

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

UTE INDIAN TRIBE OF THE UNTAH AND OURAY INDIAN RESERVATION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 18-359L
)	
THE UNITED STATES OF AMERICA,)	Judge Armando O. Bonilla
)	
Defendant.)	
)	
)	

SECOND AMENDED COMPLAINT

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I. GENERAL NATURE OF THE ACTION

1. This is an action by Plaintiff, Ute Indian Tribe of the Uintah and Ouray Reservation (sometimes referred to herein as simply the “Tribe”), against the Defendant United States for the United States’ breach of its common law, constitutional, statutory, regulatory and fiduciary trust duties to the Tribe. This action arises out of the United States’ deficient operation, maintenance, oversight, and administration of the Uintah Indian Irrigation Project, an irrigation project held in trust by the United States for the benefit of the Ute Indian Tribe. The Tribe’s losses and damages are due, *inter alia*, to Defendant’s failures in its exercise of statutory and fiduciary obligations to protect, preserve, administer, supervise, control, and manage these trust assets under applicable legal duties, duties that at all times pertinent have been and continue to be under the pervasive, comprehensive, and exclusive custody, control, and prerogative of the United States. The Tribe brings this action to obtain compensation and other relief for the damage and losses resulting from the claims asserted.

II. PARTIES

2. Plaintiff, Ute Indian Tribe of the Uintah and Ouray Reservation, is a federally recognized, sovereign Indian tribe, organized with a Constitution approved by the Secretary of the Interior under the Indian Reorganization Act of 1934, 25 U.S.C. § 5101 *et seq.*, 89 Fed. Reg. 944, 946 (Jan. 8, 2024). The Tribe’s Constitution establishes, among other things, that the Ute Tribal Business Committee is the Tribe’s governing body. The Tribe is comprised of three bands of Ute Indians, the Uintah, Whiteriver, and Uncompahgre Bands, who today occupy the Uintah and Ouray Indian Reservation in the Green River Basin of northeastern Utah, where the Tribe owns beneficial interests in land, water, various water works, and related funds. The Reservation is located within a portion of the Tribe’s aboriginal lands and encompasses just over four million acres. The Tribe

brings this cause of action on its own behalf and as *parens patriae* on behalf of its Tribal members in order to protect its members' health, welfare, and economic security and well-being.

3. Defendant, the United States, is a sovereign government, the agencies of which include the United States Department of the Interior and the Bureau of Indian Affairs ("BIA") and the Indian Service, which as relevant to this suit, was a predecessor to the BIA. The United States holds legal title as trustee to the Tribe's trust lands, waters, water works, and trust funds relating to these assets. The Tribe and its members are the beneficial owners of these assets. Defendant is vested with numerous trust, fiduciary, and other legal duties owed to the Tribe and its members under various treaties, executive orders, Congressional acts, federal regulations, judicial decrees, and express and implied contracts.

III. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction under 28 U.S.C. § 1491(a)(1) ("Tucker Act") because this is a civil action against the United States for money damages arising under the Constitution, laws, treaties, and regulations of the United States, or upon express or implied contracts with the United States.

5. Additionally, the Court has jurisdiction over this case pursuant to 28 U.S.C. § 1505 ("Indian Tucker Act") which waives sovereign immunity in suits by Indian tribes residing within the territorial limits of the United States arising under the Constitution, laws, treaties, or regulations of the United States, and/or is one which would otherwise be cognizable in this Court if the claimant were not an Indian tribe, band, or group.

6. This is a matter arising under the United States' trust responsibility over Indians and Indian tribes, as established and defined under federal law. This matter also arises under the

Constitution and various laws and treaties of the United States, including, without limitation, including:

- a. Treaty of 1849 (9 Stat. 984); Ute Treaty of 1863 (13 Stat., 673); Ute Treaty of 1868 (15 Stat., 619); and Act of April 29, 1874, Chapter 136 (18 Stat., 36);
- b. Exec. Order of Oct. 3, 1861, 1 Kapp. 900 (2d ed. 1904);
- c. Act of March 1, 1899, 30 Stat. 941
- d. The Act of June 21, 1906, Pub. L. 59-258, Stat. 325, 375;
- e. *Winters v. United States*, 207 U.S. 564 (1908) and its progeny;
- f. *Cedarview Irrigation Company*, no. 4427, slip op. (D. Utah 1923) and *Dry Gulch Irrigation Company*, No. 4418, slip op. (D. Utah 1923);
- g. Federal regulations governing the BIA's operation and maintenance of the Uintah Indian Irrigation Project, 22 Fed. Reg. 10479, 10637-38 (Dec. 24, 1957);
- h. The Irrigation Operation and Maintenance Regulations, 25 C.F.R. Part 171.

