outside Indian Country,] entails the corollary right to enter a reservation (including Indian-fee lands) for enforcement purposes, several of our opinions point in that direction. . . . [T]he law does not interfere with the process of the State courts within the reservation, nor with the operation of State laws upon [non-Indians] found there. Its effect is confined to the acts of an Indian of some tribe, of a criminal character, committed within the limits of the reservation. . . . [T]he Court's concern in [*United States v. Kagama*, 118 U.S. 375 (1886),] over possible federal encroachment on state prerogatives, suggest state authority to issue search warrants in cases such as the one before us. . . . This makes perfect sense, since, as we explained in the context of federal enclaves, the reservation of state authority to serve process is necessary to prevent [such areas] from becoming an asylum for fugitives from justice.

Id. at 363–64 (internal quotation marks omitted). Thus, since some criminal offenses committed within Indian Country are within the exclusive "criminal jurisdiction" of State courts, State and local law enforcement have the corollary right to enter Indian Country on State and County roads—even Indian-fee lands—to enforce the law. This right is reserved to the states, and anything less would be a federal encroachment on state prerogatives. *Id.*; *see also* U.S. Const. amend. X.

b. <u>The Tribe cannot properly exclude *anyone* from State and County rights-of-way, and thus State and local law enforcement can conduct legitimate law enforcement activities within State and County rights-of-way within Indian Country.</u>

Second, it is well-established that the Tribe does not possess a landowner's right to occupy and exclude within State and County rights-of-way, despite the Tribe's overreaching

efforts to assert *ultra vires* authority over such rights-of-way.[12] *See, e.g.*, Utah Code Ann. §§ 72-3-103(1), (4) ("The county governing body exercises sole jurisdiction and control of county roads within the county," including "all public highways, roads, and streets within the state that (a) are situated outside of incorporated municipalities and not designated as state highways; (b) have been designated as county roads; or (c) are located on property under the control of a federal agency and constructed or maintained by the county under agreement with the appropriate federal agency."); *id.* § 72-3-105(4) ("The county governing body exercises sole jurisdiction and control of class D roads within the county."); (*See supra* Background ¶¶ 47–58, 70–86.) The federal government has granted to Uintah County rights-of-way on federal land (public domain) that are within the historic boundaries of the former Uncompahgre Reservation. (*See, e.g.*, United States Dep't of Interior, Grants of Rights-of-Way, attached hereto as Exhibit 52.) Uintah County has "jurisdiction" and authority over these County roads.

In *Strate*, the Supreme Court considered the authority a tribe retains in a right-of-way over which a state or local roadway has been constructed. *Strate*, 520 U.S. at 454–56. The Supreme Court stated: "The right-of-way North Dakota acquired for the State's highway renders the 6.59-mile stretch equivalent, for nonmember governance purposes, to alienated, non-Indian land." *Id.* at 454–55 (internal footnote omitted). The tribes had "reserved no right to exercise dominion or control over the right-of-way," *id.* at 455, much like the State and County rights-of-way within Indian Country here, (*see, e.g.*, Ex. 52, United States Dep't of Interior, Grants of Rights-of-Way). In conclusion, the Supreme Court stated:

[12] *Hicks* was clear that this corollary right provides the right to even enter Indian-owned land to enforce the law with respect to criminal offenses within a state court's exclusive "criminal jurisdiction." *See Hicks*, 533 U.S. at 363–64. This Part merely clarifies additional authority cutting against the Tribe's incredible position that State and local law enforcement officials cannot even enter Indian Country, much less engage in legitimate law enforcement activities.

> Forming part of the State's highway, the right-of-way is open to the public, and traffic on it is subject to the State's control. The Tribes have consented to, and received payment for, the State's use of the 6.59–mile stretch for a public highway. They have retained no gatekeeping right. So long as the stretch is maintained as part of the State's highway, the Tribes cannot assert a landowner's right to occupy and exclude.

Strate, 520 U.S. at 455–56 (internal footnote omitted). Thus, this fact alone provides State and local law enforcement officials with the right to patrol State and County rights-of-way and conduct legitimate law enforcement activities therein, because the Tribe is without any right to exclude them or otherwise limit law enforcement activities within such rights-of-way.

Any reliance by the Tribe on 18 U.S.C. § 1151's language is misplaced. Section 1151 states, in relevant part, that Indian Country *includes* "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, *including rights-of-way running through the reservation*."

Uintah County does not dispute the § 1151's plain language. What Uintah County disputes is the Tribe's incorrect interpretation of that plain language. Obviously, § 1151 places certain rights-of-way within the definition of Indian Country; but again, this is only important to the extent that it prescribes federal criminal offenses and carves up "criminal jurisdiction" over criminal offenses committed within Indian Country. Irrespective of this, State and local law enforcement *can* make arrests for violations of both state and federal offenses. *See infra* Part II.A.2; *Santana-Garcia*, 264 F.3d at 1194 & n.8; *Vasquez-Alvarez*, 176 F.3d at 1295; *Gonzales*, 722 F.2d at 474–76; *see also* 25 U.S.C. § 2806 ("The provisions of this chapter alter neither the civil or criminal jurisdiction of the United States, Indian tribes, States, or other political subdivisions or agencies, nor the law enforcement, investigative, or judicial authority of any Indian tribe, State, or political subdivision or agency thereof, or of any department, agency,

court, or official of the United States other than the Secretary."). Therefore, State and local law enforcement—and anyone else for that matter—has the right to be within State and County rights-of-way within Indian Country. And, corollary to that right is the right of State and local law enforcement officials to conduct legitimate law enforcement and other governmental activities within the State and County rights-of-ways.

2. *State and Uintah County law enforcement officials have authority to stop, detain, and arrest individuals for crimes committed within Indian Country.*

Uintah County has the right to conduct legitimate law enforcement and other governmental activities within Uintah County—including Indian Country. *See* Utah Code Ann. § 17-22-1; *see also, e.g.*, § 72-3-103; § 72-3-105.

It is obvious that State and local law enforcement possess the authority to stop, detain, and arrest individuals who commit a crime within Indian Country that falls within the exclusive "criminal jurisdiction" of a State court. *See supra* Part II.A.1.a. The Tribe has taken the position, however, that because State courts may lack "criminal jurisdiction" to hear an exclusively federal criminal offense that *a fortiori* State and local law enforcement officials cannot even pull over a Native American, committing a criminal offense and/or traffic infraction on a State or County road within Indian Country. (*See, e.g.*, Ex. 3, Rasmussen Letter to Rawson, Feb. 11, 2014; Ex. 4, Tribe Letter to Uintah County Commission, Aug. 29, 2011; Ex. 5, Ute Bulletin; Tribe's Complaint, Dkt. No. 2.) This position is simply wrong.

First, the Tribe's position is impossible to enforce, as courts have recognized.[13] In *Patch*, the Ninth Circuit aptly noted: "As a practical matter, without a stop and inquiry, it is impossible

[13] Uintah County is legally obligated to enforce State law within the boundaries of Uintah County. (*See* Ex. 1, Uintah County Sheriff Jeffrey Merrell's Decl., at ¶ 3.) That Indian Country's and Uintah County's boundaries may overlap does not diminish the right and authority of State and local law enforcement to fully enforce State law within Uintah County. *See supra* Part II.A.1.

for [a law enforcement] officer to tell who is operating an offending vehicle [within Indian Country]." *Patch*, 114 F.3d at 133–34. Essentially, such a rule would require State and local law enforcement to racially profile individuals driving on State and County roads within Indian Country. The Tribe's desired rule would require the exact offensive behavior the Tribe falsely accuses Uintah County of. Not to mention that it would require unconstitutional action by Uintah County. *See* U.S. Const. amend. XIV, § 1; *United States v. Avery*, 137 F.3d 343, 355 (6th Cir. 1997) ("Accordingly, we find that citizens are entitled to equal protection of the law at all times. If law enforcement adopts a policy, employs a practice, or in a given situation takes steps to initiate an investigation of a citizen based solely upon that citizen's race, without more, then a violation of the Equal Protection Clause has occurred."). Uintah County law enforcement has a strict policy prohibiting this exact behavior. (Uintah County Sheriff's Policy Manual, attached hereto as Exhibit 53, at 210–11 ("Racial- or bias-based profiling is strictly prohibited. However, nothing in this policy is intended to prohibit a deputy from considering factors such as race or ethnicity in combination with other legitimate factors to establish reasonable suspicion or probable cause (e.g., suspect description is limited to a specific race or group).").)

