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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-RJS **PLAINTIFFS' RESPONSE TO UTE INDIAN TRIBE'S BRIEF ON STANDING**

The Ute Indian Tribe of the Uintah and Ouray Reservation (the "Tribe") seeks to intervene in this Clean Air Act ("CAA") enforcement case to "obtain[] relief from final judgment under Fed. R. Civ. P. 60(b)" based on the Tribe's assertion that the Environmental Protection Agency ("EPA") failed to consult with the Tribe in the leadup to that judgment. Mot. to Intervene, ECF No. 16, at 1. The judgment at issue is a consent decree entered by this Court between Plaintiffs, the United States and the State of Utah, and Defendant Ovintiv USA Inc. ("Ovintiv"), resolving allegations that Ovintiv violated the CAA and related regulations at facilities located in Utah, including some within the boundaries of the Uintah and Ouray Indian Reservation (the "Reservation"). Consent Decree, ECF No. 15.

Before this Court approved the consent decree, the Tribe submitted comments during the public review process asserting that it had been deprived of an opportunity to provide input on potential remedies or engage in the negotiation process, as allegedly required by a Memorandum of Agreement ("MOA") between the Tribe and EPA. Ute Indian Tribe Comments, ECF No. 4-2, at 2. The United States addressed those assertions in its motion to enter the consent decree, explaining that while consultation was not required, EPA had held a consultation meeting with the Tribe and made other unsuccessful efforts to get tribal input on potential injunctive relief, while also recognizing that principles of settlement confidentiality limited the Tribe's direct participation in negotiations given the Tribe's non-party status. Mot. to Enter, ECF No. 4, at 13-15. The Court subsequently granted the Plaintiffs' motion and entered the consent decree. ECF No. 14.

After entry, the Tribe filed a motion to intervene, reprising its public comments and seeking to have the consent decree set aside. Mot. to Intervene, ECF No. 16. The United States and Utah opposed the motion because the Tribe did not satisfy the conditions for intervention as

of right or permissive intervention set forth in Rule 24 of the Federal Rules of Civil Procedure. Plaintiffs' Opp'n, ECF No. 31 (the opposition brief includes a discussion of the consent decree, which is not repeated here). The Court deferred ruling on the motion and ordered supplemental briefing to address whether the Tribe has adequately alleged standing. Order, ECF No. 35. The Tribe filed its brief on May 8, 2025. Suppl. Br., ECF No. 42. As discussed below, the Tribe has failed to demonstrate standing to intervene in this CAA enforcement action.

THE STANDING DOCTRINE

Article III of the Constitution authorizes federal courts to decide "cases" or "controversies." U.S. Const. Art. III, § 2. Standing to sue is a requisite to demonstrate a case or controversy. *S. Furniture Leasing, Inc. v. YRC, Inc.*, 989 F.3d 1141, 1145 (10th Cir. 2021). To establish Article III standing, a plaintiff must have: (1) suffered an injury in fact, (2) that is fairly traceable to the challenged action of the defendant, and (3) that is likely to be redressed by a favorable decision. *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560-61 (1992). The injury in fact must be "concrete and particularized"—in other words, "real," "personal and individual"—and must be "actual or imminent." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339-40 (2016). The standing requirements ensure that the party seeking relief "has alleged such a personal stake in the outcome of the controversy as to warrant his invocation of federal-court jurisdiction." *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009) (quotations omitted). These same principles apply to prospective intervenors. *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 581 U.S. 433, 439 (2017).

DISCUSSION

The Tribe did not file a motion to intervene to join Plaintiffs' allegations of CAA violations. Instead, it seeks to intervene to pursue relief under Rule 60(b) from an already-

entered settlement to which it was not a party. It is settled law that "one who was not a party lacks standing to make a [Rule 60(b)] motion." C. Wright & A. Miller, 11 Fed. Prac. and Proc. § 2865 (3d ed.). This principle ensures that the use of Rule 60(b) is not "opened to the broadest claims of ancillary jurisdiction [which could] thereby thwart the finality of principal judgments." *Id*. (quoting *Western Steel Erection Co. v. United States*, 424 F.2d 737, 739 (10th Cir. 1970)). The Plaintiffs recognize, however, that standing is a "threshold issue" that is "an essential and unchanging part of the case-or-controversy requirement of Article III" regardless of whether a court is ruling on a Rule 60 motion. *Horne v. Flores*, 557 U.S. 433, 445 (2009) (internal quotation marks omitted). Here, the Tribe's interests are far too attenuated to meet standing requirements, and its supplemental brief fails to meet its burden to show any cognizable injury, let alone one that can be redressed in this enforcement action. The Tribe's motion to intervene should be denied.