IV. STATEMENT OF FACTS

A. A BRIEF AND PERTINENT HISTORY OF THE UTE INDIAN TRIBE, ITS LAND BASE, AND ITS CRITICAL NEED FOR A SUBSTANTIAL AND RELIABLE WATER SUPPLY TO SUPPORT A SUSTAINABLE HOMELAND ON ITS RESERVATION

7. The Ute Indians once “ranged from the Wasatch Front all the way to the Colorado Front Range—from present-day Salt Lake City to Denver.” CHARLES WILKINSON, FIRE ON THE PLATEAU, CONFLICT AND ENDURANCE IN THE AMERICAN SOUTHWEST, 128 (1999). In return for the Ute Indians’ cessions of vast tracts of valuable Tribal lands to the Federal Government, the United States executed treaties with the Utes that guarantee the Tribe a Tribal homeland in the Uinta Basin of northeastern Utah. *See* Treaty of 1849 (9 Stat. 984); Ute Treaty of 1863 (13 Stat., 673); Ute Treaty of 1868 (15 Stat., 619); and Act of April 29, 1874, Ch. 136 (18 Stat., 36).

8. The present-day Uintah and Ouray Indian Reservation was originally two separate reservations. The first reservation, the Uintah Valley Reservation, was established by Executive

Order on October 3, 1861, confirmed by Congress in the Act of May 5, 1864, § 2, 13 Stat. 63, and encompasses 2,039,040 acres in the Uinta Basin of Utah.¹ The second reservation, the Uncompahgre Reservation, was established pursuant to the Act of June 15, 1880 (ch. 223, 21 Stat. 1999), and the Executive Order of January 5, 1882, and it encompasses approximately 2,000,000 acres, also in the Uinta Basin. Both Reservations were established to provide a permanent homeland for the Ute Indians and to enable the Tribe and its members to become self-sustaining through agricultural and other economic pursuits. Together, the Uintah Valley Reservation and Uncompahgre Reservation are organized under the Indian Reorganization Act to form a single reservation known as the Uintah and Ouray Reservation (the “Reservation.”).

9. Utah is the third most arid State in the country. Because there is little rainfall over the summer, the only viable source of water is winter snowmelt and the ability to store it. In testimony before a Senate Committee in 1990, then U.S. Senator Jake Garn of Utah described the State of Utah’s exceptionally dry climate, explaining:

Even with summer droughts, there is sufficient snow melt to carry even today’s and future population if we have the ability to store it through the summer months. [This] is a concept that I have to continue to try to get over to my colleagues of winter snowfall, summer drought, and the need to be able to store that [winter snowmelt].

Central Utah Project Completion Act Hearing on S. 2969. Before the Subcomm. on Water and Power of the Senate Comm. on Energy and Nat. Res., 101st Cong., 132 (1990).

10. This critical need for year-round water applies equally to the Ute Indian Tribe.

¹ According to the U.S. Board on Geographic Names, “Uinta” is the proper spelling for natural features, whereas “Uintah” is the spelling applied to political entities; however, the two spellings are often used interchangeably. See [Informational Flyers - UNTAH COUNTY HERITAGE MUSEUM \(uintahmuseum.org\)](http://www.uintahmuseum.org) (last visited 1/18/2022).

