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**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

UTE INDIAN TRIBE OF THE UINTAH &
OURAY RESERVATION,

Plaintiff,

v.

GREGORY D. MCKEE, T & L
LIVESTOCK, INC., MCKEE FARMS, INC,
AND GM FERTILIZER, INC.,

Defendants.

Civil Case No. _____

**COMPLAINT FOR RECOGNITION, REGISTRATION, AND ENFORCEMENT
OF TRIBAL COURT JUDGMENT AND WRIT OF EXECUTION**

Plaintiff, UTE INDIAN TRIBE OF THE UINTAH AND OURAY INDIAN RESERVATION (“TRIBE”), for recognition, registration, and enforcement of its Ute Indian tribal court judgment against Defendants, GREGORY D. MCKEE, T & L LIVESTOCK, INC., MCKEE FARMS, INC., AND GM FERTILIZER, INC. (“Defendants”), alleges as follows:

I. GENERAL NATURE OF THE ACTION

1. This is an action to recognize, register, and enforce a tribal court money judgment under principles of comity. In an analysis that has been repeatedly relied on by the Tenth Circuit, the Ninth Circuit held that, “[i]n synthesizing the traditional elements of comity with the special requirements of Indian law, we conclude that, as a general principle, federal courts should recognize and enforce tribal judgments.” *Wilson v. Marchington*, 127 F.3d 805, 810 (9th Cir. 1997).

II. PARTIES

2. Plaintiff, the Ute Indian Tribe of the Uintah and Ouray Reservation, is a federally recognized, sovereign Indian tribe, organized under a Constitution approved by the Secretary of the Interior under the Indian Reorganization Act of 1934, 25 U.S.C. § 476, 81 Fed. Reg. 5019 (Jan. 29, 2016).

3. Defendant GREGORY D. MCKEE is an adult citizen of the State of Utah, with his principle residence at 8215 E. 8750 N., Tridell, Utah 84076.

4. Defendant T & L LIVESTOCK, INC. is a corporation organized and existing under the laws of Utah, with its principal place of business located at 8800 N. 8651 E., Roosevelt, UT 84066.

5. Defendant MCKEE FARMS, INC. is a corporation organized and existing under the laws of Utah, with its principal place of business located at 8800 N. 8651 E., Roosevelt, UT 84066.

6. Defendant GM FERTILIZER, INC. is a corporation organized and existing under the laws of Utah, with its principal place of business located at 8800 N. 8651 E., Roosevelt, UT 84066.

III. JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C.A. § 1331 because the facts and claims made in this suit relate to the recovery of damages for the “Misappropriation, Theft and/or Conversion of” water from a federally managed irrigation project held by the federal government in trust for and guaranteed to the Plaintiff. Such claims are grounded in a federal property right to the water, and also the Federal Government’s subsequent guarantees of those rights. *Onieda Indian Nation of N.Y. v. Onieda County, New York*, 414 U.S. 661, 682-84, 785-86 (1974) (Opinion by J. White; Rehnquist concurring); *Franchise Tax Bd. of State of Cal. v. Construction Laborers*, 463 U.S. 1, 23 fn. 25(1983) (*Onieda* case stands for the proposition that a property-related suit “based on Indian title is within the original ‘federal question’ jurisdiction of the district courts, because Indian title creates a federal possessory right to tribal lands, ‘wholly apart from the application of state law principles which normally and separately protect a valid right of possession.’”).

8. The waters *sub judice* were guaranteed to the Ute Indian Tribe by the federal government when it set aside the Uintah and Ouray Reservation for the Tribe. Executive Order on October 31, 1861, confirmed by Congress in the Act of May 5, 1864, § 2, 13 Stat. 63; Act of June 15, 1880 (ch. 223, 21 Stat. 1999); the Executive Order of January 5, 1882.; The Act of June 21, 1906, 34 Stat. 325.

9. The specific waters at issue were taken from the Uintah Indian Irrigation Project, a federal irrigation project under exclusive federal management over which the federal government assumed a trust responsibility to preserve for the Tribe. The Act of June 21, 1906, 34 Stat. 325.

10. Numerous other federal laws establish the federal government's trust responsibility for preserving these waters for use by the tribe, and the federal government's pervasive, comprehensive, and exclusive control of these waters. The Act of March 1, 1899, 30 Stat. 941; The Department of Appropriation Act of March 3, 35 Stat. 811 (1909); The *Cedarview Irrigation Company*, no. 4427, slip op. (D. Utah 1923) and *Dry Gulch Irrigation Company*, No. 4418, slip op. (D. Utah 1923), Decrees in Equity No. 4423 & 4418 (March 16, 1923); 22 Fed. Reg. 10479 (Dec. 24, 1957); The Act of May 28, 1941, 77 Cong. Chpt. 141, 55 Stat. 209; The Agreement between the Ute Tribe, the United States, and the Central Utah Water Conservancy District, dated September 20, 1965; National Historic Preservation Act of 1966 (NHPA; Public Law 89-665; 54 U.S.C. 300101 et seq.); The Central Utah Project Completion Act, P.L. 102-575 (1992); The Cost-Sharing Agreement between the United States and the Central Utah Water Conservancy District, dated August 11, 1993; Cooperative Agreement between the United States of America and the Uintah Indian Irrigation Project Operation and Maintenance Company, dated October 1, 2000; 25 C.F.R. Part 171.

