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

UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, UTAH Plaintiff, v. STATE OF UTAH, et al., Defendants.	**THE UTE TRIBE'S OBJECTION TO UINTAH COUNTY'S MOTION FOR PARTIAL SUMMARY JUDGMENT DOCUMENT 461** Consolidated Action Civil Case Nos. 2:75-cv-00408, 2:13-cv-00276 and 2:13-cv-01070 Senior Judge Bruce S. Jenkins

The Plaintiff Ute Indian Tribe of the Uintah and Ouray Indian Reservation ("Tribe" or "Ute Tribe") respectfully submits its opposition memorandum to Uintah County's motion for partial summary judgment, Dkt. 461.

INTRODUCTION

A "straw man" is a fallacious and exaggerated misrepresentation of an opponent's argument, a distortion of the argument that is more easily defeated than the opponent's actual argument.[1] An ad hominem is an attack on the opponent's character, often appealing to prejudice rather than intellect.[2] Uintah County's 84-page partial summary judgment motion consists almost entirely of one absurd straw man argument after another, interspersed liberally with ad hominems. Beyond that, the motion is a tedious polemic. Untethered to facts or controlling legal precedent, the motion drones on and on and on, the repetition stupefying at points. The County begins its legal argument with the grandiose assertion that *Ute III* and *Ute V* adjudicated only "one small piece" of a much larger puzzle, a puzzle that the County suggests has heretofore escaped the attention of the lesser legal minds who litigated and adjudicated *Ute Tribe v. Utah* for over a full quarter century. The County contends that only now—nearly 40 years after the case was commenced—has Uintah County's own current stellar-minded attorneys perceived "puzzle pieces" that lesser legal minds never before perceived or addressed. See Dkt. 461, p. 2. Not only is the County's premise highly insulting to the jurists and lawyers previously involved in the case, but the fallacy of the premise is laid

[1] See American Heritage New Dictionary of Cultural Literacy (2005 3rd ed.); see also https://yourlogicalfallacyis.com/strawman. (last visited 3/30/2013).

[2] See Collins English Dictionary, Complete & Unabridged (10th ed. 2009).

bare by the considered legal analyses in the *Ute I*, *Ute II*, *Ute III*, *Ute IV*, and *Ute V* decisions.

Like a narcissistic personality, Uintah County seems oblivious to what has brought the parties back into court. The Ute Tribe was forced to reopen this case in order to defend and enforce the holdings in *Ute III* and *Ute V*, together with the entire body of federal ***and*** state law that prohibits Uintah County from exercising criminal jurisdiction over Native Americans inside the U&O Reservation. Caught red-handed in the act of urging Utah state courts to ignore, and effectively vitiate, *Ute III* and *Ute V*, Uintah County has tried to "cover its own nakedness," to distract attention from its own illegal conduct by employing what illusionists call "smoke and mirrors," and what psychiatrists call "projection."[3] They do so by spinning forth a myriad of straw men to distract attention from their own illegal conduct that precipitated the need for federal court intervention in the first place. Without a shred of evidence to support most of its assertions, Uintah County variously alleges that the Tribe is asserting *exclusive* criminal *and* civil jurisdiction over *seventy percent* of Uintah County; that the Tribe is obstructing Uintah County's legitimate civil and criminal authority over public roadways; that the Tribe is interfering with the County's ability to perform search and rescue operations on ***tribal lands*** within the County; that the Tribe is asserting authority far beyond what federal law requires, etc., etc. Nearly all of Uintah County's myriad straw men arguments pose abstract and hypothetical legal questions that are unrelated to any

[3] See Psychology Of Hatred Part II: Projection & Projective Identification, Bernard Pliers, May 12, 2013. http://www.dailykos.com/story/2013/05/12/1187645/-Psychology-Of-Hatred-Part-II-Projection-Projective-Identification#. (last visited 3/30/3014).

existing justiciable controversy as required for Article III jurisdiction to exist. The few legal issues that are not straw man arguments, or wholly abstract and hypothetical, are issues that were fully, fairly, comprehensively, and conclusively adjudicated under *Ute III* and *Ute V*. Most of the County's factual assertions—if they can be called that—have already been refuted in the Tribe's Motion to Dismiss Uintah County's Second Amended Complaint, Dkts. 474 and 475, and the Tribe's Reply in Support of the Tribe's Motion for Partial Summary Judgment, Dkts. 501 and 502.[4] Nonetheless, because the Civil Rules of Procedure require it, the Tribe's attorneys will slog through Uintah County's full 84-page polemic and will respond to each straw man argument, one after another. Before doing that, however, the Tribe will set forth the Tribe's Statement of Additional Material Disputed Facts.

I. UTE TRIBE'S STATEMENT OF ADDITIONAL DISPUTED MATERIAL FACTS

1. The Ute Tribe does not obstruct Uintah County law enforcement's appropriate exercise of criminal authority. See Dkt. 475-8, Declaration of Raymond Wissiup; Dkt. 475-9, BIA Land Status Verification for lands where Uintah County Sheriff's Deputy Randy Nakai was illegally trespassing on tribal trust lands; and Dkt. 475-10, enlargement of Uintah County Transportation System Map C and C-1, showing that the lands were Deputy Nakai was parked are shown to be tribal lands even on Uintah County's own maps.

[4] The Tribe incorporates herein by reference the evidence and arguments that are contained in Dkts. 474, 475, 501 and 502.

2. The Ute Tribe does not obstruct Uintah County's ability to perform search and rescue operations. See Dkt. 502-10, Declaration of Alvera Cesspooch; Dkt. 502-11, Declaration of Misty Bruns; and Dkt. 502-12, Declaration of Taygon Tanner.

3. The Ute Tribe is not exceeding its jurisdictional authority over Uintah County roads, nor over employees of the Uintah County Transportation Department. See Dkt. 502-1, Declaration of Obie Taveapont; Dkt. 502-2, Declaration of Johanna Jenkins; Dkt. 475-13, Certified Copy of BLM Master Title Plat for T11S, R19E, Salt Lake Meridian; Dkt. 475-14, enlargement of Dkt. 475-3, showing Section 13, T11S, R19E, Salt Lake Meridian, Dkt. 475-15, enlargement of Dkt. 475-3, showing Section 27, T4S, R1E, Uintah Special Meridian; Dkt. 475-16, enlargement of Dkt. 475-3, showing Section 10, T4S, R2E, Uintah Special Meridian.

4. The Ute Tribe is not exceeding its jurisdictional authority by temporarily taking into custody firearms that trespassers have carried onto tribal lands illegally. See Dkt. 502-2, Declaration of Johanna Jenkins; Dkt. 475-17, Tribal Ordinance 00-0001, TRESPASSING ON LANDS OF THE TRIBE – CIVIL PENALTIES.

5. The Ute Tribe is not applying its UTERO Ordinance to lands or individuals who are "wholly divorced" from the Tribe, as alleged by Uintah County. See Dkt. 418-6, Declaration of Gordon Howell, Chairman of the Ute Indian Tribal Business Committee; Dkt. 418-7, Declaration of Ronald J. Wopsock, Vice-Chairman of the Ute Indian Tribal Business Committee.

6. For its part, Uintah County provides no training to its law enforcement officers that would enable the officers to determine jurisdictional boundaries within

Uintah County. See Exhibit A, Deposition of Randy Nakai, p. 12:4-11; Exhibit B, Deposition of Mark Thomas, p. 24:7- 24.

7. In addition, Uintah County prosecutors do not verify state criminal jurisdiction before charging Native Americans for criminal offenses in Uintah County. See Exhibit B, Deposition of Mark Thomas, pp. 37:15-39:10, 40:2-9, 41:13-20, 51:20-52-18.

8. According to Uintah County Prosecutor G. Mark Thomas, Uintah County prosecutors do not "examine Indian jurisdiction or federal jurisdiction unless someone raises the issue." See Exhibit B, Deposition of Mark Thomas, p. 54-17-18.

II. RESPONSE TO UINTAH COUNTY'S STATEMENT OF FACTS

Background Facts

1. *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 Uintah County Sheriff Jeffrey Merrell's Decl., attached hereto as Exhibit 8, at ¶¶ 8–9.)*

RESPONSE: **Disputed.** The Tribe raises a running objection to Jeffrey Merrell's Declaration, Exhibit 1, under Evidence Rules 401 (relevancy), 403 (prejudice) 602 (lack of personal knowledge and/or foundation), 701, 702, 703, 704, 705 (lay and expert opinions) and 802 (hearsay). The Tribe further objects on the ground that Sheriff Merrell does not define the term "public roads" in his Declaration. Roads on tribal trust lands cannot be characterized as "public" unless the Tribe and the United States have approved a grant of easement under the requirements of 25 U.S.C. §§ 323-328. In open defiance of federal law, Uintah County has for some time been unilaterally and illegally designating roads inside the U&O Reservation as "County Roads," both by

posing signs on the ground and by depicting roads as "County Roads" on County maps.[5] The Tribe also objects to the statement on grounds the statement is immaterial to the legal issues raised in the Tribe's deliberately limited motion for partial summary judgment.