A. The Tribe Did Not Suffer a Cognizable Injury

The Tribe alleges injuries flowing from its contention that EPA did not consult with it or provide an opportunity for Tribal input regarding the CAA enforcement action against Ovintiv as required in an MOA between the two entities. As an initial matter, this assertion is incorrect. As described in Plaintiffs' brief in opposition, EPA did consult with the Tribe about the planned action against Ovintiv. *See* ECF No. 31, at 5 (citing Hammond Decl., ECF No. 4-3, ¶ 19). EPA and the Tribe participated in a government-to-government consultation on October 6, 2021. *Id*. EPA also conducted other efforts to reach out to the Tribe and Tribal officials about the matter. *Id*. The Tribe's briefing ignores or mischaracterizes these efforts.

In any event, by its terms the MOA does not create any enforceable rights.[1] *See* Plaintiffs' Opp'n, ECF No. 31, at 5. The language in the MOA is clear: "This Agreement is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against either of the Parties, their departments, officers, employees, agents, or any other person." Exhibits, ECF No. 8, Attach. ¶ 9. The Tribe's proposed counterclaim thus tries to enforce a document it expressly agreed was not enforceable.

The United States' general trust responsibility also does not impose an obligation to consult in this case, as the Tribe claims. EPA recognizes and is committed to upholding the general trust responsibility between the United States government and federally recognized Tribes. EPA acts consistently with the general trust responsibility by implementing the statutes it administers on tribal and non-tribal lands alike. *See Morongo Band of Mission Indians v. FAA*, 161 F.3d 569, 574 (9th Cir. 1998) (absent specific requirements imposed by law, an agency's general trust responsibility to Tribes "is discharged by the agency's compliance with general regulations and statutes not specifically aimed at protecting Indian tribes."). Here, EPA acted consistently with its general trust responsibility by enforcing CAA requirements on the Reservation in the same manner as it does on non-Tribal land. *See also Arizona v. Navajo Nation*, 599 U.S. 555, 565-66 (2023) ("To be sure, this Court's precedents have stated that the United States maintains a general trust relationship with Indian tribes…. [But] unless Congress has created a conventional trust relationship with a tribe as to a particular trust asset, this Court will not 'apply common-law trust principles' to infer duties not found in the text of a treaty, statute, or regulation.") (citations omitted). Notably, the Tribe did not identify any treaty, statute,

[1] The MOA was also not in effect at times relevant here. It was signed in April 2023, well after EPA referred this case to the Department of Justice and initiated settlement negotiations with Ovintiv. Exhibits, ECF No. 8, Attach. 11.

or regulation concerning a legal obligation to consult.[2] However, the Court need not address whether the general trust responsibility includes an obligation to consult, as the EPA met with Tribal officials on numerous occasions—including a government-to-government consultation meeting—in an effort to consider the Tribe's interests. *See* ECF No. 16, at 4-5; *see also Hopi Tribe v. U.S. EPA*, 851 F.3d 957, 960 (9th Cir. 2017) ("EPA … consult[ed] with the …Tribe …. Therefore, regardless of the scope of enforceability of any duty to consult on part of the EPA, the EPA surely complied."). There is simply no basis to conclude that a cognizable injury occurred.

Even if the Tribe could demonstrate an enforceable failure to consult, it would constitute a procedural violation that does not in itself constitute an injury conveying Article III standing. "[B]are procedural violations, divorced from any concrete harm," do "not suffice for Article III standing." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 440 (2021). *See also Scotts Valley Band of Pomo Indians v. Douglas Burgum*, No. 1:25-cv-00958 (TNM), 2025 U.S. Dist. LEXIS 77443, at *15 (D.D.C. Apr. 23, 2025) (slip op.) (a procedural violation must be paired with an "imminent injury-in-fact"). Here, the Tribe asserts three types of harm that flow from EPA's alleged failure to consult: injury to its sovereign interests, injury to its "quasi-sovereign" interest in protecting its citizens, and direct economic harm resulting from the impingement of oil and gas development on its Reservation. As discussed below, none of these purported injuries is sufficiently actual or imminent to convey Article III standing.

[2] The Tribe cites E.O. 13175 as requiring consultation, ECF No. 16, at 6, but omits that it "is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person." Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, 65 Fed. Reg. 67250, 67252 (Nov. 6, 2000). And its citation to the Indian Tribal Justice Act, P.L. No. 103-176, 107 Stat. 2004 (Dec. 3, 1993), neither requires EPA to consult nor applies to this Clean Air Act action.

