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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UNITED STATES OF AMERICA and
STATE OF UTAH, on behalf of the UTAH
DEPARTMENT OF ENVIRONMENTAL
QUALITY, UTAH DIVISION OF AIR
QUALITY,

Plaintiffs,

v.

OVINTIV USA INC.,

Defendant,

Case No. 2:24-cv-00723-CMR-RJS-DBP

Judge Robert J. Shelby
Magistrate Dustin B. Pead

UTE INDIAN TRIBE'S BRIEF ON
STANDING PURSUANT TO APRIL 17,
2025, COURT ORDER

INTRODUCTION

The Ute Indian Tribe of the Uintah and Ouray Reservation (“Tribe”) is a federally-recognized Indian tribe. As a tribal nation, the Tribe retains all facets of a sovereign government not specifically divested by treaty or acts of Congress. *United States v. Wheeler*, 435 U.S. 313, 323 (1978). It is beyond dispute that the inherent sovereign authority of the Tribe encompasses the complicated and often challenging prerogative of determining the appropriate balance between its economic interest of energy mineral development on its Reservation and its interest in protecting Tribal natural resources and airspace within its territorial jurisdiction.

While the U.S. Environmental Protection Agency (“EPA”) is authorized to implement and enforce certain federal environmental statutes, including the Clean Air Act (“CAA”), on Indian reservations, EPA must carry out this authority in accordance with its exacting fiduciary duties to the Tribe, including the duty to uphold Tribal sovereignty. By entering into a Consent Decree to settle alleged CAA violations on Uintah and Ouray Reservation lands with no government-to-government consultation with the Tribe and no opportunity for Tribal input on the remedies for the alleged CAA violations on Tribal lands, EPA has violated its trust responsibility to the Tribe and undermined federal law and policy.

Pursuant to the Court’s Order dated April 17, 2025, ECF Doc. 35, this Brief focuses on the limited issue of whether the Tribe has adequately alleged standing in the present matter, and more particularly: (1) whether it has suffered a judicially cognizable injury and (2) whether such injury is redressable by the Court. In its pleading, the Tribe has met and exceeded the requirements to establish standing. The Tribe alleged that the United States intruded upon three separate and distinct legally protected interests: (i) the Tribe’s sovereign interest in protecting the health, safety, and welfare of its citizens and upholding the United States’ obligations to recognize and uphold the Tribe’s sovereign authority over its lands and airspace; (ii) the Tribe’s

quasi-sovereign interest in advancing the interests of its membership; (iii) the Tribe's economic interest in the oil and gas economy on the Reservation, including the Tribe's interest in preventing its longstanding industry partners from incurring steep fines with no concomitant benefit to the Tribe. Furthermore, the Tribe has adequately shown that these injuries are redressable by the court, as the relief requested by the Tribe – setting aside the Consent Decree and mandating that the United States comply with its fiduciary and government-to-government obligations to the Tribe – would, in itself, redress these injuries. Accordingly, the Tribe has satisfied its burden to demonstrate legal standing to raise a justiciable challenge to the Consent Decree.

BRIEF PROCEDURAL BACKGROUND

On September 30, 2024, the United States (with the State of Utah as its co-plaintiff) filed its Complaint against Ovintiv USA Inc. (“Ovintiv”), alleging that Ovintiv has committed CAA violations at specified oil and gas production facilities, including eleven facilities located on Indian country lands within the Uintah and Ouray Reservation (of which six are located on Tribal trust land). All eleven of these facilities are within the territorial scope of the Tribe's civil regulatory jurisdiction. The United States contemporaneously filed a Notice of Lodging of Consent Decree between EPA Region 8 and Ovintiv, with the proposed Consent Decree attached.

On December 23, 2024, the United States filed a Motion for, *inter alia*, final entry of the Consent Decree. ECF. Doc. 4. The Court entered its final order and judgment approving the Consent Decree on January 8, 2025. ECF. Docs. 14, 15.

On January 14, 2025, the Tribe filed a Motion to Intervene in the present proceeding. The Tribe's Motion included two exhibits: a proposed Motion for Relief from Judgment under Rule 60(b), for the specific and limited purpose of reopening the case to allow the Tribe to seek

intervention, as well as an accompanying Pleading under Rule 24(c) challenging the United States' execution and implementation of the Consent Decree. The Tribe's Motion to Intervene and its accompanying exhibits are collectively referred to herein as the "Pleadings."