2. *Within that 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.)*

RESPONSE: **Disputed.** The Tribe objects on grounds of hearsay, relevancy, lack of foundation and authentication, and because the statement does not accurately reflect the information that is listed on the referenced website. In addition, the statement is immaterial to the legal issues raised in the Tribe's deliberately limited motion for partial summary judgment.

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.)*

RESPONSE: **Disputed.** The Tribe objects on grounds of hearsay, relevancy and lack of foundation and authentication, and on grounds the statement is immaterial to the legal issues raised in the Tribe's deliberately limited motion for partial summary judgment.

4. *Despite this, the Tribe claims to have exclusive civil and criminal jurisdiction over approximately seventy percent of Uintah County.*

[5] See Dkt. 502-1, Exhibit Z, Declaration of Obie Taveapont, ¶¶ 9-10; Dkt. 502-2, Declaration of Johanna Jenkins, ¶ 8.

RESPONSE: **Disputed.** The Tribe has never claimed exclusive civil and criminal jurisdiction over approximately seventy percent of Uintah County. The County's statement also mischaracterizes the legal issues before the Court under the Tribe's deliberately limited motion for partial summary judgment. .

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.*

RESPONSE: **Disputed.** This is a misrepresentation of the Tribe's position. Pursuant to 18 U.S.C. § 1151, the Tribe and the federal government have *exclusive* criminal jurisdiction over tribal members for misdemeanor and felony offenses committed on roadways inside the Tribe's reservation irrespective of whether the roadways are federal state or county.

6. *In this case, the Court is being asked to make determinations as to who—i.e., the Tribe, Uintah County, and/or the State of Utah—has jurisdiction in certain areas within Uintah County under specific circumstances.*

RESPONSE: **Disputed.** The foregoing statement does not accurately represent the facts or the law; in addition, the statement mischaracterizes the legal issues before the Court under the Tribe's deliberately limited motion for partial summary judgment.

7. *Although the Tribe believes the Ute Tribe decisions have conclusively resolved all jurisdictional issues within Uintah County, this is not the case. Currently, there exists a vital misunderstanding regarding jurisdiction that is harming Uintah County.*

RESPONSE: **Disputed.** The foregoing statement does not accurately represent the facts or controlling law and the statement is also immaterial to the issues raised by the Tribe's deliberately limited motion for partial summary judgment. As a matter of law the issue is *res judicata* based on the Tenth Circuit's ruling in *Ute V* that "the Tribe and the

federal government retain jurisdiction over all trust lands, the National Forest Lands, the Uncompahgre Reservation, and the three categories of non-trust lands that remain within the boundaries of the Uintah Valley Reservation. *The state and local defendants have jurisdiction over the fee lands removed from the Reservation under the 1902-1905 allotment legislation*." 114 F.3d 1513, 1530 (10th Cir. 1997) (emphasis added).

Prosecution of Keith Blackhair

Paragraphs 8 through 37 address Uintah County's prosecution of Ute tribal member Keith Blackhair for the 9/28/2009 assault on tribal member Ramos Ray Cesspooch within the exterior boundaries of the Uncompahgre Reservation. The Tribe's evidentiary objections and the Tribe's evidence to rebut Uintah County's claims that certain ostensibly material facts are in dispute is as follows:

The Tribe objects to paragraphs 8-14 and the exhibits that support those paragraphs—Uintah County Exhibits 6 and 7—on grounds of relevancy, lack of foundation and authentication, and hearsay.

The Tribe does not dispute or object to paragraphs 16-18.

The Tribe objects to paragraphs 19-22 and 25-31 and the exhibits that support those paragraphs—Uintah County Exhibits 12, 13, 14 and 17—on grounds of relevancy, lack of foundation and authentication, and hearsay.

The Tribe especially objects to, and disputes, Paragraphs 26-28 on grounds of relevancy, speculation, lack of foundation, and patent misstatements of applicable law. Paragraphs 26-28 consist of nothing more than "piling speculation upon speculation and

conjecture upon conjecture."[6] Based on the location where Mr. Cesspooch was found, Uintah County speculates in paragraph 26 that the federal government's prosecution of Mr. Blackhair "does not mean that Mr. Blackhair could not hypothetically have committed the same or a different crime in a *different location* based on the same underlying facts." (emphasis in original) This statement is oxymoronic—the "*same underlying facts*" necessarily includes the *location* of the assault. Moreover, the Tribe's additional evidence, submitted pursuant to DUCivR56-1(d), includes Uintah County's criminal information filed in *State v. Blackhair II*, which is based on the official report of Derek Nelson,[7] a statement that is before the Court.[8] It is clear from Mr. Nelson's report that Mr. Nelson has no information that the assault occurred anywhere other than the location where Mr. Cesspooch was found on the side of Eight Mile Flat Road in Township 9 South, Range 18 East, Salt Lake Meridian. Furthermore, that *entire* township and range is located *inside the boundaries of the Uncompahgre Reservation*, a fact that is recorded on the Master Plat for Township 9 South, Range 18 East, SLM, maintained by the U.S. Bureau of Land Management ("BLM"), a copy of which is included in the Tribe's Reply Appendix, Dkt. 502-4.

In paragraph 27 Uintah County goes on to speculate that Mr. Blackhair hypothetically could have assaulted Mr. Cesspooch on State-owned lands administered by the State of Utah School and Institutional Trust Lands Administration (SITLA) within Township 9 South, Range 18 East, SLM ("SITLA Lands). The County then erroneously postulates that if Mr. Cesspooch had been assaulted on SITLA lands, Mr. Blackhair

[6] *See E.I. DuPont DeNemours & Co. v. Cudd*, 176 F.2d 855 860 (10th Cir. 1949).
[7] See Dkt. 502-3, Exhibit BB.
[8] Uintah County Exhibit 10, Dkt. 429-2, pp. 45-47.

would be "subject to the criminal jurisdiction of the State and Uintah County." This is a misstatement of controlling federal law. Indian Country is defined in 18 U.S.C. § 1151 (a) to include all land "within the limits of any Indian reservation . . . notwithstanding the issuance of any patent, and including rights-of-way running through the reservation." Because the SITLA lands are within the Uncompahgre Reservation, the assault on Mr. Cesspooch is clearly subject to exclusive federal and tribal criminal jurisdiction, even if, piling speculation upon speculation, the assault hypothetically could have occurred on SITLA lands within the reservation.

In paragraph 28 Uintah County speculates even further that Mr. Blackhair could have been "*drinking and driving, which likely included driving on county roads across SITLA lands subject to state criminal jurisdiction*." Putting aside the sheer speculation embedded in this sentence, and also putting aside the fact that 18 U.S.C. § 1151 defines Indian Country to include "rights-of-way running through the reservation," UINTAH COUNTY IS *NOT* PROSECUTING MR. BLACKHAIR FOR *DRUNK DRIVING*, IT IS PROSECUTING HIM FOR *ASSAULT*—the same assault on Ramos Ray Cesspooch on 9/28/2009 that Mr. Blackhair was federally convicted of because the assault occurred "within Indian Country."

The Tribe objects to paragraphs 29-31, 33 and 35, and the exhibits supporting those paragraphs, on grounds of relevancy, lack of foundation, and hearsay.

Prosecution of Jaymoe Tapoof

Paragraphs 38 through 46 address Uintah County's prosecution of Ute tribal member Jaymoe Tapoof. In these paragraphs Uintah County seeks to contradict the County's own verbal and written admissions, both in court-filed pleadings and in

statements to Mr. Tapoof's undersigned counsel. In April 2013, the Uintah County prosecutor in *State v. Tapoof*,[9] called Mr. Tapoof's undersigned counsel. The prosecutor sought counsel's consent to Uintah County's motion to exceed the page limits in its legal memorandum objecting to Mr. Tapoof's motion to dismiss for lack of jurisdiction. The prosecutor explained that Uintah County planned to argue that the Tenth Circuit's rulings in *Ute III* and *Ute V* were "wrongly decided," and that Utah state courts were not obligated to follow *Ute III* and *Ute V*. The prosecutor made clear that Uintah County intended to relitigate the Tribe's reservation boundaries, and he said the County needed an over-length legal memorandum in order to do so.[10] In the County's subsequently filed motion to exceed page limits, Uintah County said:

> This case involves a deeply divided notion of jurisdiction, which will require a memorandum of *several hundred pages*. The Defendant, an apparent member of the Ute Indian Tribe, is charged with reckless driving *on the Uncompahgre Reservation*. *The State seeks to prove that it has jurisdiction in this area*. To show this, the State will need to make several arguments constituting roughly 50 pages. Additionally, the State will need to proffer over 400 exhibits. (emphasis added)

See Dkt. 502-7.[11] Despite these verbal and written admissions, Uintah County now wants the Court to believe that Uintah County is prosecuting Mr. Tapoof for an off-reservation offense. The Tribe's evidentiary objections and evidence to rebut the County's claims of a genuine factual dispute are as follows:

[9] Uintah County Justice Court, case no. 125902628.