The Tribe's first argument is that the alleged failure to consult constitutes an invasion of its "legally protected sovereign interests in the maintenance of its regulatory authority and its government-to-government relationship with other sovereigns." Suppl. Br., ECF No. 42, at 4. The Tribe cites *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel. Burez*, to support this interest. In that case, the Supreme Court recognized as a sovereign interest "the power to create and enforce a legal code" and the demand for recognition from other sovereigns, like the maintenance and recognition of borders. 458 U.S. 592, 601 (1982). No such interests are implicated here. EPA's alleged failure to consult with the Tribe about the CAA enforcement action against Ovintiv does not prevent the Tribe from taking legal action against Ovintiv or otherwise enforcing tribal law, if warranted, nor does EPA's action in any way affect or inhibit the Tribe's prerogative to balance its economic and mineral development interests when doing so. The action does not dispute or in any way question tribal borders. Finally, the action does not undermine or ignore the Tribe's sovereign authority. EPA is simply enforcing provisions of the CAA as authorized by federal law—provisions that the Tribe currently lacks authority to enforce.[3] The Tribe does not cite any specific harm to its sovereign interests other than EPA's alleged failure to consult under a non-binding MOA. *See* Suppl. Br., ECF No. 42, at 5 ("The Tribe has alleged an invasion of its sovereign interests primarily through its discussion of EPA's violation of the MOA with the Tribe."). But as noted above, this is a bare procedural injury, not the concrete, actual, or imminent harm required for Article III standing.

[3] Mot. to Enter, ECF No. 4, at 15. Because the Tribe has not sought EPA approval to implement the Clean Air Act on the Reservation, EPA is the regulatory authority responsible for Clean Air Act inspections and enforcement on the Reservation. If it obtains such authority, the Tribe could pursue tribal implementation of relevant portions of the Clean Air Act under EPA's Tribal Authority Rule. *See* 42 U.S.C. § 7601(d); 40 C.F.R. Part 49.

Next, the Tribe cites *Alfred L. Snapp*, 458 U.S. at 607, to contend that the alleged failure to consult injures its "quasi-sovereign interest in upholding, protecting, and advancing the interests of its citizens" in its *parens patriae* capacity. Supp. Br., ECF No. 42, at 6. But the Supreme Court noted that a "State does not have standing as *parens patriae* to bring an action against the Federal Government." *Alfred L. Snapp,* 458 U.S. at 610 n.16. This is particularly true where a party "has failed to identify any recognition, by Congress or otherwise, of its right to challenge the actions that the Government has taken, or has failed to take," under applicable authorities. *Colo. ex rel. Suthers v. Gonzales*, 558 F. Supp. 2d 1158, 1165 (holding Colorado had no standing as *parens patriae* without an underlying right to challenge the federal government's action); *cf. Massachusetts v. EPA*, 549 U.S. 497, 520 (holding Massachusetts had standing because it asserted specific rights under the CAA). Here, the Tribe has failed to identify any legal authority giving it a right to challenge the EPA's alleged lack of consultation and exclusion of the Tribe from the settlement process, as detailed above. This failure is dispositive: the Tribe provides no evidence to meet its burden to show standing in its capacity as *parens patriae*.

Even if the Tribe could proceed as *parens patrie*, a sovereign must allege a "sufficiently concrete" injury to have standing to sue on behalf of its citizens. *Utah Division of Consumer Protection v. Stevens*, 398 F. Supp. 3d 1139, 1147 (D. Utah 2019). But the Tribe merely references a generalized obligation to protect the "economic and environmental interests" of its citizens, Suppl. Br., ECF No. 42, at 6-7, and does not identify any concrete economic or environmental harm that could plausibly be said to result if the consent decree remains in effect. The absence of any explanation is telling—the settlement requires Ovintiv to take action to bring its facilities into compliance with environmental laws and regulations applicable to operators on the Reservation and throughout the State. It does not impose a unique burden on facilities on

tribal land, and the air quality benefits—both on and outside the Reservation—are expected to be significant, reducing harmful air emissions by thousands of tons each year, much of which will occur on the Reservation. Plaintiffs' Opp'n, ECF No. 31, at 2.