In its Pleadings, the Tribe asserts that the United States' execution and implementation of the Consent Decree is unlawful because the United States, acting through EPA Region 8, failed at all stages of the Consent Decree process – from the initiation of negotiations up through execution and request for entry of final judgment – to uphold its trust responsibility to the Tribe and its own agency policies. As alleged by the Tribe, the United States failed altogether to engage in government-to-government consultation with the Tribe, in direct contrast with the EPA's own tribal consultation policy. Of equal importance, EPA failed to involve the Tribe or allow the Tribe to provide input on appropriate remedies – negotiated or otherwise – to address Ovintiv's alleged CAA violations on Indian country lands within the Tribe's Reservation. In doing so, EPA ignored its Memorandum of Agreement ("MOA") with the Tribe, which specifically requires EPA to consult with the Tribe and prioritize the Tribe's priorities and objectives to advance responsible energy development on its Reservation when enforcing the CAA and other federal environmental laws on the Uintah and Ouray Reservation. As the Tribe states in its Rule 24(c) Pleading:

[T]he MOA is not a simple contract between the Tribe and EPA. To the contrary, it is an embodiment of how the EPA must carry out its agency functions in a manner that is consistent with its trust responsibility to uphold and support inherent Tribal sovereignty.

ECF Doc. 16-2 at 8.

The Tribe's prayer for relief is for the Court to set aside the Consent Decree until such time as the United States fulfills its obligations to the Tribe under federal law. ECF Doc. 16-2 at 16.

STANDARD

To demonstrate standing, a litigant must show that "(1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical;

(2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.”

People for Ethical Treatment of Property Owners v. United States Fish and Wildlife Service, 852 F.3d 990, 996-97 (10th Cir. 2017).

A litigant must demonstrate its standing “with the manner and degree of evidence required at the successive stages of the litigation.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Consistent with this standard, the Court has directed the Tribe to address the limited question of whether it has “alleged” the elements of standing in its Pleadings.

ARGUMENT

A. The Tribe Has Adequately Alleged Injury in Fact

For the purpose of establishing standing, a litigant must show “an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Lujan* 504 U.S. at 560 (internal citations and quotation marks omitted). “An allegation of future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur.” *Baker v. USD 229 Blue Valley*, 979 F.3d 866, 871 (10th Cir. 2020) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)).

The Tribe has alleged not one but three injuries it has suffered, or will imminently suffer, as a direct result of the United States’ violations of federal law and policy. These injuries are discussed in turn below.

i. Invasion of Sovereign Interests.

First, the Tribe has alleged that the acts and omissions of the United States constitute an invasion of the Tribe’s legally protected sovereign interests in the maintenance of its regulatory authority and its government-to-government relationship with other sovereigns. The U.S.

Supreme Court has recognized a category of legally protected interests that derive exclusively and directly from government's sovereign status:

Two sovereign interests are easily identified: First, the exercise of sovereign power over individuals and entities within the relevant jurisdiction—this involves the power to create and enforce a legal code, both civil and criminal; second, the demand for recognition from other sovereigns—most frequently this involves the maintenance and recognition of borders.

Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez, 458 U.S. 592, 601 (1982).

Applying *Alfred L. Snapp*, this Court has specifically recognized these “sovereign interests,” along with the “concrete and particularized injury” that arises when a government's exercise of its sovereign authority is undermined or ignored by another sovereign. *Utah Division of Consumer Protection v. Stevens*, 398 F. Supp. 3d 1139, 1143-44 (D. Utah 2019).

While both *Alfred L. Snapp* and *Stevens* happen to address the sovereign interests of state governments, there is no defensible argument that the same principles should not apply to a tribal government. If anything, an Indian tribal government has an even more compelling case than states to “vindicate their sovereign interests,” especially in the face of an intrusion by the federal government. *Stevens*, 398 F. Supp. 3d at 1143. As the Tenth Circuit has described, Indian tribes are “sovereign political entities possessed of sovereign authority not derived from the United States, which they predate.” *N.L.R.B. v. Pueblo of San Juan*, 276 F.3d 1186, 1192 (10th Cir. 2002). Thus, while states sovereignty exists within a constitutional system of federalism and at all times under the ambit of the Supremacy Clause, tribal sovereignty exists on a wholly separate plain, neither created by nor subject to the U.S. Constitution.