[10] See Dkt. 155, Declaration of Frances C. Bassett, ¶ 11.

[11] Uintah County's Motion to Exceed Page Limits was filed on March 22, 2013. Before the County's opposition memorandum of "several hundred pages" could be filed, the Ute Tribe moved to reopen *Ute Tribe v. Utah*, and to enjoin Uintah County's various pending criminal prosecutions against Ute tribal members. See Dkts. 153 and 154.

38. *On November 23, 2012, Mr. Tapoof was traveling on U.S. 40—a main thoroughfare in the Uintah Basin. (Tapoof Arrest Report, attached hereto as Exhibit 20, at 3 (statement of BIA Officer Jason Webb).)*

RESPONSE: **DISPUTED**. Objections–hearsay, lack of foundation and authentication.[12] The Tribe and Mr. Tapoof dispute that Tapoof was travelling 105 miles per hour. There are three witnesses who will testify on Mr. Tapoof's behalf regarding the speed of the Tapoof vehicle at mile post no. 128.5 on US 40: (*i*) Mr. Tapoof himself, (*ii*) the passenger in the Tapoof vehicle, and (*iii*) the male prisoner in Deputy Lourneco's patrol car who observed the radar reading and the Tapoof vehicle at mile post no. 128.5. However, the threshold federal issue before this Court is not how fast Mr. Tapoof was driving, but rather, which tribunal has criminal jurisdiction to prosecute Mr. Tapoof. And on that issue there is no genuine issue of material fact. Uintah County itself acknowledges that it is prosecuting Mr. Tapoof "for speeding 105 mph in a 65 mph zone." The citation charges Mr. Tapoof with speeding "105 in a 65 zone," and it lists the location of the speeding violation as "SR-40 MP 128.5" and "Mile Post No. 128.5." That location is indisputably within the exterior boundaries of the Uncompahgre Reservation.[13]

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

RESPONSE: **DISPUTED**. Objections–hearsay, lack of foundation and authentication.

[12] The Tribe does not object to the admission of the citation issued to Mr. Tapoof, but the Tribe objects to the remainder of Uintah County Exhibit 20 and Exhibit 21 on the grounds cited above.
[13] See Dkt. 336-15, p.6.

40. *BIA Officer Jason Webb received this ATL, and observed a black vehicle traveling westbound on U.S. 40 at the intersection of U.S. 40 and State Route 88. (Id.)*

RESPONSE: **DISPUTED**. Objections–hearsay, lack of foundation and authentication. Even if BIA Officer Webb observed a black vehicle at the intersection of U.S. 40 and State Route 88, that location is within the interior boundary of the Uncompahgre Reservation. See Dkt. 502-8 and 502-9.

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 21.)*

RESPONSE: **DISPUTED**. Objections–hearsay, lack of foundation, and authentication.

42. *During this chase, Mr. Tapoof proceeded through approximately 2.1 miles of land that is outside the exterior boundaries of both the Uncompahgre and Uintah Valley Reservations—i.e., the area where 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 U.S. 40 traverses portions of T2S, R1E, Sections 13–14, 16, 21, 23–24 (Uinta Meridian). (See Tapoof Map.)*

RESPONSE: **DISPUTED**. Objections–hearsay, lack of foundation and authentication, and "speculation piled upon speculation." Not even the hearsay statements in the officers' reports make any reference to a traffic violation by Mr. Tapoof in the "Gilsonite Strip" or anywhere else outside the reservation boundaries.

43. *BIA Officer Webb identified the driver of the 2006 Black Mitsubishi Eclipse GT as Jaymoe Tapoof. (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. (Id.)*

RESPONSE: **DISPUTED**. Objections–hearsay, lack of foundation, and authentication.

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 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).)*

RESPONSE: **DISPUTED**. Objections–hearsay, lack of foundation, and authentication. As explained in the Tribe's response to paragraph 38, the paramount federal issue for this Court to decide is not the speed of the Tapoof vehicle at mile post no. 128.5, but rather, which tribunal has criminal jurisdiction to prosecute Mr. Tapoof for the alleged offense. And on that issue there is no genuine issue of material fact. Uintah County acknowledges that it is prosecuting Mr. Tapoof "for speeding 105 mph in a 65 mph zone." By the County's own admission, the location of the charged offense is US 40 at mile post no. 128.5, and that location is indisputably within the exterior boundary of the Uncompahgre Reservation. See Dkt. 336-15, 336-17 and 336-18. Therefore, the tribunal with jurisdiction to adjudicate the alleged offense is the Ute Indian Tribal Court. This does not mean that Uintah County lacks jurisdiction to prosecute Mr. Tapoof for an off-reservation traffic violation, i.e., within the Gilsonite Strip or elsewhere along US 40 outside of the reservation. But that is not what Uintah County is doing in *State v. Tapoof*. By the County's own admission, it is prosecuting Mr. Tapoof for reckless driving "*on the Uncompahgre Reservation*" and it is doing so in order to "*prove that it has jurisdiction in this area*." See Dkt. 502-7.

Paragraphs 47 through 86

Nearly all the statements in paragraphs are made in bad faith without a proper evidentiary basis. For this reason the Tribe will be seeking sanctions against both Uintah County and its attorneys under Rule 11 and Rule 56(h) for the Tribe's reasonable expenses and attorney's fees incurred in having to respond to paragraphs 47-86.

47. *The Tribe has interpreted the Ute Tribe decisions as granting exclusive civil and criminal jurisdiction within the exterior boundaries of the Uintah Valley and Uncompahgre Reservations. Under the Tribe's interpretation, this means that the State of Utah and Uintah County have no authority to patrol within Indian Country, even on state and/or county roads. (See Uintah County Sheriff Jeffrey Merrell's Decl., at ¶¶ 4–12.)*

RESPONSE: **DISPUTED**. This statement deliberately misstates the Tribe's position and is therefore made in bad faith. The Tribe has raised a running objection to Jeffrey Merrell's Declaration in its entirety on the grounds set forth in the Tribe's response to paragraph 1.

The Tribe reiterates its objections raised under 47 above to Uintah County's Statement of Background Facts, nos. 48-50 as well. The Tribe further objects to ¶¶ 48-50 on grounds of relevancy, hearsay, lack of foundation/personal knowledge and authentication, and "speculation piled upon speculation." There is no evidentiary basis for these statements, the statements are made in bad faith, and should be sanctioned under Rules 11 and 56(h).

Paragraphs 51 and 52 RESPONSE: **DISPUTED**. Objections–relevancy, hearsay, lack of foundation/personal knowledge and authentication, and "speculation piled upon speculation." Paragraphs 51 and 52 are based on the Declaration of Uintah

County Sheriff Deputy Randy Nakai, and Mr. Nakai's Declaration is the only evidence Uintah County was able to muster in support of its baseless claim that the Tribe has "interfered" with Uintah County's "legitimate law enforcement activities within Indian Country." Deputy Nakai describes an incident on May 30, 2013, in which tribal officers asked Nakai to leave tribal lands. In the interest of brevity, the Tribe incorporates by reference the discussion of this incident in the Tribe's motion to dismiss Uintah County's Second Amended Complaint and the evidence proffered in support of the Tribe's motion to dismiss.[14] As that discussion makes clear, Deputy Nakai was asked to leave tribal trust lands that are identified on the records of the Bureau of Indian Affairs as Indian Allotment No. 259A.[15] The land in question is even depicted as "Native American" lands on Uintah County's own highly flawed and suspect 2013 Uintah County Transportation System Map.[16] Thus there is no evidentiary basis for the County's statements of fact under paragraphs 51 and 52. For this reason, County and its attorneys should be sanctioned under Rules 11 and 56(h).

53. *The Tribe's extreme jurisdictional position has conveyed the (wrong) impression that the land within the exterior boundaries of the former Uintah Valley and Uncompahgre Reservations is a "safe haven" for the Tribe's members.*

RESPONSE: **DISPUTED**. Objections–relevancy, hearsay, lack of foundation/personal knowledge and authentication, and "speculation piled upon speculation." There is no evidentiary basis for this statement, the statement is made in bad faith and should be

[14] See Dkt. 474, ¶¶ 27-29, Dkt. 475-8.
[15] See Dkt. 475-G, BIA Land Status Verification dated February 4, 2014. The Tribe asks the Court to take judicial notice of the BIA Land Status Verification.
[16] Dkts. 475-3 and 475-4. Dkt. 475-10, enlarged section of Exhibit C, showing the intersection of 3750 South and 2500 East.

sanctioned under Rules 11 and 56(h). Lacking any evidentiary basis, the statement is nothing more than "piling speculation upon speculation, and conjecture upon conjecture."

