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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

<p>Lynn D. Becker,</p> <p>Plaintiff,</p> <p>vs.</p> <p>Ute Indian Tribe of the Uintah and Ouray Reservation, a federally chartered corporation; Ute Indian Tribe of the Uintah and Ouray Reservation, a federally recognized Indian tribe; the Uintah and Ouray Tribal Business Committee, and Ute Energy Holdings, LLC, a Delaware LLC,</p> <p>Defendants</p>	<p>BECKER'S OPPOSITION TO DEFENDANTS' JANUARY 11, 2018 MOTIONS (DKTS 73 – 78)</p> <p>Civil No. 2:16-cv-958</p> <p>Judge Clark Waddoups</p>
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This is Becker's opposition to the Tribes' motions filed in this action on January 11, 2018 (Dkts 73 – 78) ("January Motions").

These January Motions are virtually identical to the Tribe's motions filed in the Companion Case (Civil No. 2:16-cv-579) on December 7, 2017 ("Companion Case Motions").¹ Except for adapting the Companion Case Motions to the procedural posture

¹ It is unclear why motions about the State Court Action were re-filed in this action, which is about the Tribal Court Action. The upshot of the January Motions, however, is to stop the State Court Action.

of this case (e.g., reversing the roles of plaintiff and defendant), the January Motions literally are cut and pasted from the Companion Case Motions.

Like the Companion Case, this action consists of a claim based upon this Court's original (Section 1331) jurisdiction, with the remainder based upon this Court's Section 1367 supplemental jurisdiction.

As in the Companion Case, this Court should decline to exercise supplemental jurisdiction in this action. As in the Companion Case, this Court should retain jurisdiction until the non-federal (tribal and state) actions are resolved, including appeals.

As requested in Becker's pending motion for preliminary injunction (Dkt 70), this Court, in exercise of its original jurisdiction, should preliminarily enjoin the Tribe from pursuing the Tribal Court Action pursuant to this Court's original jurisdiction.

BACKGROUND

Given that these January Motions are virtually identical to the Companion Case Motions, and that the Tribe requested that the Court include one (Dkt 75) of the these January Motions in the January 17 hearing in the Companion Case,² and that the Tenth Circuit adopted into its decision in this case the Tenth Circuit's decision in the Companion Case,³ Becker incorporates by reference the relevant proceedings, filings⁴ and transcript of oral ruling⁵ in the Companion Case.

² Companion Case, Dkt 78.

³ "To resolve the remaining issues in this case, we adopt our decision in the companion case...."

⁴ Companion Case, Dkts 52 – 70.

⁵ A transcript of the Court's oral ruling is attached as Exhibit A.

ARGUMENT

On the appeal of this action, the Tenth Circuit ruled that this Court has original Section 1331 jurisdiction of Becker's claim.⁶ On the appeal of the Companion Case, the Tenth Circuit also ruled that this Court has original jurisdiction of one claim.

This Court ruled on January 17, 2018 that all of the other claims that the Utes asserted in the Companion Case are supplemental, and declined to exercise supplemental jurisdiction of those supplemental claims in the Companion Case.

The Tribe is asserting those same claims, issues and defenses in the Tribe's counterclaims and the January Motions in this action. For example, the January Motions and the Tribe's counterclaims in this action assert claims, issues and defenses regarding tribal sovereign immunity, lack of state court jurisdiction, *Younger* abstention, the Anti-Injunction Act and comity. For the same reasons that this Court declined to exercise supplemental federal jurisdiction in the Companion Case so that the State Court Action can proceed, this Court should decline to exercise supplemental jurisdiction in this action to allow the State Court Action to proceed.

As to the Tribal Court Action, the issues unique to the Tribal Court are addressed in Becker's pending Motion for Preliminary Injunction in this action.

CONCLUSION

Becker respectfully requests that the Court decline to exercise supplemental jurisdiction in this action, and that the Court promptly issue a preliminary injunction

6 “[W]hether a tribal court has adjudicative authority over nonmembers is a federal question” (quoting *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 324 (2008)). Hence, the federal district court had jurisdiction to hear the present dispute.... The Tribe's claim that exhaustion is required is not a matter of jurisdiction.” *Becker v. Ute Indian Tribe*, 868 F.3e 1199, 1203 (10th Cir. 2017).

enjoining the Utes from proceeding with the Tribal Court Action.

Date: January 23, 2018

ISOM LAW FIRM PLLC

/s/ David K. Isom

David K. Isom

Attorney for Plaintiff Lynn D. Becker

CERTIFICATE OF SERVICE

The undersigned certifies that on this 23rd day of January, 2018, the foregoing was served on all attorneys of record through the Court's electronic filing system.

/s/ David K. Isom