The Tribe has alleged an invasion of its sovereign interests primarily through its discussion of EPA's violation of the its MOA with the Tribe. As the Tribe has pled, the MOA is a government-to-government agreement that was negotiated for the singular purpose of upholding Tribal sovereignty. Hence, the third recital to the MOA specifically states that Tribe

“is a federally-recognized Indian tribe and responsible for protecting the environment and public health on the [Uintah and Ouray] Reservation consistent with tribal law.” ECF Doc. 4-4. The MOA accomplishes this singular purpose by creating a set protocol whereby EPA must not only consult with the Tribe but prioritize remedial measures identified by the Tribe in this consultation process. As the Tribe has plainly alleged, EPA has outright ignored the protocol set forth in the MOA during the negotiation of this Consent Decree and, as a result, intruded upon the Tribe’s sovereign interests.

ii. Invasion of Quasi-Sovereign Interests.

Second, the Tribe has alleged injury to its quasi-sovereign interest in upholding, protecting, and advancing the interests of its citizens. A sovereign government has standing in its capacity as *parens patriae* to protect the “health and well-being—both physical and economic—of its residents in general.” *Alfred L. Snapp*, 458 U.S. at 607. A government’s quasi-sovereign interest is “an interest independent of and behind the titles of its citizens, in all the earth and air within its domain.” *Massachusetts v. E.P.A.*, 549 U.S. 497, 518-19 (2007) (quoting *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 237 (1907)). Accordingly, a government retains a legally protected, quasi-sovereign interest to “preserve its sovereign territory.” *Id.* at 519.

For the Ute Indian Tribe, preservation of sovereign territory is not as simple as penalizing Clean Air Act violations by oil and gas producers operating on its Reservation. As the Tribe explains in its Motion to Intervene, it requires a more delicate balancing of economic and environmental interests:

The Tribe is placed in a unique position within the dichotomy of oil and gas production and environmental protection. While the Tribe has been forced to depend nearly exclusively on energy production on its Reservation to render its Reservation homeland economically sustainable, it is the Tribe and its membership who suffers disproportionately from the adverse environmental impacts of energy

mineral production. To accommodate these often conflicting needs, the Tribe continuously endeavors to promote and advance sustainable development on its Reservation.

ECF Doc. 16 at 11.

The foregoing aptly illustrates how the quasi-sovereign interests of the Tribal government are directly implicated in any EPA enforcement action against oil and gas producers operating on the Reservation, in that such enforcement actions affect both the environmental and the economic interests that the Tribal government must balance to best and most efficaciously advance the interests of its membership. Here, EPA's failure to involve, consult with, or obtain input from the Tribe has deprived the Tribe of its ability to advocate for the multi-faceted interests of its membership.

iii. Direct Economic Harm.

As explained in detail in the Tribe's Rule 24(c) pleading, on-Reservation fossil fuel production is the Tribe's main source of government revenue. Because the Tribe has a direct and substantial economic interest in oil and gas development on its Reservation, it naturally follows that the Tribe has an interest in either (i) reducing fees and penalties on its industry partners that may hinder oil and gas production or make on-Reservation oil and gas production more costly for present and future operators, or (ii) ensuring that the Tribe derives meaningful benefit from the fees and penalties remitted by its industry partners for on-Reservation CAA violations. *See, Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 464 (2017) (finding that an economic loss of any scope constitutes injury for standing purposes).

As the Tribe outlines in its Pleadings, the Consent Decree includes a stipulated civil fine of \$5.5mm, to be split evenly between the United States and the State of Utah. The Consent Decree also separately requires Ovintiv to undergo various modifications to its existing facilities and to undergo substantial evaluation and reporting requirements, each of which come with their own

expenses separate and apart from the \$5.5 million civil fine. The Tribe will not see a dime of these fines and costs. In fact, the Consent Decree barely acknowledges the Tribe's existence, much less its direct and substantial economic interests at stake. The sole reference to the Tribe is found in Paragraph 25.B, requiring Ovintiv to provide the Ute Indian Tribe Air Quality Program with a list of Ovintiv's Tank Systems located on the Uintah and Ouray Reservation, but even here any fines for a violation of these terms go to the United States, not the Tribe.