Second, in the Tenth Circuit, it is well-established that State and local law enforcement officials can stop, detain, and arrest individuals, even for *federal criminal violations*. *See Santana-Garcia*, 264 F.3d at 1194 & n.8. The Tenth Circuit has stated: "[W]e inferred in *Vasquez-Alvarez*, that state and local police officers *had implicit authority within their respective jurisdictions 'to investigate and make arrests for violations of federal law . . . .'*"[14] *Id.* at 1194

[14] The Tribe cannot argue that Indian Country, lying geographically within Uintah County, is outside Uintah County's "jurisdiction"—as that word is used in the above-referenced quote from *Santana-Garcia*. To argue that Uintah County lacks "jurisdiction," in this sense, would require the Court to hold that a state court lacks *all* "criminal jurisdiction" over crimes committed within Indian Country—a position Uintah County has proved incorrect. Indian Country just assists in defining *federal criminal law*, in no way does it limit the authority of the

(emphasis added); *see also Vasquez-Alvarez*, 176 F.3d at 1295. Further, the Tenth Circuit stated:

> In any event, we read the expansive language of Utah Code Ann. § 77-7-2 to *empower Utah state troopers to make arrests for suspected violations of federal law*, at least until the Utah state courts tell us otherwise. Utah law authorizes a state law enforcement officer to make a warrantless arrest for "any public offense," where the offense is committed or attempted in the officer's presence, or where the officer has reasonable cause to believe the suspect committed a public offense and may be a flight risk.

Santana-Garcia, 264 F.3d at 1194 n.8 (emphasis added). The Supreme Court has also accepted this principle. *See Gonzales*, 722 F.2d at 474–76 (discussing relevant Supreme Court precedent). 18 U.S.C. §§ 1151–53, merely create federal criminal offenses over which state courts' "criminal jurisdiction" has been stripped. So long as probable cause exists to arrest an individual for violations of state and federal law at the time of the arrest, State and local law enforcement can properly execute an arrest.[15] *See Santana-Garcia*, 264 F.3d at 1193–94. State and local law enforcement officers can make arrests on the basis of an individual's actions that *only violate*

---

state—other than a state court's "criminal jurisdiction" to hear a federal criminal case—to enforce the law within Indian Country or alter its "jurisdiction." Moreover, the Supreme Court has indicated that its position is as follows:

> 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. State sovereignty does not end at a reservation's border. 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. "Ordinarily," it is now clear, "an Indian reservation is considered part of the territory of the State."

Hicks, 533 U.S. at 361–62 (internal citations omitted). State statute, which the court in *Santana-Garcia* looked to in determining "jurisdiction" there, also provides that this is within Uintah County's territorial "jurisdiction," which is all *Santana-Garcia* is getting at. *See* Utah Code Ann. §§ 17-18a-202, 17-18a-401 (defining the respective "jurisdiction" of Uintah County, for purposes of law enforcement, as the geographic boundary of Uintah County).

[15] By virtue of the 18 U.S.C. § 1153(b), almost inevitably, if a State or local law enforcement official has probable cause to make an arrest for a State crime, probable cause will *also* exist to make an arrest of an Indian committing that criminal act within Indian Country, which by statute can only be a federal criminal offense. *See* 18 U.S.C. § 1153(b) ("Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States *shall be defined and punished in accordance with the laws of the State in which such offense was committed* as are in force at the time of such offense." (emphasis added)).

federal criminal law. *See id.*; *see also* 25 U.S.C. § 2806 ("The provisions of this chapter alter neither the civil or criminal jurisdiction of the United States, Indian tribes, States, or other political subdivisions or agencies, nor the law enforcement, investigative, or judicial authority of any Indian tribe, State, or political subdivision or agency thereof, or of any department, agency, court, or official of the United States other than the Secretary."). Arrests of Indians who commit crimes within Indian Country are no different.[16] And, given the remoteness of many parts of Uintah County, and the limited numbers of federal/tribal law enforcement officials, this is necessary to ensure that Uintah County—over which both the Tribe and Uintah County exercise aspects of sovereignty and responsibility for citizens—and its citizens remain safe.

Therefore, State and Uintah County law enforcement officials possess authority to stop, detain, and arrest individuals for crimes committed within Indian Country—even if they are wholly federal crimes.[17]

3. *State and Uintah County law enforcement officials can enforce State law within Indian Country for State criminal offenses committed outside Indian Country.*

It would seem that the foregoing point would go without saying, but the Tribe has taken the position that State and local law enforcement officials cannot enforce State law within Indian Country for State criminal offenses committed outside Indian Country. (*See, e.g.*, *supra* Background ¶¶ 38–46, 53–58.) State courts have "criminal jurisdiction" to hear cases involving

[16] At the same time, it does not mean that there is no room for necessary cooperation between the Tribe and federal government, on the one hand, and the State and Uintah County, on the other hand.

[17] Falling naturally from this is the corollary authority of State and local law enforcement officials to take all necessary actions bound up with their authority to make an arrest, *e.g.*, the authority to impound an arrestee's vehicle, etc. If State and local law enforcement have the authority to arrest, with that authority must come all other necessary powers. Moreover, this is also covered by Uintah County's "civil jurisdiction."

a Native American committing a criminal offense outside Indian Country.[18] *See Hagen*, 510 U.S. at 421–22; *Draper*, 164 U.S. 240 (1896); *McBratney*, 104 U.S. 621 (1881); *Patch*, 114 F.3d at 133 (citing *Duro*, 495 U.S. at 680 n.1); *see also* Criminal Resource Manual § 689(A); Utah Code Ann. §§ 17-18a-201, 401; *id.* § 76-1-201. The Tribe's perception of Indian Country as an "Iron Curtain" of sorts, impervious to the State's and Uintah County's authority, is wrong. The Tribe has taken the position that State and local law enforcement *cannot* arrest an Indian within Indian Country for a criminal offense committed entirely outside Indian Country.[19] [20] (*See supra* Background ¶¶ 38–46, 68–69.) It is the location of the criminal offense, not the location of the arrest that determines whether the offense is state or federal in nature, under 18 U.S.C. §§ 1151–53. This is reinforced by the Supreme Court's language in *Hicks*:

---

[18] Criminal defendants possess the right to challenge a State court's "criminal jurisdiction," therefore Uintah County must also have the corollary right—in both criminal and civil proceedings—to raise "jurisdictional" issues. The Tribe's requested injunctive relief to the contrary is legally untenable.

[19] Under 18 U.S.C. §§ 1151–53, "criminal jurisdiction" is based on the location where the criminal offense took place. *See* Utah Code Ann. § 76-1-201(1) ("A person is subject to prosecution in this state for an offense which he commits [if] the offense is committed either wholly or partly within the state."); *State v. Amoroso*, 975 P.2d 505, 508–09 (holding that under § 76-1-201, if conduct or a result of conduct constituting any element of the offense occurs within the State, the State has jurisdiction to prosecute the offense). For this reason, when a person, including a Tribal member, commits an offense outside Indian Country, he/she is subject to a state court's "criminal jurisdiction," because the criminal act was committed outside Indian Country and thus is not a federal criminal offense. *See, e.g.*, *Kake v. Egan*, 369 U.S. 60, 75 (1962) ("It has never been doubted that States may punish crimes committed by Indians, even reservation Indians, outside of Indian country."); *State v. Kozlowicz*, 911 P.2d 1298 (Utah Ct. App. 1996) (upholding state criminal jurisdiction over Ute tribal member because she was not within Indian Country when she committed the offenses for which she was charged by the state); *State v. Coando*, 858 P.2d 926 (Utah 1992) (holding state court had criminal jurisdiction over Ute tribal member because offense had not occurred within Indian Country); *see also Muscogee (Creek) Nation v. Pruitt*, 669 F.3d 1159, 1182 (10th Cir. 2012) (holding "numerous Supreme Court cases hold[] that tribal members acting outside their Indian country are subject to state law"). The Tribe's attempt to conflate the location of arrest with the location of the criminal offense, is inappropriate.

[20] This issue is especially important because the "checkerboard" nature of Indian Country within Uintah County, *see Ute V*, 114 F.3d at 1530, creates a "multiple-jurisdiction" problem. That is, along a single stretch of State and/or County road within Uintah County, an individual can commit a federal criminal offense—reckless driving—within Indian Country, and commit a State criminal offense—reckless driving—outside of Indian Country, based on the same episode, within a matter of miles, or even feet. (*See supra* Background ¶¶ 38–46.) State and local law enforcement possess the authority to stop, detain, and arrest in such situations, and *both* State and Federal Courts have "criminal jurisdiction," either based on the offending conduct committed within—Federal—or without—State—Indian Country.