11. When President Abraham Lincoln established the Uintah Valley Reservation in 1861, the Federal government knew that the lands it was reserving for the Tribe were virtually worthless: a team of surveyors had described the entire Uinta Basin as “one vast contiguity of waste, and measurably valueless, except for nomadic purposes, hunting grounds for Indians, and to hold the world together.” CHARLES WILKINSON, *supra* ¶ 7 at 149-50

12. When, in early 1861, a federal Superintendent of Indian Affairs arrived in Utah, he described the Utes as a defeated people, suffering in a “state of nakedness and starvation, destitute and dying of want.” *Ute Indian Tribe v. State of Utah*, 521 F. Supp. 1072, 1094 (D. Utah 1981) (citing Letter from Sup. Davies to Comm. Dole of June 30, 1861, in Report of the Commissioner of Indian Affairs, 1861, at 129).

13. Tracking almost all other nineteenth-century instruments of the Federal Government establishing Indian reservations, the treaties and executive orders that, collectively, establish the Uintah and Ouray Reservation are silent on water rights retained by the Tribe.

14. In 1908, the United States Supreme Court ruled that when the United States establishes an Indian reservation, the Federal Government impliedly reserves the amount of water necessary to fulfill the reservation’s purpose. *Winters v. United States*, 207 U.S. 564 (1908) (now commonly known as the “*Winters Doctrine*”). The water rights reserved to the Ute Tribe upon the establishment of the Uintah Valley and Uncompahgre Reservations are referred to hereafter as the Tribe’s “Indian Reserved Water Rights.”

15. The Tribe’s Indian Reserved Water Rights encompass the entire amount of water necessary to sustain a viable and permanent homeland within the exterior boundaries of the Uintah and Ouray Reservation. The U.S. Supreme Court has affirmed that Indian Reserved Water Rights

are not limited in use to irrigation or any other specific purpose or use. *Arizona v. California*, 439 U.S. 419, 421 (1979); *Colville Confederated Tribes v. Walton*, 647 F.2d 42, 48 (9th Cir. 1981).

16. The Tribe’s Indian Reserved Water Rights, established upon the creation of the Tribe’s Reservation—and *before* the allotment of land in severalty to individual Indians—are Tribal trust assets that are held by the United States, as trustee, for the benefit of the Tribe.

17. Because the Tribe’s statutory and Indian Reserved Water Rights vested upon the creation of the Tribe’s reservation, the Tribe’s Reserved Water Rights are “present perfected” rights, recognized and protected in Article VIII of the 1922 Colorado River Compact. *Arizona v. California*, 373 U.S. 546, 600 (1963). Article VIII of the 1922 Colorado River Compact states that “[p]resent perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact.”

18. As “present perfected” water rights, the Tribe’s Indian Reserved Water Rights exist separate from, independent of, and senior to the interstate apportionment framework set forth in the Colorado River Compact. They are also vested property rights, regardless of whether they are being put to beneficial use.

19. The Tribe’s Indian Reserved Water Rights are owned in trust by the United States for the benefit of the Tribe.

B. BACKGROUND ON THE UNTAH INDIAN IRRIGATION PROJECT

i. History and Statutory Authorization

20. It is a foundational axiom of federal Indian law that the United States “has charged itself with moral obligations of the highest responsibility and trust...” and that “[i]ts conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be

judged by the most exacting fiduciary standards.” *Seminole Nation v. United States*, 316 U.S. 286 (1942).

21. Throughout the history of its dealings with the Ute Indian Tribe, the United States has, through affirmative actions, accepted and assumed fiduciary duties to secure and protect not just the Tribe’s water rights, but also the Tribe’s access to water, so as to enable the Tribe and its members to actually utilize these water rights to support a permanent and sustainable homeland on its Reservation. In so doing, the United States has assumed and exercised comprehensive, pervasive, elaborate, and exclusive control over a portion of the Tribe’s Indian Reserved Water Rights and associated water infrastructure, leaving the Tribe in a position of complete reliance on its federal trustee.

22. Federal action affirmatively accepting fiduciary responsibility over the Tribe’s access to water began as early as the nineteenth century. In the 1899 Indian Appropriations Act, the United States Congress confirmed and declared the Ute Tribe’s rights to Reservation water resources. The Act of March 1, 1899, 30 Stat. 941 (“1899 Act”), authorizing the Secretary of the Interior to grant rights-of-way for the construction of ditches and canals on or through the Reservation for the purpose of diverting and appropriating those waters, provided explicitly that:

all such grants shall be subject at all times to the paramount rights of the Indians on said reservation to so much of said waters as may be appropriated, or may hereafter be appropriated or needed by them for agriculture and domestic purposes; and it shall be the duty of the Secretary of the Interior to proscribe such rules and regulations as he may deem necessary to secure to the Indians the quantity of water needed for their present and prospective wants, and to otherwise protect the rights and interests of the Indians and the Indian service.