54. *In the Tapoof case, relied on by the Tribe, Mr. Tapoof was observed traveling 105 mph in a 65 mph zone on a main public thoroughfare located on land clearly 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 knew to be tribal land. (Uintah County's Statement of Additional Facts, at ¶¶ 52–60.)*

RESPONSE: **DISPUTED**. Objections–relevancy, hearsay, lack of foundation and authentication, and "speculation piled upon speculation." There is no evidentiary basis for these statements, the statements are made in bad faith and should be sanctioned under Rules 11 and 56(h). In particular, there is no evidence that Mr. Tapoof knew the jurisdictional status of any of the lands described. Not only do these statements pile "speculation upon speculation, and conjecture upon conjecture," but the statement ignores the undisputed evidence that the location of Mr. Tapoof's alleged speeding offense, mile post no. 128.5 on U.S. 40, is within the Tribe's reservation boundary. The Tribe incorporates by reference its responses and objections under paragraphs 38-46 above.

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 public road 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.)*

RESPONSE: **DISPUTED**. The Tribe raises a running objection to Mr. Slaugh's Declaration, Exhibit 27, in its entirety under Evidence Rules 401, 403, 602, 701, 702, 703, 704 and 705. Uintah County did not identify Mr. Slaugh as an expert witness on

the boundaries of Indian Country, and there is no evidence to establish that Mr. Slaugh has the necessary lay or expert knowledge, training or expertise to opine on the jurisdictional status of lands in and the checkerboard area of the Uintah Valley Reservation.

56. *In response, the vehicle turned around, went past Deputy Slaugh—in the direction the vehicle initially came from—and attempted to elude Deputy Slaugh. The vehicle only stopped when it had pulled off the roadway 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 and smelled badly of alcohol. (Id. at ¶ 4.)*

RESPONSE: **DISPUTED**. Objections under Evidence Rules 401, 403, 602, 701, 702, 703, 704 and 705.

57. *Deputy Slaugh confirmed that the driver, Waylon Wash, had revoked driving privileges, was alcohol restricted, 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 an 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.)*

RESPONSE: **DISPUTED**. Objections–relevancy and inadmissible hearsay as to Mr. Wash's driving restrictions and blood alcohol levels. Objections under Rules 602, 701, 702, 703, 704 and 705 to Mr. Slaugh's assertion that an offense was committed "outside Indian Country" and that Mr. Wash "did not stop until within Indian Country." See Tribe's running objection under paragraph 55 above. Objections to Mark Thomas' Declaration, Exhibit 31, under Evidence Rules 401, 403, 602, 701, 702, 703, 704 and 705.

58. *The Tribe has reinforced this "safe haven" mentality by refusing to arrest/prosecute tribal members for any 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 driving under the influence. Rather, Officer Serawop only arrested Mr. Wash for the lesser offense of intoxication—the only offense that Officer Serawop personally observed. (Id. at ¶¶ 6–10.)

RESPONSE: **DISPUTED**. Objections under Evidence Rules 401, 403, 602, 701, 702, 703, 704 and 705. The Tribe specifically objects to Officer Serawop's hearsay statements in Mr. Slaugh's Declaration.

59. *The Tribe's unsupportable "jurisdictional" position also jeopardizes Uintah County's ability to "respond[] to medical calls or accidents which require immediate response to provide lifesaving actions to individuals." (See Uintah County Sheriff Jeffrey Merrell's Decl., at ¶ 15.)*

RESPONSE: **Disputed.** Objections–relevancy, hearsay, lack of foundation/personal knowledge and authentication, and "speculation piled upon speculation." There is no good faith basis for a statement that deliberately misstates the Tribe's position; the statement is made in bad faith and should be sanctioned under Rules 11 and 56(h). As indicated in the Tribe's response to paragraph 1, the Tribe objects to Jeffrey Merrell's Declaration, Exhibit 1, and the hearsay statements contained in the Declaration.

60. *On June 29, 2007, a wildfire that originated on the Tribe's land spread into the community of Farm Creek, located within Uintah County. (Keith Campbell Decl., attached hereto as Exhibit 25, at ¶¶ 4–5.) The wildfire resulted in the deaths of three individuals (non-Indians), prompting the emergency evacuation of all residents in the communities of Farm Creek and Whiterocks. (Id. at ¶¶ 6–7.) . . . the Ute Tribe Search and Rescue tried to obstruct 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.)*

RESPONSE: **DISPUTED**. Objections–Evidence Rules 401, 403, 602, 802, and "speculation piled upon speculation." As discussed in more detail below, this statement is premised entirely on half-truths, no-truths, and distortions of fact. Because Uintah County and its attorneys had available to them the whole truth concerning this incident, and because the statement is completely immaterial to the issues under the Tribe's limited motion for partial summary judgment, Uintah County and its attorneys should be sanctioned under Rules 11 and 56(h).

Paragraphs 60 relies on a single incident from almost seven years ago for its allegation that "*the Ute Tribe Search and Rescue tried to obstruct search and rescue operations in Uintah County*." The allegaton is based on half-truths and distortions of truth in the Declarations of Duchesne County Sheriff Travis Mitchell, Duchesne County Deputy David Boren, and Uintah County Deputy Keith Campbell. The Declarations make clear that a voluntary evacuation was being conducted of the reservation town of Whiterocks.[17] In the interest of brevity, the Tribe incorporates by reference the discussion of this incident in the Tribe's motion to dismiss Uintah County's Second Amended Complaint.[18] In addition, the Tribe has submitting counter-Declarations from Alvera Cesspooch and Misty Bruns, two tribal women who attended the meeting in question and were treated brusquely by Messrs. Mitchell, Boren and Campbell, perhaps

[17] It is clear from the 1997 Uintah Valley Indian Reservation Jurisdiction Map that the town of Whiterocks is located inside the Uintah Valley Reservation. In addition, the Tribe also asks the Court to take judicial notice of the 2010 Census data for Whiterocks which shows that 272 of the community's 289 residents are Native Americans:

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_DP05.

[18] See Dkt. 474, ¶ 30.

because the men had difficulty dealing with two tribal women functioning at the same professional level as themselves.[19]

Both Uintah County and Duchesne County resist working with the Tribe in emergency situations on tribal lands. The Tribe has submitted the Declaration of Taygon Tanner, a non-Indian who volunteers on the Ute Tribe's Search and Rescue Team.[20] Mr. Tanner describes a search and rescue operation on December 19, 2011, which Duchesne County conducted on tribal lands without notification to the Tribe. When Mr. Tanner learned of the operation, he was asked by the Tribe to proceed to the scene. In addition, because no notice had been provided to the Tribe, Mr. Tanner was asked to gather information, including vehicle license plates, and to ask individuals whether they had secured access permits from the Tribe before going onto tribal lands. Mr. Tanner stopped only three vehicles on tribal lands to ask if they had access permits. Based on his actions in stopping those three vehicles, Duchesne County Sheriff's Deputies went to Mr. Tanner's residence, arrested him, carted him off to jail, and charged him criminally for "unlawful detention"—that detention consisting of Mr. Tanner stopping three vehicles on tribal lands and asking the individuals in the vehicle ifr they had secured permission and/or access permits from the Tribe before going onto tribal lands. In his Declaration Mr. Tanner says that Duchesne County Sheriff Mitchell has the reputation of being a "bully" who believes "he can do whatever he wants on tribal lands," and someone who believes he doesn't "have to go through established protocols." Mr. Tanner further states that Sheriff Mitchell "operates in a vindictive

[19] See Dkts. 502-10 and 502-11.
[20] See Dkt. 502-12.

manner" against anyone such as Tanner, "who assists the Ute Indian Tribe" in any manner.

UINTAH COUNTY IS PROPERLY EXERCISING CRIMINAL AUTHORITY

Paragraphs 61-69. Objections–hearsay, lack of foundation and authentication, and "speculation piled upon speculation." Like many of the County's preceding paragraphs, paragraphs 61-69, are based on falsehoods, half-truths, and/or willful distortions of undisputed facts and established law. M. Scott Peck, a renowned psychiatrict, observed that a "*dedication to reality*" is essential for human health and discipline. He explained that:

> Superficially, this should be obvious. For truth is reality. That which is false is unreal. The more clearly we see the reality of the world, the better equipped we are to deal with the world. The less clearly we see the reality of the worLd—the more our minds are befuddled by falsehood, misperceptions and illusions—the less able we will be to determine correct courses of action and make wise decisions.[21]

Uintah County is dedicated not to facts and reality, but to denial and delusion. Although the Tenth Circuit ruled in 1985 and again in 1997 that the Uncompahgre Indian Reservation was never "disestablished nor diminished,"[22] Uintah County has refused to accept those holdings. Since the dismissal of this case in March 2000, the Board of Commissioners of Uintah County has approved and adopted various "Uintah County Transportation System" maps. The County's Maps for calendar years 2005, 2010, 2013 and 2014 have been submitted to the Court.[23] These maps and various other Uintah

[21] M Scott Peck, M.D., The Road Less Travelled, p. 44 (1978).
[22] *Ute III*, 773 F.2d at 1093, and *Ute V*, 114 F.3d at 1519.
[23] Dkt. 475-1, 475-2, 475-3, 475-4, 475-5, and 475-6.