> While it is not entirely clear from our precedent whether the last mentioned authority entails the corollary right to enter a reservation (including Indian-fee lands) for enforcement purposes, several of our opinions point in that direction. . . . [T]he law "does not interfere with the process of the State courts within the reservation, nor with the operation of State laws upon [non-Indians] found there. Its effect is confined to the acts of an Indian of some tribe, of a criminal character, committed within the limits of the reservation. [T]he Court's concern in *Kagama* over possible federal encroachment on state prerogatives, suggest state authority to issue search warrants in cases such as the one before us. ("Process" is defined as "any means used by a court to acquire or exercise its jurisdiction over a person or over specific property," Black's Law Dictionary 1084 (5th ed.1979), and is equated in criminal cases with a warrant, *id.*, at 1085.) It is noteworthy that *Kagama* recognized the right of state *laws* to "operat[e] . . . upon [non-Indians] found" within a reservation, but did not similarly limit to non-Indians or the property of non-Indians the scope of the *process* of state courts. This makes perfect sense, since, as we explained in the context of federal enclaves, the reservation of state authority to serve process is necessary to "prevent [such areas] from becoming an asylum for fugitives from justice."
>
> We conclude today, in accordance with these prior statements, that tribal authority to regulate state officers in executing [criminal] process [against a tribal member] related to the violation, off reservation, of state laws is not essential to tribal self—government or internal relations—to "the right to make laws and be ruled by them." The State's interest in execution of process is considerable, and even when it relates to Indian-fee lands it no more impairs the tribe's self-government than federal enforcement of federal law impairs state government.

Hicks, 533 U.S. at 363–65 (internal footnote omitted). In *Hicks*, the Supreme Court accepted as wholly permissible the action of state law enforcement officers to enter the Fallon Paiute-Shoshone Reservation, and execute a search warrant related to off-reservation criminal conduct within Mr. Hicks' home on tribal land. *See id.* at 355–56. If that is the case, Uintah County law enforcement possess the authority to pursue a Tribal member within Indian Country when an off-reservation crime has been committed. (*See, e.g.*, *supra* Background ¶¶ 38–46, 53–58.)

Unfortunately, the Tribe has advocated and created in the minds of its members that Indian Country and/or Tribal land is a "safe haven." (*See, e.g.*, *supra* Background ¶¶ 38–46, 53–58.) This has created the *dangerous* incentive for Tribal members to flee to Indian Country, or Tribal land, when pursued by State and local law enforcement officials. (*See, e.g.*, Ex. 27, Deputy Troy Slaugh Declaration, at ¶¶ 6–7 ("There was some conversation between myself and [BIA] Officer Serawop about jurisdictional issues, and Officer Serawop indicated that the Ute Tribe prosecutors were dismissing any case that involved Uintah County deputies, and that he wished he could do something with the driver.").) *See Jones v. Norton*, No. 2:09-CV-00730-TC-SA, 2010 U.S. Dist. LEXIS 75466, at *2–*3 (D. Utah July 26, 2010) ("On April 1, 2007, Trooper Dave Swenson, a state trooper with the Utah Highway Patrol was driving on Highway 40 in Uintah County when he saw "two Tribal males," Uriah Kurip and Todd Murray, in a car traveling 74 miles an hour in a 65 mile an hour zone. Mr. Kurip was the driver. When Mr. Kurip refused to pull over, a high-speed chase began. Mr. Kurip drove onto the Uintah-Ouray Indian Reservation where, after ten miles and twenty minutes of pursuit, Mr. Kurip lost control of the car and skidded off the road."). As in *Hicks*, the Court *must* make clear that neither Indian Country nor Tribal land is "an asylum for fugitives from justice." *Hicks*, 533 U.S. at 364.

Therefore, State and Uintah County law enforcement officials can enforce State law within Indian Country for State criminal offenses committed outside Indian Country. This means, State and Uintah County law enforcement officials can pursue a Tribal member into Indian Country, *and even onto Tribal land*, to enforce State criminal law violations committed outside Indian Country.

4. *State and Uintah County law enforcement officials, as well as State courts, have authority to determine if they possess "criminal jurisdiction" and/or "civil jurisdiction" over an individual under specific circumstances.*

Not only does the Tribe assert that State and local law enforcement officials cannot enforce the law within Indian Country, the Tribe pushes a position that would require State and local law enforcement—and State courts—to immediately "cease and desist" if an individual merely *claims* to be a Tribal member. This position is unprecedented and without legal support.[21] The Tribe's position would divest State and local law enforcement, and State courts, of all authority to investigate an individual's Tribal membership status in making a "jurisdictional" determination.

Such a position would entitle alleged Tribal members to greater protection than afforded foreign diplomats, under Article 30 of the Vienna Convention on Consular Relations. (*See* Ex. 53, Uintah County Sheriff's Policy Manual, Policy 423, at 240–45.) Even a recognized foreign diplomat, entitled to diplomatic immunity—a right far greater than any possessed by Tribal members within Indian Country—bears a burden of establishing his/her entitlement to immunity. (*Id.*) That includes a burden of proper identification. (*Id.* at 240 "Deputies should take appropriate enforcement action for all violations observed, regardless of claims of diplomatic or consular immunity received from violators. A person shall not, however, be subjected to in-custody arrest when diplomatic or consular immunity is claimed by the individual or suspected by the deputy, *and the deputy has verified or reasonably suspects that the claim of immunity is valid*." (emphasis added).) State and local law enforcement officials have the authority to require

[21] It also risks another incentive for non-Tribal members accused of crimes within Indian Country to wrongfully assert Tribal membership to avoid further inquiry by State and local law enforcement. State and local law enforcement, and State courts, necessarily need to undertake further investigation to determine the veracity of such claims.

a Tribal member to provide suitable identification to establish Tribal membership. *See also supra* Part II.A.1–3.

The Tribe's position, with respect to a State court, is even more untenable. It is well-established that courts, including State courts, have "jurisdiction" to determine if they possess "criminal jurisdiction" over a case; it is only if a court ultimately determines it lacks "jurisdiction" that it is powerless to continue to hear the case. *See Cunningham v. BHP Petroleum Great Britain PLC*, 427 F.3d 1238, 1245 (10th Cir. 2005). The Tribe's counsel admitted as much during oral argument to the Court on January 10, 2014. (January 10, 2014 Hearing Tr., excerpts attached hereto as Exhibit 54, at 26 ("Tribal courts, *like every other court*, have jurisdiction to determine their own jurisdiction.") (emphasis added).)

Not only do State courts possess this authority, but State law provides a proper statutory mechanism for criminal defendants to challenge a State court's "criminal jurisdiction" over them in any given case. *See* Utah Code Ann. §§ 76-1-201(1), (5)(b), (6)(c), (6)(d). Relevant here, under State law, facts that "deprive the state of jurisdiction or prohibit the state from exercising jurisdiction" include situations where the "offense occurred on land that is exclusively within federal jurisdiction" or where the "defendant is an enrolled member of an Indian tribe, . . . the Indian tribe has a legal status with the United States or the state . . . vests jurisdiction in either tribal or federal courts for certain offenses committed within the exterior boundaries of a tribal reservation, and . . . the facts establish that the crime is one that vests jurisdiction in tribal or federal court." *Id.* §§ 76-1-201(6)(c), (d). In fact, Tribal members have successfully challenged State court "criminal jurisdiction" on these grounds, obtaining dismissal. (*See* Ex. 38, Blake Nez Hearing Minutes.) But, in other instances, Tribal members have sought to use the confused state of "criminal jurisdiction" over criminal offenses committed within Indian Country to escape the

"criminal jurisdiction," not only of a State court, but also the Federal court, based on the same criminal acts. (*See supra* Background ¶¶ 8–37.) Particularly when an alleged Tribal member—or admitted Tribal member, for that matter—creates an issue of fact regarding a court's "criminal jurisdiction," a State court should—and is justified in doing so—require that individual to demonstrate that the State court lacks "criminal jurisdiction" over the case. (*See id.* ¶¶ 15–36.) The law does not, and should not, reward gamesmanship.

Therefore, State and Uintah County law enforcement officials, as well as State courts, have authority to determine if they possess "criminal jurisdiction" and/or "civil jurisdiction" over an individual under specific circumstances. Further, State and Uintah County law enforcement officials, as well as State courts, *must* exercise this authority to fulfill their legal duties.

> 5. *In instances where the Tribal and federal courts relinquish "criminal jurisdiction" over an individual's criminal conduct, "criminal jurisdiction" is conferred, by default, on the State courts.*

Even for criminal offenses committed within Indian Country, a State court possesses "criminal jurisdiction" over Indians where the Tribal and federal courts do not exercise "criminal jurisdiction" over criminal conduct. Within Uintah County, both the Tribe and Uintah County exercise "attributes" of sovereignty. *See Plains Commerce*, 554 U.S. at 327–30 ("[T]he sovereignty that the Indian tribes retain is of a unique and limited character . . . ."); *Hicks*, 533 U.S. at 361–65 ("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. State sovereignty does not end at a reservation's border."); *Montana*, 450 U.S. at 563–67 (stating that tribes "have lost many of the attributes of sovereignty"). Incumbent in this dual "sovereignty" within Uintah County is the duty to enforce the law. To do so is necessary to provide for the health, safety, and welfare of *all* citizens residing within Uintah County *and* Indian Country. In

instances where the Tribe and/or the federal government *refuses* to prosecute criminal offenses occurring within Indian Country, the health, safety, and welfare of the State's and Uintah County's citizens is placed in grave jeopardy. This constitutes a "federal encroachment on [critical] state prerogatives," *Hicks*, 533 U.S. at 365, that provides a corollary right to State courts to exercise "criminal jurisdiction" over such criminal offenses. Sections 1151–53 of Title 18 assume, without stating, that the Tribe and federal government would prosecute federal criminal offenses committed within Indian Country.[22] (*See, e.g.*, Ex. 27, Deputy Troy Slaugh Declaration, at ¶¶ 6–7 ("There was some conversation between myself and [BIA] Officer Serawop about jurisdictional issues, and Officer Serawop indicated that the Ute Tribe prosecutors were dismissing any case that involved Uintah County deputies, and that he wished he could do something with the driver.").) If the Tribe does not prosecute those who violate the law, then State courts retain "criminal jurisdiction" over these criminal offenses. In practice, there must be a forum for the redress of such public offenses. *See Boumediene v. Bush*, 553 U.S. 723, 766–71 (2008); Henry M. Hart, Jr., *The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic*, 66 Harv. L. Rev. 1362, 1401–02 (1953).