23. With the 1899 Act, Congress established the Ute Tribe’s water rights as “paramount” to that of any appropriator. Congress recognized that the Tribe has both present and future “paramount” rights to as much water as the Tribe wants or needs for agricultural and

domestic purposes. And Congress explicitly conferred upon the Secretary a fiduciary duty to secure and protect the amount of water necessary to satisfy the Tribe’s “present and prospective wants.”

24. Following passage of the 1899 Act, the United States quickly recognized that further affirmative action was needed in order to secure and develop the Tribe’s access to water. In 1906, the Commissioner of Indian Affairs, in his annual report, described conditions on the Uintah and Ouray Reservation, stating, in pertinent part:

The future of these [Ute] Indians depends upon a successful irrigation scheme, for without water their lands are valueless, and starvation or extermination will be their fate.

Rept. of the Comm. of Ind. Aff., 1906, as quoted in *Ute Indian Tribe of the Uintah and Ouray Reservation v. Utah*, 521 F. Supp. 1126 at 1072 (D. Utah 1981).

25. Congress responded by authorizing construction of the Uintah Indian Irrigation Project; stipulating expressly that “title to the project” was to be held “in trust for the Indians;” and providing for the Secretary of Interior to “sue and be sued” in relation to the Irrigation project. 1906 Appropriation Act, Publ. L. 59-258, Stat. 325, 375.

26. The 1906 Act states:

[t]hat such irrigation systems shall be constructed and completed and held and operated ... and the title thereto until otherwise provided by law shall be in the Secretary of the Interior in trust for the Indians, and he may sue and be sued in matters relating thereto[.]

The Indian Irrigation Project authorized under the 1906 Act is now known as the Uintah Indian Irrigation Project (hereafter the “UIIP”).

27. Consistent with the plain language of the 1906 Act, Title to the UIIP has been at all times and remains held by the United States as a trust asset of the Tribe.

28. Specific and comprehensive Federal regulations governing the BIA’s operation and maintenance of the UIIP were promulgated before 1957 as Part 121, and subsequently renumbered as Part 199 on December 24, 1957, 22 Fed. Reg. 10479, 10637-38 (Dec. 24, 1957) (“1957 regulations”). These regulations applied specifically to the UIIP and provide the BIA with pervasive and comprehensive control of the UIIP.

29. The 1957 regulations continued a system for the assessment of operation and maintenance fees payable by landowners within the UIIP. The regulations provided that “Bills for the yearly assessment of construction and operation and maintenance charges will be issued each year for the record owner of land within the project,” with an “annual per-acre charge for operation and maintenance...levied against the entire irrigable area of each farm unit or allotment to which irrigation water can be delivered from present constructed works.” 22 Fed. Reg. 10638 (Dec. 24, 1957).

30. Section 199.20 of the regulations stated that “[n]o persons other than those specifically designated by the project engineer are authorized to regulate project structures or to interfere in any way with project-operated canals or any works appurtenant thereto or to the water flowing therein.” The term “project engineer” was in reference to the BIA engineer charged with implementing the regulations. *Id.*

31. The federal regulations also required the BIA to deliver water to “one point on the upper boundary of each farm unit on the project,” and to “maintain the lateral system to said delivery point.” These requirements affirmed and reinforced the Federal Government’s pervasive, comprehensive, and exclusive control over UIIP operations extended all the way to the property boundaries of individual irrigators.

32. In 2008, the United States promulgated regulations that now govern the operation and maintenance of all irrigation projects administered by the BIA, including the UIIP. But the United States' exclusive responsibilities relating to the operation of the UIIP, as reinforced by the prior federal regulations, remain in full force and effect under the 2008 regulations.