County maps are posted on the County's website on the internet.[24] As shown by the 2005 and 2010 Maps, Uintah County has refused to depict—and to thereby *acknowledge*—the boundary of the Uncompahgre Reservation, a reservation that has been in continuous existence since 1882 under the holdings in *Ute III* and *Ute V*. Uintah County has gone even further in its 2013 and 2014 Transportation Maps, eliminating from those Maps any mention of "Indian Country" and eliminating altogether any reference to the Uintah and Ouray Indian Reservation within the land area of Uintah County.[25] The grey line that was used on the 2005 and 2010 maps to depict "Reservation Boundary" is used on the 2013 and 2014 maps to depict only the boundary between the Uintah Special Meridian and the Salt Lake Meridian. In effect, Uintah County has attempted to eliminate both the Uintah Valley Reservation and the Uncompahgre Reservation from the land area of Uintah County by the simple expedient of eliminating the reservation boundaries from its maps.

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. This is not the case.*

RESPONSE: **DISPUTED**. Uintah County insists that its actions and motivations are as pure as the driven snow. The truth says otherwise, as set forth above in all the Tribe's responses to preceding paragraphs, which responses are incorporated by reference.

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." (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.)*

[24] See http://www.co.uintah.ut.us/gis/gis.php.
[25] See Dkt. 475-3, 475-4, and 475-5.

RESPONSE: **DISPUTED**. Objections–hearsay, lack of foundation, and "speculation piled upon speculation." The Tribe incorporates its running objection to Sheriff Merrell's Declaration under paragraph one. It is only "impossible for all intents and purposes" to determine the jurisdictional status of lands in Uintah County when the County's law enforcement officers rely solely on Uintah County maps that have erased, eliminated, dreamed-away, and/or failed altogether to even acknowledge the Tribe's reservation boundaries.[26] So, here's a suggestion for Uintah County and Sheriff Merrell: Uintah County should begin using a map that *reflects reality*. Novel concept there. The Tribe has submitted to the Court a map that was prepared by the U.S. Department of Interior, Bureau of Indian Affairs, captioned "Land Status and Uintah and Ouray Indian Reservation Boundary Map."[27] On that map the reservation's exterior boundaries are depicted in black; the boundary line between the Uintah Valley and the Uncompahgre reservations is depicted in blue; the boundary line for Uintah County is depicted in orange; and the boundary line for Duchesne County is depicted in pink. The map depicts very clearly those areas of Uintah County that are within Indian Country and those areas that are not. The Tribe suggests that Uintah County and Sheriff Merrell begin using this map.

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.*

[26] Dkts. 475-3, 475-4 and 475-5.
[27] See Dkts. 475-6 and 475-7. The Tribe asks the Court to take judicial notice of the map.

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.)

RESPONSE: **DISPUTED**. Preliminarily, Uintah County should never have instituted felony charges against Ms. Jenkins without first verifying the primary federal issue of Indian country criminal jurisdiction. Further, it is undisputed that Ms. Jenkins' attorneys made Uintah County aware of the County's lack of jurisdiction on March 8, 2013, when Ms. Jenkins filed a motion to dismiss *State v. Jenkins* for lack of jurisdiction. See Dkt. 336-11. At that point, Uintah County had a decision to make: the correct and lawful decision would have been for Uintah County to concede its lack of jurisdiction, then and there, and to dismiss charges against Ms. Jenkins. But no, that is not what Uintah County did. Instead, Uintah County doubled-down and seized upon its illegal prosecution of Ms. Jenkins as a golden opportunity to relitigate the boundaries of the Tribe's Uncompahgre Reservation, and to do so behind the Tribe's back and in the Tribe's absence. The County filed a 57-page objection to Ms. Jenkins' motion to dismiss, and argued to a Utah state court that the Tenth Circuit rulings in *Ute III* and *Ute V* were "wrongly decided" and that Utah state courts are free to ignore and disregard the the rulings in *Ute III* and *Ute V*.[28] The County then persisted in illegally exercising criminal jurisdiction over Ms. Jenkins for another eight (8) months. When the County finally did dismiss charges against Ms. Jenkins for lack of jurisdiction—months after learning it lacked jurisdiction—the County dismissed the case without proper notice to Ms. Jenkins and her counsel; the County somehow secured an *ex parte* dismissal

[28] See Dkt. 336-12, pp. 3-16.

without prejudice from the Utah state court, just as the County three years earlier had obtained a dismissal without prejudice in *State v. Blackhair I* for lack of jurisdiction.[29]

This is what Uintah County does. When a Ute tribal member challenges Uintah County's lack of criminal jurisdiction over Indian Country offenses, the County obtains an *ex parte* dismissal of its criminal prosecutions without prejudice. This allows the County to then reinstitute the illegal prosecutions at a later, more opportune time. This is precisely what Uintah County did in *State v. Blackhair I*, and by virtue of the dismissal without prejudice in that case, Uintah County was able to reinstitute criminal assault charges against Mr. Blackhair two years later in *State v. Blackhair II*. Following this modus operandi, the *ex parte* dismissal without prejudice in *State v. Maria Jenkins I* will likewise allow Uintah County to institute a *State v. Maria Jenkins II* prosecution in another two or three years when the County thinks no one is watching. For this reason, the dismissal of *State v. Maria Jenkins I* emphatically is not moot, first and foremost because a dismissal without prejudice means the County's illegal prosecution of Ms. Jenkins is capable of repetition. Secondly, under the voluntary-cessation exception to the mootness doctrine, Uintah County cannot moot its illegal prosecution of Maria Jenkins by the simple expedient of dismissing the illegal prosecution long enough to render the issue moot, while at the same time preserving its ability to resume the illegal prosecution at a later date.[30]

68. *In the Blake Nez case, the crime was committed outside Indian Country. (See Blake Nez BIA Land Verification II, attached hereto as Exhibit 30.) Originally, the BIA land status verification had shown that the location was within Indian*

[29] See Dkt. 502-5 and 502-6; see also Dkt. 498-1, Declaration of Sandra Denton, Esq., ¶ 5.
[30] *See, e.g., City News & Novelty, Inc. v. City of Waukesha*, 531U.S. 278, 284 n. 1 (2001): *U.S. v. Seminole Nation of Okla.*, 321 F.3d 939, 943 (10th Cir. 2002).

> *Country, based on the address provided by the arresting officer. (See Blake Nez BIA Land Verification I, attached hereto as Exhibit 31; Blake Nez Letter, attached hereto as Exhibit 32.) 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 33, at ¶ 4.)*

RESPONSE: **DISPUTED**. Objections–hearsay, lack of foundation and authentication, "speculation piled upon speculation," half-truths and distortions of the truths. Uintah County wrongly implies that Mr. Nez's alleged offense indisputably occurred off-reservation and that any confusion concerning the location is due to errors at the Bureau of Indian Affairs. To counter this flagrant misrepresentation, the Tribe is submitting the written transcript from the jurisdictional hearing in *State v. Nez*.[31] The transcript makes clear that the arresting officer's reports listed two different locations for the alleged offense, the first location within Indian country, and the second, ostensibly "corrected" location, a location off the reservation. The transcript includes the following colloquy between the Uintah County Sheriff's Deputy who arrested Mr. Nez and Mr. Nez's counsel:

Q. (By Defense Counsel) The mobile device in your cruiser, is that different than the cruiser video that your cruiser has within it?

A. As far as the GPS Coordinates?

Q. Yes.

A. Yes.

Q. Okay. So which one do you work off of in determining whether you're within Indian country or not?

A. I use the land status map on my computer. The reason for that is because the GPS coordinates on my camera I have been told are inaccurate.[32]

[31] See Dkt. 502-13.
[32] See Dkt. 502-13, p. 13:1-12.

Q. Okay. And you put 200 North 6500 East?

A. Correct, ma'am.

Q. Because that's where the violation occurred, right?

A. Well, I made an error, ma'am. I apologize. I am human.

Q. Okay, so that's not where the violation occurred?

A. The violation occurred at 500 North 6500 East.

Q. Then why didn't you put that on Exhibit No. 1?

A. Well, I apologize, ma'am. I am human. I do make mistakes.

Q. Okay. So that's an error?

A. That's an error.[33]

Q. And the GPS coordinate, sir, you indicate that you wrote on the top of Exhibit No. 3 came from your mobile—what did you call it?