Therefore, the Tribe is improperly asserting what it refers to as "criminal jurisdiction" in the above-mentioned circumstances.

[22] Uintah County has diligently attempted to obtain discovery with respect to the Tribal court's and/or Tribal prosecutor's handling of criminal cases referred by Uintah County to the Tribe for prosecution. (*See, e.g.*, Uintah County's Motion to Compel, Case No. 2:75-cv-00408, Dkt. No. 350.) The Tribe has resisted any such discovery, despite the Court's Order that the Tribe provide this information to Uintah County. (*See* Order Partially Granting Uintah County's Motion to Compel, Case No. 2:75-cv-00408, Dkt. No. 432; Rawson Letter to Bassett, Jan. 16, 2014, attached hereto as Exhibit 55; Rasmussen Letter to Rawson, Jan. 31, 2014, attached hereto as Exhibit 56; Ex. 3, Rasmussen Letter to Rawson, Feb. 11, 2014; Ex. 4, Tribe Letter to Uintah County Commission, Aug. 29, 2011; Ex. 5, Ute Bulletin.) Uintah County will file a motion to compel on this issue, and provide additional supporting material to the Court once the Court orders it be produced.

B. THE *UTE TRIBE* LITIGATION NEVER DECIDED THE SPECIFIC ISSUES NECESSARY TO ALLOCATE "JURISDICTION" THAT IS CIVIL IN NATURE WITHIN UINTAH COUNTY

Tribal "civil jurisdiction"—which encompasses, *e.g.*, adjudicative authority, regulatory authority, etc.—is a derivative of Supreme Court case law, and an independent function of the Tribe's retained "power to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members." *Montana*, 450 U.S. at 564; *see also, e.g.*, *Plains Commerce Bank*, 554 U.S. at 327–30; *Hicks*, 533 U.S. at 361–65; *Strate*, 520 U.S. at 454–59. This overriding principle must be borne in mind when approaching issues of "civil jurisdiction," or more appropriately stated, the proper exercise of civil authority. Admittedly, the Tribe possesses *some* civil authority within Indian Country; but, it cannot be forgotten that so do the State and Uintah County. *See, e.g.*, *Hicks*, 533 U.S. at 361–65 ("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*. State sovereignty does not end at a reservation's border." (emphasis added)); *Montana*, 450 U.S. at 563–67 (holding that, with respect to civil authority, because tribes "have lost many of the attributes of sovereignty," "exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation").

With this in mind, the Court must consider specific issues regarding the proper allocation of civil authority.

1. *The Tribe's interests—and thus the scope of its civil authority—are not equal throughout Indian Country.*

The Supreme Court's cases are clear: Tribal interests—and by necessary implication,

Tribal civil authority—are not equal at all geographic locations within Indian Country.[23] *See, e.g.*, *Plains Commerce*, 554 U.S. at 327; *Hicks*, 533 U.S. at 361. As *Plains Commerce* put it, the tribal sovereignty from which a tribe's civil authority derives, "centers on the land held by the tribe and on tribal members within the reservation." *Plains Commerce*, 554 U.S. at 327. Despite *Ute V*'s holding with respect to the boundaries of Indian Country, particularly within the historic boundaries of the former Uncompahgre Reservation, the Tribe owns relatively little land outside the boundaries of the Hill Creek Extension. *See* Act of March 11, 1948, 62 Stat. 72. In reality, the vast majority of the land within the historic boundaries of the former Uncompahgre Reservation—outside of the Hill Creek Extension—is comprised of (1) federal (public domain) lands administered by the Bureau of Land Management ("BLM"), Bureau of Reclamation ("BOR"), and National Forest Service ("NFS"); (2) private non-Indian fee land; and (3) SITLA lands. (*See* Ex. 2, Uintah County Map.) As to these categories of land, the Tribe does not possess a landowners' right to occupy and exclude.[24] [25] Thus, the Tribe's civil authority over nonmembers throughout all Indian Country cannot be the same, *especially* within the historic boundaries of the former Uncompahgre Reservation. The Tribe's assertion that it possesses

[23] The Tribe possesses *no* civil authority over nonmembers outside Indian Country.

[24] It would be an odd—and incorrect—result indeed for the Court to determine that the Tribe, possessing attributes of sovereignty, could possess the power to occupy and exclude lands owned by other sovereigns, such as the United States and the State of Utah. Uintah County does not dispute that the Hill Creek Extension, created by Act of March 11, 1948, 62 Stat. 72, returned certain lands from the public domain, within the historic boundaries of the former Uncompahgre Reservation, to land held in trust for the Tribe which the Tribe *does* possess some power to occupy and exclude, as permitted by federal law, unless the rights have been diminished or forfeited—such as a right-of-way. But, the Tribe's position that it possesses exclusive civil regulatory jurisdiction over lands owned by non-Indians, the United States, and State of Utah must be rejected.

[25] Further evidence of the Tribe's lack of a landowner's right to occupy and exclude these categories of land inheres in the BLM's grant of rights-of-way over land owned by the United States, and administered by the BLM, without the approval of the Tribe. (*See* Ex. 52, United States Dep't of Interior, Grants of Right-of-Ways.) If the BLM can convey a right-of-way within lands considered by the Tribe to be Indian Country, that seems to cut against a finding that the Tribe has the right to occupy and exclude on such categories of land, especially those same rights-of-way.

uniform *exclusive* "civil jurisdiction" within Indian Country must therefore fail.

2. *The State and Uintah County possess civil authority within Indian Country.*

It is clear that the State and Uintah County possess civil authority within Indian Country, both on Tribally-owned and non-Indian lands. *See Hicks*, 533 U.S. at 361 ("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*. State sovereignty does not end at a reservation's border." (emphasis added)); *see also* Utah Code Ann. § 17-22-1; *id.* §§ 72-3-103(1), (4); *id.* § 72-3-105(4). First, *Hicks* made clear that the State and Uintah County have civil authority to effect process on Tribally-owned lands. *See Hicks*, 533 U.S. at 360–64; *see also id.* at 364 ("We conclude today, in accordance with these prior statements, that tribal authority to regulate state officers in executing process related to the violation, off reservation, of state laws is not essential to tribal self-government or internal relations—to 'the right to make laws and be ruled by them.' The State's interest in execution of process is considerable, and even when it relates to Indian-fee lands it no more impairs the tribe's self-government than federal enforcement of federal law impairs state government."); *see also* Utah Code Ann. § 17-22-1(k).

Second, the State and Uintah County have civil authority to conduct search-and-rescue operations within Indian Country. Utah Code Ann. § 17-22-1(p) ("The sheriff shall manage search and rescue services in his county."); *see also id.* § 17-22-1(m). The Tribe has asserted that it has the exclusive right to conduct search and rescue operations within Indian Country. (*See supra* Background ¶¶ 59–60.) This is incorrect. As noted above, other than on Tribally-owned lands, the Tribe has no authority to exercise a landowners' right to occupy and exclude. *See supra* Part II.B.1. At least with respect to those lands, when nonmembers are in danger and

in need of assistance of search and rescue,[26] the State and Uintah County have civil authority to engage in such activities. Since the Tribe does not own those lands, its interest is at its lowest point. And, because these activities do not involve the Tribe nor its members, to establish a *Montana* exception, the Tribe would have to establish either (1) that the "nonmembers . . . enter[ed] consensual relationships with the tribe or its members"; or (2) "the . . . activity . . . directly affects the tribe's political integrity, economic security, health, or welfare." *Strate*, 520 U.S. at 446. The Tribe can establish neither *Montana* exception.