11. In sum, several facts support the existence of federal question jurisdiction in this Court:

- a. The water taken by the Defendants was held by the federal government in trust for the Ute Indian Tribe;
- b. Numerous acts, regulations, agreements, and cases establish and confirm the federal government's trust responsibility to protect, preserve, and manage these specific waters for the Ute Indian Tribe.
- c. Numerous acts, regulations, agreements, and cases establish and confirm the federal government's pervasive, comprehensive and exclusive trust responsibility to management and control the specific waters taken by the Defendants.

12. Venue lies in the District of Utah, the judicial district in which the claim arose, and in which all Defendants reside. 28 U.S.C.A. § 1391.

IV. STATEMENT OF FACTS

13. Tribe sued Defendants for "Misappropriation, Theft and/or Conversion of Water" in tribal court. A copy of the operative complaint is attached as Exhibit A, and incorporated by reference.

14. The Ute Tribal Court has adopted rules of civil and appellate procedure, and rules of evidence. Parties before the Court are provided notice, and an opportunity to present evidence and witnesses. Parties before the Court are also provided an opportunity to contest opposing evidence and cross-examine opposing witnesses.

15. Service of Process was made on all Defendants. Certified copies of the returns are attached as Exhibits B, C, D, and E. Plaintiff incorporates Exhibits B, C, D, and E by reference.

16. Defendants filed an answer to the Amended Complaint. A certified copy of Defendants' answer is attached as Exhibit F, and incorporated by reference.

17. The Ute Indian Tribal Court held a trial on the matter on July 13, 2015. A transcript of the trial proceedings is attached as Exhibit K, and incorporated by reference. Despite having filed an answer and receiving notice of the trial, Defendants did not participate in the trial. A certified copy of the notice of the trial date is attached as Exhibit H, and incorporated by reference. A certified copy of the Court's Findings and Fact and Conclusions of Law is attached as Exhibit I, and incorporated by reference.

18. The court later entered a Final Judgment for Damages and Permanent Injunction on Sept. 29, 2015. A certified copy of the Court's final judgment is attached as Exhibit J, and incorporated by reference.

19. The judgment was entered on *August 3, 2015*, and no appeal has been taken from it. No payment on account of the judgment has ever been made, nor has a *supersedeas* bond been posted to stay enforcement of the judgment. The deadline for filing a notice of appeal has expired. The judgment is final, conclusive, and enforceable in the Ute court.

20. The Ute Tribal Court had subject matter jurisdiction pursuant to the Tribe's inherent sovereign right to regulate activities of all non-Indians who willingly enter into a consensual relationship with the Tribe or its members, or whose activities upon tribal lands imperil the Tribe's political integrity, economic security, or health and welfare. *Montana v. United States*, 450 U.S. 544 (1981). The Tribal Court also had subject matter jurisdiction based on the Tribe's inherent sovereign right to (i) manage the use of its

territory and natural resources by both tribal members and nonmembers, see *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 335-36 (1983), and (ii) to exclude nonmembers from the Tribe's lands and waters, including the irrigation ditches and canals that transport tribal waters. See *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 811-14 (9th Cir. 2011).

21. The Ute Tribal Court has personal jurisdiction over the Defendants pursuant to the Defendants' presence on Ute lands, causing harm to Ute assets, and their voluntary appearance in tribal court.

22. Venue was proper in the Ute Court because the illegal activities undertaken by the Defendants occurred on tribal land within the boundaries of the Tribe's reservation, and the Defendant's entered into a consensual relationship with tribal member Frank Arrowchis.

23. All conditions precedent to the initiation and maintenance of this action have been satisfied or otherwise occurred.

WHEREFORE, Plaintiff asks this court for the following relief:

A finding that the Ute Tribal Court Judgment is entitled to recognition, registration, and enforcement in accordance with federal law;

An order recognizing, registering, and making enforceable the tribal court judgment in this Court as a judgment of this Court;

A writ of execution commanding the United States Marshal to seize the nonexempt portion of the property of Defendants sufficient to satisfy the judgment;

An order permitting post-judgment discovery for the purpose of identifying property from which the judgment can be satisfied;

An order forbidding any person from transferring, disposing, or interfering with property of the Defendants from which the judgment can be satisfied;

Costs and disbursements of this proceeding, including without limitation, attorneys' fees, expenses, expert costs and all other costs; and

Such other and further relief as the Court shall deem just and proper.

DATED this 17th day of April, 2018.

J. PRESTON STIEFF LAW OFFICES

/s/ J. Preston Stieff

J. Preston Stieff

Attorney for Plaintiff

Index to *Complaint for Recognition, Registration, and Enforcement of Tribal Court Judgment and Writ of Execution*

Exhibit A	Ute Indian Tribe's Complaint Against Defendants
Exhibit B	Proof of Service on Gregory D. McKee
Exhibit C	Proof of Service on T & L Livestock, Inc.
Exhibit D	Proof of Service on McKee Farms, Inc.
Exhibit E	Proof of Service on GM Fertilizer, Inc.
Exhibit F	Defendants' Answer to Complaint
Exhibit G	Defendants' Motion to Dismiss
Exhibit H	Notice of Trial Date Sent to Defendants
Exhibit I	Ute Tribal Court's Findings of Fact and Conclusions of Law
Exhibit J	Ute Tribal Court's Final Judgment for Damages and Permanent Injunction
Exhibit K	Transcript of Ute Tribal Court Proceedings and Exhibits