Accordingly, the Consent Decree creates an imminent economic burden on the Tribe with no counterbalancing economic benefit.

B. The Injuries Alleged by the Tribe are Redressable by this Court

Each of the injuries discussed above is redressable through a favorable decision by this Court. To demonstrate standing, a litigant must show that the injuries suffered are redressable by the court. *People for Ethical Treatment*, 852 F.3d at 97. To satisfy the "redressability" prong, "it must be the effect of the court's judgment on the defendant that redresses the plaintiff's injury, whether directly or indirectly." *Nova Health Systems v. Gandy*, 416 F.3d 1149, 1159 (10th Cir. 2005). While mere speculation that a favorable court order will redress the injury is typically insufficient, certainty is also not required. A litigant must simply show that redress will "likely" occur if their requested relief is granted by the court.

As to the above-described injuries to the Tribe's sovereign and quasi-sovereign interests, redress is built into the relief sought, such that a favorable decision by the Court will, in itself, redress the injury. The Tribe has requested that the Court issue an order to "[s]et aside the Consent Decree until such time as the United States, through the Environmental Protection Agency, fulfills its obligations to the Tribe under federal law, including as embodied in the MOA between EPA Region 8 and the Tribe." The relief sought can be broken into two distinct elements, both of which fall within the Court's authority under the Administrative Procedure

Act, 5 U.S.C. § 706. These elements are (i) setting aside the Consent Decree and (ii) conditioning any reinstatement of the Consent Decree upon the United States’ satisfaction of its obligations to the Tribe under federal law. As described in greater detail *supra*, the invasion to the Tribe’s legally protected sovereign and quasi-sovereign interests are manifest through the United States’ failure to consult with, involve, or obtain input from the Tribe in developing the Consent Decree. As such, the unlawful acts and omissions of the United States that give rise to the Tribe’s legal challenge are, themselves, the injury. They are one in the same. An order negating the results of these unlawful acts and omissions will therefore redress the injuries to the Tribe’s sovereign and quasi-sovereign interests.

Regarding the economic injuries suffered by the Tribe, there is at the very least a high “likelihood” that these injuries will be redressed by a favorable Court order. If the Tribe’s requested relief is granted, the United States will be required to comply with its obligations to the Tribe, including, *inter alia*, its obligation to consider and prioritize Tribal preferences concerning remedies to address Ovintiv’s CAA violations. While the Tribe acknowledges there is little possibility of eliminating economic costs incurred by its industry partner altogether, requiring the United States not just to obtain but to prioritize Tribal input on appropriate remedies gives rise to a strong “likelihood” that these money-focused remedial measures can be at least partially re-oriented to better serve the Tribe’s interests.

In fact, there is precedent in this very Court and involving this very Tribe demonstrating that EPA is within its authority to establish remedial measures to this effect. In *United States of America v. Questar Gas Management Company*, 2:08-cv-00167-TS-PMW (D. Utah), the parties negotiated – and this Court approved – a Consent Decree (attached as **Exhibit 1**) by and between the United States, operator Questar Gas Management Company (“Questar”), and intervening individuals from the Tribe’s elected leadership, to settle CAA violations on the

Uintah and Ouray Reservation. The approved Consent Decree directed Questar to pay \$350,000 into a Tribal Clean Air Trust Fund to be administered by a nonprofit entity to be formed by intervening Tribal representatives. Ex. 1 at 15. The Consent Decree provided that these funds were to be deployed by the nonprofit “to reduce emissions of air pollution on the Reservation, mitigate the impacts of air pollution on tribal members, screen for air pollution related health impacts among tribal members, or educate tribal members about the deleterious impacts of air pollution on public health and the environment.” *Id.* This negotiated and Court-approved establishment of the Tribal Clean Air Trust Fund and its associated source of funding exemplifies the tools that are available for the United States to tailor civil penalties toward the advancement of the Tribe’s conservation objectives and priorities.

CONCLUSION

Based on the foregoing, the Tribe has adequately alleged standing to proceed on the merits of its Pleadings.

Dated this 8th day of May 2025.

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WORD NUMBER CERTIFICATION

I, Michael W. Holditch, certify that this Brief contains 3,086 words and therefore complies with DUCivR 7-1(a)(4).

/s/ Michael Holditch
Michael Holditch