To be sure, the Tribe's interest in such situations is virtually non-existent. And, by necessary implication, "The State's interest in [providing emergency services] is considerable, and even when it relates to Indian-fee lands it no more impairs the tribe's self-government than federal enforcement of federal law impairs state government." Thus, both on Tribally-owned *and* non-Indian lands within Indian Country, the State and Uintah County have civil authority to provide emergency services to its citizens. Although this is particularly the case with respect to non-Indians, it applies equally to Tribal members. The State and/or Uintah County's provision of necessary emergency services to Tribal members in no way "affects the [T]ribe's political integrity, economic security, health, or welfare." *Strate*, 520 U.S. at 446. In fact, it does nothing more than promote the Tribe's interests. The State and Uintah County have authority to provide emergency services within Indian Country.

Third, the State and Uintah County have civil authority to operate and maintain State and County rights-of-ways within Indian Country. *See, e.g.*, *Broadbent Land Co. v. Town of Manila*, 842 P.2d 907 (Utah 1992); *See* Utah Code Ann. §§ 72-3-103; § 72-3-105. The Tribe has asserted that Uintah County officials/employees are trespassing when present within State and/or County

[26] Or equally, other governmental services such as emergency medical services, etc.

rights-of-way within Indian Country. (*See supra* Background ¶¶ 51–52, 71–73.) This is incorrect. The Supreme Court has held such rights-of-way to be "equivalent, for nonmember governance purposes, to alienated, non-Indian land." *Strate*, 520 U.S. at 454. Again, as above, the Tribe cannot establish any *Montana* exception with respect to exercise of authority over State and County rights-of-way, especially outside of land owned by the Tribe or trust lands.

And, the Tribe's interests in excluding Uintah County from operating and maintaining County rights-of-way are virtually non-existent. The Tribe and its members benefit from Uintah County operating and maintaining the County roads Tribal members travel over for personal and business reasons. As State and County rights-of-way, the State and Uintah County have a significant "interest in [operating and maintaining such rights-of-ways] is considerable, and even when it relates to Indian-fee lands it no more impairs the tribe's self-government than federal enforcement of federal law impairs state government."[27] *Hicks*, 533 U.S. at 364. The State and Uintah County have an obligation to ensure the safety of those within such rights-of-way, requiring patrols by law enforcement officials,[28] and otherwise operating and maintaining such rights-of-way.[29] [30]

[27] Even by the off-chance that a nonmember were to get into a traffic accident with a Tribal member, this would still fall under *Montana*'s general rule that the Tribe lacks civil authority. That is because a traffic accident does not involve a consensual relationship with the Tribe or one of its members. By their very nature, "accidents" are unexpected occurrences. *Montana*'s first exception could not apply. And, like the discussion of the State and County's provision of emergency services, *see supra* Part II.B.2, the Tribe cannot establish *Montana*'s second exception.

[28] This means that State and Uintah County law enforcement have authority to make traffic stops and issue citations for certain traffic infractions that do not rise to the level of a criminal offense—thus not falling within the scope of 18 U.S.C. §§ 1151–53, because such violations fall under the State's civil, not criminal, authority—to ensure the safety of those individuals traveling within State and County rights-of-way. This includes the authority to stop and cite Indians within Indian Country, for such traffic violations.

[29] This includes not only such mundane activities as patrolling, plowing snow, and repairing roads; but also goes much further. *See Broadbent*, 842 P.2d at 907 ("An easement that permits a public highway also permits certain inchoate future transportation uses. Like the power lines at issue in *Pickett*, the subterranean sewage line installed here is a use of an inchoate interest that is incidental to the use of the highway as a transportation corridor. In fact,

The State and Uintah County possess other civil authority within Indian Country, but the Court should declare the State and Uintah County's authority to engage in these specifically mentioned civil activities: operation, maintenance, and patrolling State and County roads, conducting search and rescue, as well as other emergency operations, and service of process.

3. *The Tribe is interfering with Uintah County's exercise of civil authority within—and without—Indian Country.*

The Tribe is exceeding its civil authority, going far beyond the "exercise of tribal power . . . necessary to protect tribal self-government or to control internal relations," "inconsistent with the dependent status of the [T]ribe[]," in the absence of "express congressional delegation." *Montana*, 450 U.S. at 564. First, the Tribe has attempted to block and/or prevent access to State and Country rights-of-ways. (*See supra* Background ¶¶ 51–52, 71–73, 76.) The Tribe has also taken down Uintah County road signs located within County rights-of-ways. (*See id.* ¶¶ 71–73.) As discussed *supra* Part II.B.2, the Tribe has no landowner's right to occupy and exclude in State and County rights-of-ways, and has virtually no interest over those areas. *See* Utah Code Ann. §§ 72-3-103; § 72-3-105. By engaging in these activities, even within Indian Country, the Tribe has acted "inconsistent with [its] dependent status," exceeding its civil authority.

Second, the Tribe has stopped non-Indians on County rights-of-ways and on the sole access roads to private non-Indian fee land. (*See supra* Background ¶¶ 74–75.) During such

---

the invisible underground sewage line is far less intrusive than the above-ground power lines in *Pickett*. *A fortiori*, we find that the installation of the sewer line does not entitle Broadbent to compensation for an additional servitude because it does not further encroach on Broadbent's underlying fee.").

[30] "Undoubtedly, those who drive carelessly on a public highway running through a reservation endanger all in the vicinity, and surely jeopardize the safety of tribal members. But if *Montana*'s second exception requires no more, *the exception would severely shrink the rule*. . . . Read in isolation, the *Montana* rule's second exception can be misperceived." *Strate*, 520 U.S. at 457–59 (emphasis added). Thus, the second exception must be tied to "the right of reservation Indians to make their own laws and be ruled by them." *Id.* at 459. Any other interest, no matter how compelling, falls short of qualifying a tribe for civil authority under *Montana*'s second exception.

actions, the Tribe has confiscated nonmembers's personal property. (*See id.*) Again, by asserting authority over these activities of nonmembers, the Tribe has acted "inconsistent with [its] dependent status," exceeding its civil authority. *See* Utah Code Ann. §§ 72-3-103; § 72-3-105. The Tribe cannot establish either of the *Montana* exceptions. Because the Tribe cannot establish a landowner's right to occupy and exclude on State and County rights-of-ways, the Tribe cannot restrict any individual's access thereto—much less confiscate their personal property for such an alleged "trespass." And, the Tribe has no legitimate interest in restricting access to private non-Indian fee land.[31]

Third, the Tribe has improperly asserted its civil authority over lands that the Tribe does not possess a landowner's right to occupy and exclude. For example, the Tribe has attempted to prevent civil actions regarding zoning laws and foreclosure of non-Tribally owned land within Indian Country. (*See, e.g. supra* Background ¶¶ 51–52, 70–86.) The Supreme Court's holding in *Plains Commerce* illustrates the impropriety of such assertion of authority by the Tribe. *See Plains Commerce*, 554 U.S. at 330–40 (applying the *Montana* test to a similar fact pattern and

[31] This must at least be the case in instances such as illustrated by Mr. Anderton, (*see supra* Background ¶¶ 74–75), where a nonmember's ingress and egress from the private non-Indian fee land, that must traverse Tribally-owned land, did not put the Tribally-owned land in any type of jeopardy. If the Tribe could restrict such access, it would essentially possess a sovereign right over that private non-Indian fee land. This is contrary to the Supreme Court's holdings, particularly in *Montana*. *Montana* stated that "authority could only extend to land on which the Tribe exercises 'absolute and undisturbed use and occupation,'" and "that power cannot apply to lands held in fee by non-Indians." *Montana*, 450 U.S. at 559. The Supreme Court stated:

> There is simply no suggestion in the legislative history that Congress intended that the non-Indians who would settle upon alienated allotted lands would be subject to tribal regulatory authority. . . . It defies common sense to suppose that Congress would intend that non-Indians purchasing allotted lands would become subject to tribal jurisdiction when an avowed purpose of the allotment policy was the ultimate destruction of tribal government. And it is hardly likely Congress could have imagined that the purpose of peaceful assimilation could be advanced if feeholders could be excluded from fishing or hunting on their acquired property.

Id. at 559 n.9. Any decision by the Court sanctioning such exercise of authority over nonmembers would improperly subject non-Indian fee land to tribal regulatory authority.

holding that in such circumstances the *Montana* exceptions do not apply); *see also supra* note 31 (quoting *Montana*, 450 U.S. at 559 & n.9). The Tribe has no civil authority in such situations.

Fourth, the Tribe has improperly applied its UTERO Ordinance. Though under the circumstances recognized in *Montana* and its progeny, the Tribe's UTERO Ordinance *might* be proper if applied correctly and its terms were more limited, but as-applied and as currently drafted the UTERO Ordinance far exceeds the Tribe's civil authority. For instance, the Tribe has applied its UTERO Ordinance both directly and indirectly to nonmembers engaging in business with nonmembers on private non-Indian fee land. (*See supra* Background ¶¶ 77–79.) *Strate* makes clear that this conduct falls within *Montana*'s general rule that the Tribe lacks regulatory authority, finding no place in an exception. *See Strate*, 520 U.S. at 456–59. In circumstances, such as these, where the Tribe is not a party to the contract, *any* application of the UTERO Ordinance to non-Indians—or other Tribal authority—outside Tribally-owned land is *ultra vires*. Furthermore, the remoteness of the Tribe's interest is illustrated by the application of the UTERO Ordinance within the historic boundaries of the former Uncompahgre Reservation. As previously noted, with the exception of the Hill Creek Extension, the vast majority of the former Uncompahgre Reservation is *not* Tribally owned. And, a large percentage of the oil-and-gas industry present in the Uintah Basin is located within the boundaries of the former Uncompahgre Reservation on land owned by the United States and administered by the BLM. Land over which the Tribe possesses no landowner's right to occupy and exclude. Thus, because these business transactions occur on land in which the Tribe has no interest and between parties other than the Tribe and/or Tribal members, the Tribe is improperly applying the UTERO Ordinance.