Lastly, the Tribe contends that the alleged failure to consult caused it direct economic harm because oil and gas production is the Tribe's primary source of revenue. Suppl. Br., ECF No. 42, at 7. To prevent this economic harm, the Tribe contends, somewhat paradoxically, that it has an interest in reducing fees and penalties that may hinder oil and gas production on the Reservation *and* ensuring that the Tribe benefits from any fees and penalties paid for environmental violations on the Reservation. *Id*. The Tribe specifically notes that "it will not see a dime" of the $5.5 million civil penalty that Ovintiv has paid under the terms of the consent decree. *Id*. at 8. The problem with the Tribe's argument is two-fold. First, the consent decree does not disadvantage oil and gas production on the Reservation. It requires Ovintiv to take the same compliance-related actions at all its facilities in Utah, both on and off the Reservation. Ovintiv can engage in oil and gas production on the Reservation—and pay associated fees and royalties to the Tribe—after the settlement, just as it did before. Second, the Tribe's contention that it is entitled to a share of the penalty recovered in this action is contrary to applicable federal law. To obtain a penalty, the Tribe would have needed to bring a claim against Ovintiv that could be resolved through payment of a penalty, but as noted above the Tribe has no such authority for the CAA violations at issue. *See supra* note 3.[4] The Tribe's lack of a penalty payment is not the result of any purported lack of consultation; it is simply not a remedy available to the Tribe here.

[4] The Miscellaneous Receipts Act provides that "an official or agent of the Government receiving money from the Government from any source shall deposit the money in the Treasury." 31 U.S.C. § 3302(b). The Department of Justice interprets this requirement to prohibit the federal government from entering into a settlement that shares the settlement proceeds with entities that

In sum, the Tribe has not articulated any specific injury it has suffered or will suffer due to EPA's alleged failure to consult. The Tribe offers only speculative and conclusory assertions of harm that are not concrete or imminent. As such, the Tribe does not demonstrate the showing of injury required for Article III standing.

B. The Tribe's Alleged Injuries Are Not Redressable by the Court

The Tribe must also demonstrate that the alleged injuries are redressable by the Court to have Article III standing. *Lujan*, 504 U.S. at 560-61. The Tribe contends that its injuries are redressable because the Court could issue an order setting aside the consent decree until the EPA consults with the Tribe pursuant to the MOA. Suppl. Br., ECF No. 42, at 8. In the Tribe's view, this will require the United States "to consider and prioritize Tribal preferences concerning remedies to address Ovintiv's CAA violations." *Id*. at 9.

There are two problems with this argument. First, redressability requires it to "be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 561 (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26 at 38, 43) (internal quotation marks omitted). Even if the non-binding MOA created an enforceable obligation (which under its express terms it does not, Exhibits, ECF No. 8, Attach. 3 ¶ 9), it would be to hold a government-to-government consultation "prior" to EPA referring a case to the Department of Justice. *Id*. at ¶ 7. EPA in fact met with the Tribe as discussed above, and in any event the referral to the Department of Justice already had happened before the effective date of the MOA. Exhibits, ECF No. 8, Attach. 11. Further, the non-binding MOA does not address

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have not asserted a claim against the settling defendant. *See Joint Collection of Penalties with State and Local Governments and Federally Recognized Indian Tribes*, March 11, 2005, available at: https://www.epa.gov/sites/default/files/documents/jointcollectionofpenalties-mem.pdf (last visited May 14, 2025).

EPA prioritizing Tribal preferences in judicial cases—the relevant language only relates to a "civil administrative enforcement action." *Id.* at ¶ 7. EPA may, give effect to the Tribe's preferences at its discretion if they are meritorious and lawful. But the MOA does not require EPA to take any specific action. Accordingly, the alleged injuries are not likely to be redressed by the relief the Tribe seeks.

Second, the Tribe's motion comes too late. As explained in Plaintiffs' opposition, Ovintiv has already complied with substantial portions of the entered consent decree: it has paid the civil penalty owed to the State and federal governments; it has implemented the mitigation project; and it has begun implementing the injunctive requirements. ECF No. 31, at 7. The consent decree cannot be set aside without causing extreme prejudice to the existing parties.

Finally, the Tribe references the consent decree in *United States et al. v. Questar Gas Mgmt. Co*., 2:08-cv-00167-TS-PMW (D. Utah), for the proposition that EPA has the authority to establish remedial measures that benefit the Tribe, such as a mitigation project that was negotiated in that case. Suppl. Br., ECF No. 42, at 9-10. This is a red herring. In fact, EPA reached out to the Tribe on multiple occasions seeking to explore projects that would benefit the Tribe and how the Tribe could potentially assert an independent cause of action. Hammond Decl., ECF No. 4-3, ¶¶ 20-22. The Tribe did not respond to EPA's entreaties. *Id*.

CONCLUSION

For these reasons, the United States and the State of Utah respectfully request that the Court deny the Tribe's Motion to Intervene for lack of standing.

Respectfully submitted,

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