A. The land status map.

Q. Okay. And that's an electronic thing?

A. Yes, it's on my computer.

Q. Did you memorialize the GPS coordinates that you found in any way?

A. No. That's why I write them down.

Q. Okay. Are you able to make printouts from that mobile device?

A. I never have. I don't know.

Q. So you don't know if you can or not?

A. No.

Q. Okay. How do you know that your mobile device on your vehicle is accurate and what's on your camera is not?

A. County Attorney Mr. Thomas inquired about that one time because I used my camera per – or to put down my GPS coordinates. He sent me a letter back with a map saying, "These are the coordinates. These obviously are not correct." Ever since then I've had to use my land status map which has been correct to this point.

Q. And how do you know that, sir?

A. I don't.[34]

[33] Reply Appendix, Exhibit LL , p. 17:21 – p.18:11.
[34] Dkt. 502-13, p. 13:1-12.

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 offense outside Indian Country and fix its faulty map. (Id.; Blake Nez Letter.) Despite this, the Tribe continued to contend that Uintah County was without jurisdiction. And, eventually, the Uintah County Justice Court dismissed the charges against Mr. Nez for lack of 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 offense was committed within the State of Utah. (Blake Nez Hearing Minutes, attached hereto as Exhibit 34, at 2.)*

RESPONSE: **DISPUTED**. Objections–hearsay, lack of foundation and authentication, "speculation piled upon speculation," half-truths and distortions of the truths. See Tribe's Response to Paragraph 67 above.

THE TRIBE IS ASSERTING JURISDICTION BEYOND ITS PROPER AUTHORITY

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.*

RESPONSE: **DISPUTED**. There is no evidentiary basis for this statement and the statement is therefore made in bad faith and should be sanctioned under Rules 11 and 56(h).

THE TRIBE IS ACTING BEYOND ITS AUTHORITY BY IMPROPERLY ASSERTING AUTHORITY OVER ROADS AND COUNTY EMPLOYEES

71. On January 23, 2013, Jeff Ellis, a Uintah County Roads Department employee was sent to inspect a pipeline crossing located on a Uintah County road. (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 Ute Indian Tribe 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 Uintah County road, 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 in the area. (*Id.*) Later, on April 1, 2013, Mr. Ellis was returning to the area to replace the missing Uintah County road signs, when he observed a Ute Indian Tribe road closure sign on a Uintah County road. (*Id.* at ¶ 5.)

RESPONSE: **DISPUTED**. Objections–relevancy, hearsay, lack of foundation/personal knowledge and authentication, and "speculation piled upon speculation." The Tribe has a question for Uintah County: why are Uintah County road employees ostensibly "*inspecting*" an (oil/gas) "*pipeline crossing*" on tribal trust lands inside the Uncompahgre Reservation? In the interest of brevity, the Tribe incorporates by reference the discussion of this incident in the Tribe's motion to dismiss Uintah County's Second Amended Complaint and the evidence proffered in support of the Tribe's motion to dismiss.[35] As that discussion makes clear, the entire township and range where the incident occurred is within the boundaries of the Uncompahgre Reservation; indeed, the location is even depicted as "Native American lands" on Uintah County's own flawed and suspect 2013 and 2014 Uintah County Transportation System Maps. In addition, the Tribe has submitted a counter-Declaration from Obie Taveapont, the tribal Oil and Gas Compliance Officer who spoke with Messrs. Ellis and Slaugh on January 23, 2013.[36] Mr. Taveapont gives quite a different account of the encounter than the Uintah County employees.

Paragraphs 72-76 all describe incidents that occurred on tribal lands inside the Tribe's reservation boundaries when, according to Uintah County, the Ute Tribe "improperly asserted authority" over Uintah County employees and "improperly stopped non-Indians," and—horror of horrors--even "confiscated their personal property." RESPONSE: **DISPUTED**. Objections–relevancy, hearsay, lack of foundation/personal knowledge and authentication, and "speculation piled upon speculation."

[35] See Dkt. 474, ¶¶ 33-34, Dkts. 475-13, 475-14.
[36] See Dkt. 502-1, Declaration of Obie Taveapont.

In all but one of the incidents described the Tribe's officer on the scene was a self-possessed and professional tribal woman by the name of Johanna Jenkins. And boy oh boy, did Ms. Jenkins seem to send the male Declarants into apoplectic fits. The Tribe is submitting the Declarations of Tribal Compliance Officers Jenkins and Taveapont to show the Tribe's and the tribal officers' version of the encounters.[37] In addition, in the interest of brevity, the Tribe incorporates by reference the discussion of this incident in the Tribe's motion to dismiss Uintah County's Second Amended Complaint and the evidence the Tribe proffered in support of the Tribe's motion to dismiss.[38] Two factors must be emphasized. First, the declarations Uintah County obtained from its employees and from the individuals who were stopped by Mr. Taveapont and Ms. Jenkins are riddled with half-truths, non-truths, and distortions of the truth. And this is true notwithstanding that the whole truth was apparently known, or reasonably should have been known, to Uintah County and its attorneys. For instance, the Declaration procured by Uintah County from Mr. Anderton, Dkt. 462-43, pp. 27-29, fails to disclose that Uintah County Sheriff's Deputies where on the scene when Tribal Officer Johanna Jenkins took Mr. Anderton's rifles into custody. The County's Declarations also fail to disclose that when Mr. Anderton protested his rifles being taken into custody, the two Uintah County Sheriff's Deputies who were on present told Anderton there was nothing they could do because Mr. Anderton was on tribal lands without a valid access permit.[39] In addition, Uintah County and its attorneys use the

[37] See Dkt. 502-1 and 502-2.
[38] See Dkt. 474, ¶¶ 37, 46, 56-58, Dkt. 475-15, 475-16, 475-17.
[39] See Dkt. 502-2, Declaration of Johanna Jenkins, ¶ 7.

Anderton and Kettle (Dkt. 462-43, pp. 31-32) Declarations to suggest to this Court that the so-called "Chevron Pipeline Road" is a "public road" in Uintah County, concealing from the Court that the Chevron Pipeline Road is not, in fact, a public road, but a private access way that Cheveron leases from the Ute Tribe. See Ms. Jenkins' Declaration, Dkt. 502-2. Because of repeated trespasses from individuals like Messrs. Anderton and Kettle, Chevron has barricaded the road to prevent access. Id.

Paragraphs 72-76 are premised entirely on half-truths, non-truths and distortions of fact. Because the whole truth was available to Uintah County and its attorneys, and because this statement is completely immaterial to the issues under the Tribe's limited motion for partial summary judgment, the Tribe seeks sanctions from Uintah County and its attorneys under Rules 11 and 56(h).

Paragraphs 77-79 all describe incidents allegedly related to the Tribe's Ute Tribal Employment Rights Office ("UTERO). RESPONSE: **DISPUTED**. Objections– under Evidence Rules 401 (relevancy), 403 (prejudice) 602 (lack of personal knowledge and/or foundation), 701, 702, 703, 704, 705 (lay and expert opinions) and 802 (hearsay). In the interest of brevity, the Tribe adopts by reference the Declarations of the Tribe's Chairman Gordon Howell, and Vice-Chairman Ronald Wopsock and the evidentiary exhibits that the Tribe submitted on this same identical issue in the Tribe's Alternative Motion for Summary Judgment on Duchesne County's Counterclaim and Third-Party Complaint.[40] Because the statements under paragraphs 91-94 are completely immaterial to the issues under the Tribe's limited motion for partial summary

[40] See Dkts. 418-2, 418-3, 418-5, 418-6, Declaration of Gordon Howell, and Dkt. 418-7, Declaration of Ronald J. Wopsock.

judgment, the Tribe seeks sanctions from Uintah County and its attorneys under Rules 11 and 56(h).

Paragraphs 80-84 are intended to support Uintah County's assertion that the "Tribe is asserting authority over land far exceeding the holding in *Ute V*." In support of this assertion, the County has submitted to the Court a map that Uintah County says "depicts what the Tribe asserts is the boundaries of the Reservation." See Uintah County paragraph 81. This statement is completely devoid of truth. The Tribe has submitted the counter Declarations of Todd K. Gravelle, Esq., the attorney for the Ute Tribe who negotiated the Cooperative Agreement between the Ute Tribe and the State of Utah,[41] and Christopher L. Robideau, the Tribe's Acting Transportation Director and the individual who provided the map in question to the Utah Department of Transportation. Messrs. Gravelle and Robideau make clear that the map was never intended "to represent the land area covered by the Tribe's criminal or civil jurisdiction," nor was the map intended to represent that the Tribe has "continuous exclusive jurisdiction within the exterior boundaries of the Tribe's Reservation."[42] Because the statements under paragraphs 95-99 have no basis in fact and no evidentiary support, and because the matters under these paragraphs are completely immaterial to the issues under the Tribe's limited motion for partial summary judgment, the Tribe seeks sanctions from Uintah County and its attorneys under Rules 11 and 56(h).