Fifth, the Tribe is improperly asserting authority over *all* lands within the exterior historic boundaries of the former Uintah Valley and Uncompahgre Reservations. (*See supra* Background

¶¶ 80–84; Ex. 48, Tribe's Map to UDOT.) In *Ute V*, the Tenth Circuit held that the Uintah Valley Reservation had been diminished. *Ute V*, 114 F.3d at 1528–31 (holding the historic Uintah Valley Reservation was diminished by non-Indian fee land within the boundaries of the historic Reservation). The Tribe, however, has asserted—through its representations to UDOT—"jurisdiction" over all lands within the exterior boundaries of *both* the historic Uintah Valley and Uncompahgre Reservations, *including* non-Indian fee land. (*See supra* Background ¶¶ 80–84; Ex. 48, Tribe's Map to UDOT.) This is in direct conflict with *Ute V* and is "inconsistent with [the Tribe's] dependent status." The Tribe possesses *no* civil authority outside Indian Country. Therefore, the Tribe is exercising civil authority *ultra vires* in the above-mentioned specific circumstances.

Based on the foregoing, the Court should enter summary judgment against the Tribe on its requests for declaratory judgment, and in favor of Uintah County on its requests for declaratory judgment.

III. THE COURT SHOULD ENTER SUMMARY JUDGMENT AGAINST THE TRIBE ON ITS INJUNCTIVE RELIEF CLAIMS

For all the reasons discussed above, *supra* Part II, as a matter of law, the Tribe cannot establish success on the merits to satisfy a request for injunctive relief. The Tribe's failure to establish this element alone is fatal to its request for injunctive relief. *See Sierra Club*, No. 12-6201, 2013 WL 5539633, at *2. Furthermore, as discussed in Uintah County's opposition to the Tribe's motion for summary judgment, (Uintah County's Opposition, Case No. 2:75-cv-00408, Dkt. No. 427, 429–30), the Tribe cannot establish the other three required elements to obtain a permanent injunction.[32]

[32] Uintah County incorporates these arguments by reference in this Motion.

The Court should also therefore enter summary judgment against the Tribe on its requests for injunctive relief.

IV. IN THE ALTERNATIVE, THE COURT SHOULD CERTIFY AN INTERLOCUTORY APPEAL TO THE TENTH CIRCUIT TO RECALL *UTE III*'S AND *UTE V*'S MANDATE

If the Court determines that—despite superseding Supreme Court precedent and the other authorities discussed herein—it is bound by the Tenth Circuit's mandates—as broadly defined by the Tribe—then an interlocutory appeal to the Tenth Circuit to recall its *Ute III* and *Ute V* mandates is imperative. A district court may certify an interlocutory appeal where there is (1) "a controlling question of law," as to which there is (2) "substantial ground for difference of opinion," and (3) "an immediate appeal . . . may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b); *see also Pack v. Investools, Inc.*, No. 2:09-cv-1042, 2011 WL 2161098, at *1 (D. Utah June 1, 2011). Although this avenue is to be used sparingly, *Pack*, 2011 WL 2161098, at *1, the certification of an interlocutory appeal is an important procedural instrument to "avoid[] unnecessary litigation," *Utah v. Kennecott Corp.*, 14 F.3d 1489, 1495 (10th Cir. 1994).

Here, if the Court determines that it is bound by *Ute III*'s and *Ute V*'s mandate to declare that the Tribe has *exclusive* "criminal jurisdiction" and "civil jurisdiction," to the exclusion of Uintah County's criminal and civil authority, within Indian Country[33]—as defined by *Ute III* and

---

[33] The practical implication of the Tribe's position—based on loose language contained in both *Ute III* and *Ute V*—is that the State and Uintah County cannot exercise *any* "jurisdiction," or authority, within Indian Country, which according to the Tribe covers 70 percent of Uintah County. That means, for example, that State and local law enforcement officers would be precluded from patrolling roads, such as State highway U.S. 40, within Indian Country to even enforce State criminal law against non-Indians. The impact—and ridiculous nature—of this implication is striking when considering that the United States Supreme Court has held that tribes "lack criminal jurisdiction over nonmembers." *Hicks*, 533 U.S. at 358 (citing *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978)). This interpretation would create a veritable "Catch-22": *Ute V* denies State courts *all* "criminal jurisdiction" for

Ute V—then Court should certify an interlocutory appeal to the Tenth Circuit to recall and modify *Ute III*'s and *Ute V*'s mandate. *See Ute V*, 114 F.3d at 1520–21, 1531 (holding that the Tenth Circuit's ruling "left nothing for the district court to address beyond the 'ministerial dictates of the mandate'" such that "the case was no longer sub judice," leaving the district court without any power to alter the Tenth Circuit's mandate). The contradictory treatment of the historic Uintah Valley and Uncompahgre Reservations, discussed *infra* Part IV.A.1, as well as superseding United States Supreme Court case law, discussed *supra* Part II & *infra* Part IV.A.2, show that the Tenth Circuit's prior determination of the boundaries of Indian Country—in both *Ute III* and *Ute V*—cannot be used for specific "jurisdictional" determinations, and in many instances are no longer valid. The loose language of the Tenth Circuit's mandates wrongly define "Indian Country" and, according to the Tribe, purport to provide the Tribe with *exclusive* "criminal jurisdiction" and "civil jurisdiction"—improperly conflating such issues—including "jurisdiction," or authority, over non-Indians. If the Court feels it is sub judice bound by the Tribe's interpretation of the Tenth Circuit's mandates and that these issues were conclusively addressed in *Ute III* and *Ute V*, then this is a "controlling question of law" that should be determined by the Tenth Circuit and a recall of the mandates is appropriate. *See Ute V*, 114 F.3d at 1520–21. Moreover, given the broad prospective injunctive relief at issue in this case—that will impact everyone who at some point or another in time might do nothing more than pass innocently over a State or County road traversing Uintah County—this presents the

---

criminal offenses committed within Indian Country, and *Oliphant* denies the Tribe *all* "criminal jurisdiction" for criminal offenses committed by non-Indians—both within and without Indian Country. This would mean that non-Indians could only be prosecuted by the *federal* government for *federal* crimes committed within Indian Country. This cannot be the case. The safety of *all* citizens—Indian and non-Indian alike—within Uintah County depends on it. *See Hicks*, 533 U.S. at 364 (discussing the specter of an area becoming "an asylum for fugitives from justice").

"extraordinary circumstances" necessary for the Tenth Circuit to recall its mandates.[34] *Id.* at 1521–24.

Furthermore, since an application for interlocutory appeal "does not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order," 28 U.S.C. § 1292(b), Uintah County respectfully requests that the Court stay all proceedings in this action, pending final resolution of Uintah County's application for and interlocutory appeal by the Tenth Circuit, if the Court determines it is bound by the Tribe's interpretation of Tenth Circuit's mandate to prevent Uintah County from exercising criminal and civil authority over 70 percent of Uintah County.

A. THE COURT SHOULD CERTIFY TO THE TENTH CIRCUIT THE REMAND OF *UTE III* AND *UTE V*

The Court should certify the remand for several reasons.

1. Ute V *is internally inconsistent.*

Even if the Court were to accept the Tribe's position that *Ute V* properly decided jurisdictional issues regarding the Uintah Valley Reservation—which it did not—*Ute V* is internally inconsistent in its treatment of some categories of land within the historic Uintah Valley and Uncompahgre Reservations. Specifically, *Ute V* held that the historic Uintah Valley Reservation was diminished to the extent that certain lands passed into fee status in the hands of non-Indians. *Ute V*, 114 F.3d at 1529–31. *Ute V* found this same category of land to be part of the Uncompahgre Reservation. *Id.* However, by failing to modify its mandate with respect to the historic Uncompahgre Reservation, the Tenth Circuit created a regime based on inconsistent

[34] *See United States v. Swift & Co.*, 286 U.S. 106, 114–15 (1932) ("[A] court does not abdicate its power to revoke or modify its mandate, if satisfied that what is has been doing has been turned through changing circumstances into an instrument of wrong." (Cardozo, J.)).

reasoning. That is, certain private non-Indian fee land within the boundaries of the historic Uintah Valley Reservation is outside Indian Country, while the same type of land within the boundaries of the historic Uncompahgre Reservation is within Indian Country. There is no meaningful legal distinction to be made with respect to these types of lands, which has very practical "jurisdictional" implications. Moreover, given the large percentage of non-Indian fee land—especially federal (public domain) land—within the historic Uncompahgre Reservation, this internal inconsistency results in serious practical implications. *Ute V* cannot stand on inconsistent treatment of non-Indian fee lands. And, since the Tenth Circuit determined that *Hagen* required it to modify its mandate with respect to non-Indian fee lands within the historic Uintah Valley Reservation, the Tenth Circuit must so modify its mandate with respect to non-Indian fee lands within the boundaries of the historic Uncompahgre Reservation. Because *Ute III* and *Ute V* are internally inconsistent, this "exceptional circumstance" is sufficient for the Court to certify this issue to the Tenth Circuit so it can recall and modify its mandates.

2. Ute V *is inconsistent with superseding Supreme Court precedent.*

As discussed *supra* Part II, to the extent that *Ute III*'s and *Ute V*'s mandates are read to provide the Tribe exclusive "criminal jurisdiction" and "civil jurisdiction," they are contrary to superseding Supreme Court precedent, and the Tenth Circuit *must* recall its mandate. *See Ute V*, 114 F.3d at 1520–27. There is no way the Court could adopt the Tribe's interpretation of *Ute V* and still adhere to the Supreme Court's clear pronunciations regarding a tribe's criminal and civil authority. *See supra* Part II.

For example, in *Strate*, although the Supreme Court readily acknowledged that "tribes retain considerable control over nonmember conduct on tribal land," it held that "[t]he right-of-way North Dakota acquired for the State's highway renders the 6.59-mile stretch equivalent, for

nonmember governance purposes, to alienated, non-Indian land." *Strate*, 520 U.S. at 454 (internal footnotes omitted). This was so, even though the incident at issue occurred on land held in trust for the tribe. *Id.* at 442–43. If *Ute V* is interpreted as providing the Tribe *exclusive* criminal and civil authority over State and County rights-of-way within Indian Country, it would be in direct conflict with the Supreme Court's holding in *Strate*. *Strate* stands for the direct proposition that the State and Uintah County must *at least* have criminal and civil authority over non-Indians within such rights-of-way, as well as the corresponding right to patrol within such rights-of-way. Further, in *Strate*, the Supreme Court stated: "We do not here question the authority of tribal police to patrol roads within a reservation, including rights-of-way made part of a state highway, and to detain and turn over to state officers nonmembers stopped on the highway for conduct violating state law." *Id.* at 456 n.11. This statement begs the question whether State and Uintah County officials may properly pull over Indians found within such rights-of-way, detain them, and turn them over to BIA police in order to ensure the safety of such rights-of-way. At a minimum, this statement in *Hicks* is a recognition that "State" law applies to State and County rights-of-way within Indian Country.

Also, in light of *Hicks*, Uintah County *must* at least have some authority within Indian Country. There, the Supreme Court assumed that a state has the "right to enter a reservation (including Indian fee-lands) for enforcement purposes," based in part on the fact that the law "does not interfere with the process of the State courts within the reservation" since "the reservation of state authority to serve process is necessary to 'prevent [such areas] from becoming an asylum for fugitives from justice.'" *Hicks*, 533 U.S. at 363–64. To hold that Uintah County has absolutely no criminal or civil authority within Indian Country is directly contrary to the Supreme Court's holding in *Hicks*. Nonetheless, the Tribe advocates this very

interpretation of *Ute III* and *Ute V*.

Moreover, *Plains Commerce* necessarily rejects any interpretation of *Ute V* that would provide the Tribe exclusive criminal and civil authority over lands originally allotted to Indians that have since passed into non-Indian owned fee status. *See Ute V*, 114 F.3d at 1529–31 (according to the Tribe's interpretation, lands allotted to individual Indians that have since passed into fee status are subject to the Tribe's exclusive *civil and criminal* jurisdiction). In *Plains Commerce*, the Supreme Court held that a non-Indian bank was not subject to tribal civil, adjudicative jurisdiction related to the bank's sale of fee land that it owned within the reservation. *Plains Commerce*, 554 U.S. at 320. The Supreme Court carefully considered the status of the land, finding that it was originally allotted to an individual Indian, had passed into fee status, and was alienated to a non-Indian who had mortgaged the fee land. *Id.* at 321, 331. Even though the owners of the fee land who had actually deeded the land over to the bank in lieu of foreclosure were tribal members, the Supreme Court determined that the tribe lacked civil, adjudicative jurisdiction over the subsequent sale because the sale implicated neither the tribe's sovereignty nor its ability to protect its internal relations and self-government. *Id.* at 331–40. The Supreme Court has also stated that "a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction." *Strate*, 520 U.S. at 453. Thus, if *Ute V* is interpreted as granting exclusive civil authority over nonmembers' activities within the exterior historic boundaries of the former Uintah Valley and Uncompahgre Reservations, as determined by *Ute V*, the decision would be in direct conflict with *Plains Commerce*.

Particularly where, as here, the Tenth Circuit's mandates, as interpreted by the Tribe, affect the potential imposition of broad prospective relief impacting inter-"sovereign" allocation of authority, the mandate must be corrected. *See Swift*, 286 U.S. at 114–15. Because both *Ute*

III and *Ute V* are in direct conflict with superseding Supreme Court precedent, the Tenth Circuit must recall its mandates.

3. Ute V *failed to contemplate critical areas, such as private non-Indian, SITLA, and BLM lands.*

As discussed *supra* Part II.B.1, *Ute V* did not adequately, or uniformly, address land within the historic boundaries of the former Uintah Valley and Uncompahgre Reservations owned by private non-Indians, the United States, or the State of Utah. Particularly, within the historic boundaries of the former Uncompahgre Reservation—excluding the Hill Creek Extension—this comprises almost all of the land within that area. (*See* Ex. 2, Uintah County Map.) Given the Tribe's status as a limited sovereign, *see Plains Commerce*, 554 U.S. at 327, land owned by the United States, *e.g.*, BLM-administered lands, and by the State of Utah, *e.g.*, SITLA lands, cannot be subject to the *exclusive* "jurisdiction" of the Tribe. Although the historical actions of the parties are inconsistent with such an interpretation, (*see, e.g.*, Ex. 52, United States Dep't of Interior, Grants of Rights-of-Way), the Tribe claims *Ute V* stands for the proposition that the United States and the State of Utah are wholly without "jurisdiction" *on lands they own*. Such lands cannot be subject to the Tribe's *exclusive* "jurisdiction," and *Ute III* and *Ute V*'s failure to address these categories of lands is another "extraordinary circumstance" demanding the Tenth Circuit recall its mandates.

4. Ute V*'s reliance on* Ute III*, and failure to follow other binding Tenth Circuit precedent was improper.*

Another "exceptional circumstance" here is that *Ute V* incorrectly accepted—in conclusory fashion—*Ute III*'s diminishment/disestablishment analysis of the historic Uncompahgre Reservation, despite Tenth Circuit and Supreme Court cases questioning the analysis and result of *Ute III*. In *Ute V*, the Tenth Circuit considered the effect of *Hagen* on *Ute*

III. *Ute V*, 114 F.3d at 1516 ("In this appeal, we decide whether to modify our judgment in [*Ute III*], after the time for rehearing has passed, in light of its conflict with a later, contrary decision of the Supreme Court."). The Tenth Circuit concluded that "*Hagen*'s only effect was to reduce (and not terminate) the boundaries of the Uintah Valley Reservation to the extent that lands within the Reservation were unallotted, opened for settlement under the 1902-1905 legislation, and not thereafter returned to tribal ownership." *Id.* at 1526. *Ute V* held that because *Hagen* addressed only the historic Uintah Valley Reservation, the court did not need to revisit *Ute III*'s determination as to the historic Uncompahgre Reservation. *Id.* at 1529.

Indeed, *Ute V* declined to revisit *Ute III*'s determination as to the historic Uncompahgre Reservation even though it acknowledged that *Hagen* directly contradicted *Ute III*'s analysis. *Ute V* acknowledged that *Hagen* held that the "'restoration of unallotted reservation lands to the public domain evidences a Congressional intent with respect to those lands inconsistent with the continuation of reservation status.'" *Id.* at 1528 (quoting *Hagen*, 510 U.S. at 414). On this point, *Hagen*, a Supreme Court case, directly contradicts *Ute III*'s conclusion that "'public domain' language standing alone is insufficient to support a finding of explicit Congressional intent to disestablish." *Ute III*, 773 F.2d at 1095 (holding that the "restore to the public domain" language "must be viewed as ambiguous in portent, especially since the change in the 1897 Act reveals Congress' preoccupation with title to the opened lands").