Paragraphs 85-86 are intended to support Uintah County's assertion that the "Tribe is asserting authority over land in conflict with Supreme Court Precedent.

[41] See Dkt. 502-14, Declaration of Todd K. Gravelle, Esq.
[42] See Dkt. 502-15, Declaration of Christopher L. Robideau, ¶¶ 6-8.

RESPONSE: **Disputed.** The Tribe objects to Mark Thomas' Declaration, Exhibit 31, under Evidence Rules 401 (relevancy), 403 (prejudice) 602 (lack of personal knowledge and/or foundation), 701, 702, 703, 704, 705 (lay and expert opinions) and 802 (hearsay).

Uintah County's Statements of Additional Elements and Material Facts

Uintah County's so-called "Undisputed Material Facts, nos. 1 through 13, pp. xxxvi - xlv, are legal conclusions improperly couched as statements of fact and as such are **DISPUTED**. In addition, the Tribe objects to the County's continued and flagrant misstatements of the Tribe's legal positions.

More to the point, on March 27, 2014, the Tenth Circuit did something that neither District Court Judge Bruce Jenkins nor Judge Dee Benson has been willing to do to date: the Tenth Circuit issued an order enjoining the State of Utah and Wasatch County from prosecuting a Ute tribal member for traffic misdemeanors committed within the Tribe's Uintah Valley Reservation. In doing so, the Tenth Circuit said that the factors governing the issuance of injunctive relief "weigh in favor of granting the Tribe's request for injunction." Stated differently, after less than 24 hours review, the Tenth Circuit granted the Tribe's request for injunctive relief and it did so in a *single sentence*. See Exhibit C.

II. THE COURT SHOULD ENTER PARTIAL SUMMARY JUDGMENT ON THE TRIBE'S MOTION, DKT. 335, AND SHOULD DENY UINTAH COUNTY'S CROSS-MOTION FOR SUMMARY JUDGMENT

Uintah County suggests that, forty years after *Ute Tribe v. Utah* was filed, it only now has become the "task" of this court to determine "the appropriate allocation of 'jurisdiction,' both criminal *and* civil in nature, between Uintah County and the Tribe." See Dkt. 461, p. 2 (emphasis and quotation in original). The contention is specious. What Uintah County refuses to acknowledge is that under both federal and state law, it is the delineation of tribal-state boundaries that concomitantly delineates jurisdiction, both criminal and civil, between the Tribe and the State and its political subdivisions. Moreover, the delineation of tribal-state boundaries, and the concomitant allocation of jurisdiction, both criminal and civil, was precisely the controversy that *was* fully and conclusively adjudicated in *Ute III* and *Ute V*. Furthermore, the Tribe emphatically disputes that the five issues listed on pages 3, 9, 12, 16 and 18 of the Uintah County Response are issues that the Tribe and Uintah County "together" identified as points of disputes ripe for adjudication.[43] To the contrary, those five issues are issues that Uintah County *alone* identified as issues during the Court's forced sequestration of the parties' counsel at the hearing on June 24, 2013.

A. The Tenth Circuit Conclusively Adjudicated the Allocation of Criminal and Civil Jurisdiction Within Uintah County and That Precedent is Binding on This Court

Although Uintah County now feigns ignorance of the issues that were actually litigated in *Ute III* and *Ute V*, the Tenth Circuit itself was not ignorant of the issues that the Court was deciding. In *Ute V* the Tenth Circuit adjudicated the issue of state-tribal

[43] See Dkt. 461, p. 2.

jurisdiction by adopting and incorporating by reference the statutory definition of Indian county under 18 U.S.C. § 1151. In doing so, the Court specifically noted that Indian country includes "rights-of-way running through the reservation." *See Ute Indian Tribe v. Utah*, 114 F.3d at 1529. The Court then stated explicitly that:

> . . . the Tribe and the federal government retain jurisdiction over all trust lands, the National Forest Lands, the Uncompahgre Reservation, and the three categories of non-trust lands that remain within the boundaries of the Uintah Valley Reservation. The state and local defendants have jurisdiction over the fee lands removed from the Reservation under the 1902-1905 allotment legislation.

Id. at 1530. It is impossible to read *Ute V*, pp. 1529-30, and to then assert, as Uintah County does here, that the Tenth Circuit failed to consider and adjudicate jurisdictional authority over public roadways within the Uintah and Ouray Reservation. Not only did the Tenth Circuit considered the question expressly, but the Court properly deferred to the statutory definition of Indian country under 18 U.S.C. § 1151, noting that the Congressional definition specifically includes "rights-of-ways running through the reservation."

The Tenth Circuit's ruling in *Ute V* is consonant with the weight of authority. Other federal circuits and state courts have long recognized that state and county highways running through an Indian reservation remain part of the reservation and within the territorial jurisdiction of Indian tribes. *Rosebud Sioux Tribe v. State of South Dakota*, 900 F.2d 1164, 1174 (8th Cir. 1990)(absent tribal consent, South Dakota has no jurisdiction over public highways running through Indian lands in South Dakota) *United States v. Harvey*, 701 F.2d 800, 805 (9th Cir. 1983) (state traffic laws do not apply to Indians within Indian country), *rev'd on other grounds*, *United States v. Chapel*,

55 F.3d 1416 (9th Cir. 1995); *Ortez-Barraza v. United States*, 512 F.2d 1176 (9th Cir. 1975) (tribal police officer could investigate violations of state and federal law on roadways within Indian country); *Konaha v. Brown*, 131 F.2d 737 (7th Cir. 1942)(state of Wisconsin lacks jurisdiction to prosecute a tribal Indian for traffic offenses committed on a Wisconsin state highway); *State of Washington v. Pink*, 185 P.3d 634 (Wash. Ct. App. 2008) (roadway easement granted by Quinault Tribe did not eliminate tribal jurisdiction over tribal members for offenses committed on the roadway); *State of Wisconsin v. Webster*, 338 N.W.2d 474, 482-83 (Wis. 1983) (Wisconsin lacks criminal jurisdiction over tribal members for offenses arising on public highways located within Indian country); *Enriquez v. Superior Court, In and For Pima County*, 565 P.2d 522, 523 (Az. Ct. App. 1977)(easement for highway running through the reservation does not alter the Indian country status of the lands traversed by the highway); *Schantz v. White Lightning*, 231 N.W.2d 812, 816 (N.D. 1975) (state highways traversing an Indian reservation are within Indian country); *Signa v. Bailey*, 164 N.W.2d 886, 889-91 (Minn. 1969) (apart from compliance with process mandated by federal law, state has no criminal or civil jurisdiction over tribal members within Indian country); *In the Matter of Denetclaw*, 320 P.2d 697 (Ariz. 1958) (federal government's grant of roadway easement to State of Arizona did not affect the Indian country status of land encumbered by the easement).

For the sake of brevity, the Tribe incorporates by reference the legal arguments and authorities set forth in the Tribe's motion, Dkt. 335, together with arguments set forth in the Tribe other summary judgment responses filed today, Dkts. 530, 531 and

534, together with the legal arguments and authorities set forth under the Tribe's motion to dismiss Uintah County's Second Amended Complaint, Dkt. 474.

III. THE COURT SHOULD ENTER SUMMARY JUDGMENT IN THE TRIBE'S FAVOR ON ITS INJUNCTIVE RELIEF CLAIMS

On March 27, 2014, the Tenth Circuit did something that neither District Court Judge Bruce Jenkins nor Judge Dee Benson has been willing to do to date: the Tenth Circuit issued an order enjoining the State of Utah and Wasatch County from prosecuting a Ute tribal member for traffic misdemeanors committed within the Tribe's Uintah Valley Reservation. In doing so, the Tenth Circuit concluded that the factors governing the issuance of injunctive relief "weigh in favor of granting the Tribe's request for injunction." Stated differently, after less than 24 hours to review the issue, the Tenth Circuit granted the Tribe's request for injunctive relief and the Court did so in a *single sentence*. See Exhibit C. Beyond this observation, in the interest of brevity, the Tribe incorporates by reference the legal arguments and authorities set forth in the Tribe's motion, Dkt. 335, together with arguments set forth in the Tribe other summary judgment responses filed today, Dkts. 530, 531 and 534.

IV. THIS COURT SHOULD NOT CERTIFY ANY ISSUE DEFINED BY UINTAH COUNTY TO THE UNITED STATES COURT OF APPEALS.

In Section IV of its brief, Uintah County goes one step beyond its other incorrect arguments by asserting that because it refuses to accept the judgments and mandates from *Ute III* and *Ute V*, this Court should disrespectfully certify to the Court of Appeals the exact same issues which the Court of Appeals decided in *Ute V*.

Clearly this Court should not do that. It should instead follow the mandate that the Court of Appeals gave to this Court, and decide the limited issues on remand. *Ute*

Indian Tribe v. State of Utah, 935 F. Supp. 1473, 1517 (D. Utah 1996) (*Ute IV*) (holding that a district court's duty is to scrupulously apply the Court of Appeals decision).