Ute V further held that even if the *Ute III* determination was "based on a misreading of the applicable legislation, such a misreading alone is not sufficient to justify departing from [the Tenth Circuit's] earlier judgment." *Ute V*, 114 F.3d at 1529. As such, the Tenth Circuit would not modify *Ute III* even "to correct a prior erroneous judgment." *Id.* Accordingly, *Ute V* wholesale adopted *Ute III*'s flawed reasoning and conclusion as to the historic Uncompahgre

Reservation.

Ute V is nothing more than the continuation of the flawed analysis and incorrect decision in *Ute III*. Indeed, the Supreme Court noted in *Hagen* that *Ute III* is "unexamined and unsupported," and is otherwise a complete outlier in that it is the "only case in which a Federal Court of Appeals decided that statutory restoration language did not terminate a reservation." *Hagen*, 510 U.S. at 414. *Hagen* also emphasized that until *Ute III*, "every court had decided that unallotted lands were restored to the public domain pursuant to the terms of the 1902 Act." *Id.* at 415.

Moreover, in effectively adopting *Ute III*'s flawed reasoning, *Ute V* completely ignores the intervening and binding Tenth Circuit precedent of *Pittsburg & Midway Coal Mining Co. v. Yazzie*, 909 F.2d 1387 (10th Cir. 1990). In *Yazzie*, the Tenth Circuit analyzed whether the phrases "restored to the public domain" and "opened to settlement and entry" required a finding that the Navajo Reservation had been diminished. *Id.* at 1398. *Yazzie* held that the phrase "restore to the public domain" was the operative language of the act; it evinced Congressional intent to diminish a reservation. *Id.* at 1398–99. In reaching this conclusion, *Yazzie* criticized *Ute III*'s holding that the "restoration to the public domain" language was ambiguous, in the context of the historic Uncompahgre Reservation. *Id.* at 1400.[35] The Tenth Circuit noted in *Yazzie* that *Ute III*'s analysis of this language as to the historic Uncompahgre Reservation was also undercut "by [the Tenth Circuit's] conflicting statement earlier in the same opinion that public domain language implies 'a wholesale diminishment of the Reservation.'" *Id.* at 1400.

[35] *Yazzie* attempts to distinguish *Ute III* on the basis that "the restoration language was not the operative language" of the 1894 and 1897 Acts. *Yazzie*, 909 F.2d at 1400. *Ute III*, however, characterizes the restoration language as "the 1894 Act's operative language." *Ute III*, 773 F.2d at 1091 n.3 (quoting 1894 Act language that "what portions of said reservation are unsuited or will not be required for allotments, and thereupon such portions so reported shall, by proclamation, be restored to the public domain and made subject to entry as hereinafter provided"). Thus, this basis for distinguishing *Ute III* cannot stand.

Yazzie concluded that *Ute III*'s interpretation of the public domain language in the context of the historic Uncompahgre Reservation was "unexamined and unsupported." *Id.* at 1404. Indeed, *Hagen* confirmed that *Yazzie* disavowed *Ute III*'s conclusion that language restoring "unallotted reservation lands to the public domain . . . did not terminate a reservation." *Hagen*, 510 U.S. at 414 (noting that *Ute III* is the only case "in which a Federal Court of Appeals decided that statutory restoration language did not terminate a reservation").

Ute V's continued reliance on *Ute III*'s flawed legal analysis, as explained by the United States Supreme Court and the Tenth Circuit, and failure to offer any basis as to why the Tenth Circuit was not bound by its own holding in *Yazzie* was improper. Certifying these issues, under these "exceptional circumstances," is proper.

B. THE TENTH CIRCUIT WRONGLY HELD THAT THE HISTORIC UNCOMPAHGRE RESERVATION HAS NOT BEEN DIMINISHED/DISESTABLISHED, CONTRARY TO *HAGEN*

As demonstrated above, the Tenth Circuit's decisions in *Ute III* and *Ute V*, holding that the historic Uncompahgre Reservation has not been diminished/disestablished is directly contrary to Supreme Court precedent, and must be recalled for several reasons. Uintah County does not undertake here to exhaustively analyze whether the historic Uncompahgre Reservation should be disestablished or diminished under the proper legal test in *Hagen*. However, substantial evidence exists that demonstrates both *Ute III*'s and *Ute V*'s holding that the historic Uncompahgre Reservation has not been diminished/disestablished are wrong. Such historical evidence and legal arguments have been adequately raised in other litigation, and Uintah County relies on those arguments here. (Uintah County's Blackhair "Jurisdictional" Memo, attached hereto as Exhibit 57.) By virtue of the fact that the Court cannot take action on the *Hagen* Court's disestablishment/diminishment analysis as applied to the historic Uncompahgre

Reservation under the mandate rule, *see Ute V*, 114 F.3d at 1520–21, 1531 (holding that the Tenth Circuit's ruling "left nothing for the district court to address beyond the 'ministerial dictates of the mandate'" such that "the case was no longer sub judice," leaving the Court without any power to alter the Tenth Circuit's mandate), Uintah County believes it unnecessary to make these arguments here—as they are more appropriately raised before the Tenth Circuit to consider when deciding whether to recall its prior mandates. If the Court desires further briefing on this issue, however, Uintah County will do so.

Therefore, in the alternative to Uintah County's motion for summary judgment, if the Court determines that it is bound by the Tribe's interpretation of the Tenth Circuit's mandates—and interprets that to mean that the Tribe has *exclusive* "criminal jurisdiction" and "civil jurisdiction" within Indian Country—then the Court should certify an interlocutory appeal to the Tenth Circuit to recall its mandates, and stay all proceedings in the interim.

CONCLUSION

For at least the reasons set forth above, the Court should grant Uintah County's Partial Motion for Summary Judgment as to the Tribe's Complaint for Declaratory and Injunctive Relief and Uintah County's Counterclaims; or, in the alternative, Uintah County's Motion to Certify Issues for Interlocutory Appeal Under 28 U.S.C. § 1292(b).

DATED this 14th day of February 2014.

G. Mark Thomas
UINTAH COUNTY ATTORNEY
Jonathan A. Stearmer
CHIEF DEPUTY UINTAH COUNTY ATTORNEY—CIVIL

RAY QUINNEY & NEBEKER P.C.

/s/ Greggory J. Savage
E. Blaine Rawson
Greggory J. Savage
Calvin R. Winder

Attorneys for Uintah County

1270147

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February, 2014, I electronically filed the foregoing **DEFENDANT UINTAH COUNTY'S (1) PARTIAL MOTION FOR SUMMARY JUDGMENT AS TO THE TRIBE'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND UINTAH COUNTY'S COUNTERCLAIMS; AND (2) ALTERNATIVE MOTION TO CERTIFY ISSUES FOR INTERLOCUTORY APPEAL UNDER 28 U.S.C. § 1292(B)** with the Clerk of Court using the CM/ECF system, which sent notification of such filing to the following:

J. Preston Stieff
J PRESTON STIEFF LAW OFFICES
136 East South Temple, Suite 2400
Salt Lake City, Utah 84111
jpslaw@qwestoffice.net

Jesse C Trentadue
Britton R. Butterfield
Noah M. Hoagland
Carl F. Huefner
SUITTER AXLAND
8 East Broadway, Suite 200
Salt Lake City, UT 84111
jesse32@sautah.com
nhoagland@sautah.com
chuefner@sautah.com
bbutterfield@sautah.com

Randy S. Hunter
Kyle J. Kaiser
Katharine Harsch Kinsman
UTAH ATTORNEY GENERAL'S OFFICE
160 East 300 South
Post Office Box 140857
Salt Lake City, UT 84114-0857
randyhunter@utah.gov
kkaiser@utah.gov
kkinsman@utah.gov

Steven Foote
DUCHESNE COUNTY ATTORNEY'S OFFICE
Post Office Box 346
Duchesne, UT 84021
sfoote@duchesne.utah.gov

Frances C. Bassett
Jeffery S. Rasmussen
Sandra L. Denton
Todd K. Gravelle
FREDERICKS PEEBLES & MORGAN LLP
1900 Plaza Drive
Louisville, CO 80027-2314
fbassett@ndnlaw.com
jrasmussen@ndnlaw.com
sdenton@ndnlaw.com
tgravelle@ndnlaw.com

D. Williams Ronnow
J. Craig Smith
SMITH HARTVIGSEN PLLC
175 South Main Street, Suite 300
Salt Lake City, UT 84111
bronnow@smithlawonline.com
jcsmith@smithlawonline.com

Grant H. Charles
ROOSEVELT CITY ATTORNEY
Post Office Box 1182
Duchesne, UT 84021
gcharles@duchesne.utah.gov

Amy F. Hugie
33 South Main, Suite 2A
Brigham City, UT 84302
amyhugie@xmission.com

Gina L. Allery
US DEPARTMENT OF JUSTICE (7611)
Post Office Box 7611
Ben Franklin Station
Washington, DC 20044
gina.allery@usdoj.gov

/s/ Pauline Langston

1270147