1. Ute V is not internally inconsistent, and this Court cannot certify to a superior Court an issue premised upon the superior court's decision being wrong.

In Section IV.A.1 of its brief, Uintah County asserts that this Court should tell the Tenth Circuit that its decision in *Ute V* is "internally inconsistent" and that the Court of Appeals should therefore withdraw and modify that decision. Uintah County cites no precedent, and none exists, for a District Court to certify to a Court of Appeals that its mandate in the same case is wrong. The reason there is no precedent supporting the County's argument is that district courts are lower courts than circuit courts of appeal. District courts take the decision of the court of appeals and apply it, regardless of whether the district court thinks the decision is right or wrong.[44]

> The inferior court is bound by the decree as the law of the case; and must carry it into execution, according to the mandate. They cannot vary it, or examine it for any other purpose than execution; nor give any other or further relief; nor review it upon any matter decided on appeal, for error apparent; nor intermeddle with it, further than to settle so much as has been remanded. *Sibbald v. United States*, 37 U.S. (12 Pet.) 488, 492 (1838). Indeed, the rule has remained essentially unchanged in nearly one hundred and fifty years.

Ute Indian Tribe v. State of Utah, 935 F. Supp. 1473, 1517 (D. Utah 1996) (internal quotations omitted)

It would not even matter if *Ute V* were internally inconsistent. This Court is to apply it, not send it back to the Court of Appeals with a critique.

[44] Defendant's suggested rule that if a district court believes the court of appeals is wrong, it should send the case back up to the court of appeals and tells it to try again is not only disrespectful but unworkable. Most mandates with remands are issued precisely because the court of appeals and the district court reached contrary results.

Further, Uintah County's assertion that *Ute V* is internally inconsistent is actually based upon the same argument that it presented in *Ute V* and that the Court of Appeals expressly rejected in 1997. In *Ute V*, the State and aligned parties argued that *Ute III* was inconsistent with *Hagen*, and that the Court of Appeals therefore was required to withdraw its mandate from *Ute III*. The Court of Appeals explained in great detail the limited degree to which Ute III was inconsistent with Hagen, and why it was therefore making only a limited modification of its prior mandate. The Court of Appeals discussed its prior mandate, the great importance of finality and of respect for judgments, and the specific and unique factual and procedural posture presented to it. It then held:

> [The general rule respecting finality] is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination. [Finality's] enforcement is essential to the maintenance of social order; for the aid of judicial tribunals would not be invoked for the vindication of rights of person and property if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue, and actually determined by them.

Ute V, 114 F.3d at 1524 (quoting *Southern Pac. Ry. Co. v. United States*, 168 U.S. 1, 49 (1897)). The purpose of finality is to protect "litigants from burdensome relitigation" and to promote "judicial economy" where parties have already had an opportunity to fully and fairly litigate contested matters. *Id*. (quoting *United States v. Stauffer Chem. Co.*, 464 U.S. 165, 172 (1984). Based upon this rule of law, the *Ute V* court did not overturn the entire decision in *Ute III*. *Id.* The court left *Ute III* untouched with respect to non-*Hagen* matters, stating "finality requires those decisions to remain undisturbed" and modifying *Ute III* "only to the extent that it directly conflicts with the holding in Hagen." *Id*.

The Court of Appeals provided a detailed analysis of the distinction, which all of the State defendants profess to not understand, between judgments and mandates on the one hand and precedential authority on the other. *See also Ute IV* at 1513 ("At least as to parties with whom the State has litigated and lost, the State is not free to litigate the same issue arising under virtually identical facts against the same party over and over again until it obtains a more favorable result.") (Internal quotations omitted).

The alleged "internal inconsistency" that Uintah County claims to see derives from that distinction. It is not inconsistency. It is proper application of the rule against perpetual relitigation by losing parties, and, as relevant to the current matter, it is the application of the rule regarding judgments and mandates which the Tenth Circuit made in this case and applied to its own prior mandate from *Ute III*. It must be followed, regardless of whether Uintah County or other parties aligned with the State respect the Tenth Circuit or its decisions.

2. Alleged inconsistency between *Ute V* and later Supreme Court cases is not a basis for certification of an interlocutory appeal.

Uintah County next asserts that this Court should certify to the Tenth Circuit that its prior decision is inconsistent with three "*Montana* Rule" cases (based upon *Montana v. United States*, 450 U.S. 544 (1981)). *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Nevada v. Hicks*, 533 U.S. 353 (2001); *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008).

As discussed in detail above and as briefly summarized below, there is no inconsistency related to any issues presented by the facts of this case. But even if we assumed, arguendo, that there was inconsistency, such inconsistency would be

immaterial. *Ute V.* Judgments and mandates are not recalled based upon inconsistency with later precedential authority. And as this Court itself has noted, "The State of Utah and indeed, the city and county defendants, routinely enjoy the benefit of the constraints imposed on the operation of *stare decisis* by considerations of finality—the idea that after final judgment, a new rule cannot reopen the door already closed. *Ute IV* at 1511 (internal quotations omitted.). The rule applies to all parties equally, and the State and aligned parties need to accept the rule even when they are the ones who want to reopen a closed door.

Additionally, there is no inconsistency between *Ute V* and the three *Montana* Rule cases that is presented under the facts of this case. The three "*Montana* Rule" cases all relate to tribal court jurisdiction over non-Indians, not state jurisdiction over Indians. They do not overrule or alter the United States Supreme Court's holdings that states cannot prosecute tribal members for on-Reservation offenses. *E.g.*, *United States v. John*, 437 U.S. 634 (1978); *DeCoteau v. District County Court*, 420 U.S. 425, 427 n.2 (1975)(in a non-Public Law 280 state, jurisdiction for offenses on the reservation "is in the tribe and the Federal Government"); *Williams v. United States*, 327 U.S. 711, 714 (1946) ("the laws and courts of the United States, rather than those of Arizona, have jurisdiction over offenses committed" on an Indian Reservation); *Donnelly v. United States*, 228 U.S. 243, 271-72 (1913).

3. Ute V did not fail to contemplate critical areas, such as private non-Indian, SITLA and BLM lands.

Uintah County's argument in section IV.A.3 of its brief is suffers from the same flaw as its argument in section IV.A.1 of its brief: this Court cannot certify to the Court of

Appeals that its prior decision was wrong. Moreover, the County is wrong—the Court of appeals did "contemplate" its decision, and it issued a decision which covered each of the areas discussed by the County. The County just does not like the decision the Court of Appeals issued. The Court of Appeals held that because the Uncompahgre Reservation was undiminished, it was like every other undiminished reservation in this country—the land within its exterior boundaries was reservation.[45]

4. This Court cannot certify the question of whether Ute V wrongly relied on Ute III or wrongly failed to follow other Circuit precedent.

The County's argument in section IV.A.4 of its brief is legally indistinguishable from its argument in section IV.A.1, discussed above. It asks this Court to certify to the Court of Appeals that *Ute V* was wrong, and, as discussed above this Court cannot certify that issue. And, of course, the Tenth Circuit in Ute V provided a detailed explanation of the extent to which it would modify Ute III and why its decision was consistent with not only Tenth Circuit cases but United States Supreme Court cases.

5. This Court cannot certify to the Tenth Circuit the issue of whether the Tenth Circuit wrongly held that Uncompahgre Reservation had not been disestablished.

In Section IV.B of its brief, the County directly asks this Court to certify to the Court of Appeals an issue of whether the Tenth Circuit was wrong on core decisions from *Ute III* (that the Uncompahgre Reservation had not been disestablished or

[45] Inexplicably, on page 35 of its brief, the County makes an argument premised upon its assertion that the Tribe's claims that the United States lacks jurisdiction on the Uncompahgre Reservation. In response to Defendants' numerous prior attempts to set up that straw man argument, the Tribe has repeatedly written that it does not assert exclusive jurisdiction, and that in fact the Tribe asserts that it and the United States both have jurisdiction, but that the State lacks jurisdiction.

diminished and from *Ute V* (that the judgment and mandate regarding the Uncompahgre Reservation could not be withdrawn). As discussed in section IV.A of this brief, this Court cannot certify that issue. The Court is required to accept that the Tenth Circuit's decision was right, and as also discussed above, the Tenth Circuit's decision regarding the Uncompahgre Reservation was right.

CONCLUSION

WHEREFORE, based on the reasons and authorities cited herein, the Tribe requests that the Court DENY Uintah County's Motion.

Respectfully submitted this 31st day of March, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of March, 2014, I electronically filed the foregoing **THE UTE TRIBE'S OBJECTION TO UINTAH COUNTY'S MOTION FOR PARTIAL SUMMARY JUDGMENT DOCUMENT 461,** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to all parties of record as follows:

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