33. The BIA is also responsible for UIIP recordkeeping, billing, and collections of the annual O&M fees from UIIP water users.

ii. Decreed Project Water Rights

34. Upon construction of the UIIP, as conflicts arose between the Utes and their non-Indian neighbors over the surface streams flowing through the reservation, the United States went into court, as trustee for the Utes, and secured both (i) an adjudication of the Tribe's water rights on the Lake Fork, Whiterock and Uintah Rivers, and (ii) an injunction prohibiting non-Indian interference with tribal waters in these Rivers. *United States v. Dry Gulch Irrigation Co.*, No. 4418, slip op. (D. Utah 1923); *United States v. Cedarview Irrigation Co.*, No. 4427 slip op. (D. Utah 1923).

35. In its complaints in *Dry Gulch* and *Cedarview*, which led to the 1923 Decrees, the United States readily admitted that the United States has assumed enforceable trust obligations to the Ute Indians. In pertinent part, the United States affirmatively alleged:

- that the Ute Indians are “wards” of the United States;
- that the Tribe’s reservation lands are “of less value” than the lands the Tribe was forced to cede to the United States at the point of starvation;
- that “all” of the Tribe’s reservation lands are “arid in character and will not produce crops without irrigation” and that “unless irrigated” the Tribe’s lands “are comparatively valueless;”
- that it is the “intent and policy and the *duty*” of the United States “to protect” the Ute Indians “in their rights … and material welfare;”

- that the Ute Indians “on account of their lack of development ... and their dependent condition, are unable to cope with white men in the scramble for water;”
- that non-Indian interference with the flow of surface waters through the Reservation has “caused ...[the Ute] Indians to suffer the damage of and to lose large and valuable agricultural crops,” resulting in “great and irreparable damage and injury” to the Indians.

United States’ complaints in *Dry Gulch* and *Cedarview*, U.S. District Court for the District of Utah, case numbers 4418 and 4427.

36. The two federal decrees affirm the Tribal Indian Reserved Water Rights for irrigation of 59,771.69 acres of Reservation land from the Lake Fork and Uintah Rivers, with a total diversion duty of 3.0 acre-feet per year per acre, for a total annual diversion right of 179,315.07 acre-feet per year.

37. The 1923 federal decrees quantified a portion of the Tribe’s 1861-priority Indian Reserved Water Rights. Thus, even though one of the integral legal properties of Indian Reserved Water Rights is that they can be used for non-irrigation purposes, the United States unilaterally prosecuted an adjudication of a substantial portion of the Tribe’s Indian Reserved Water Rights for the specific and limited purpose of delivery to irrigable lands through the UIIP.

C. THE UNITED STATES’ DEFICIENT OPERATION, MAINTENANCE, OVERSIGHT, AND ADMINISTRATION OF THE UIIP AS A TRUST ASSET

38. In 2016 the UIIP, which was supposed to serve about 88,000 acres of allotted lands for the benefit of the Tribe and its members, only delivered water to approximately 61,000 acres of land, resulting in massive waste of the Tribe’s Indian Reserved Water Rights and lost economic opportunities to develop Tribal lands.

39. Even within the truncated portion of the Reservation acreage that is being irrigated, deficient operation and maintenance of the UIIP has led to suboptimal UIIP performance and, in turn, sparse and inconsistent agricultural production.

40. These ongoing shortcomings in UIIP performance are attributable to various deficiencies in how the United States has operated, maintained, overseen, and administered the UIIP, as further detailed below.

a. **Failure to Provide Storage Necessary to for the UIIP to Function**

41. The 1906 Act authorized more than just the construction of various ditches and canals to facilitate irrigation within Reservation boundaries; it authorized an integrated Irrigation project for the benefit of the Ute Indian Tribe and its members. The plain language of the 1906 Act refers not to specific facilities, but to “irrigation systems.”

42. Per federal regulations specifically governing Indian irrigation projects, an “irrigation facility” includes “all structures and appurtenant works for the delivery, diversion, and storage of irrigation water. These facilities may be referred to as projects, systems, or irrigation areas.” 25 C.F.R. § 171.00 (emphases added). Thus, storage facilities can accurately be considered part of an integrated irrigation system like the one authorized under the 1906 Act.

43. In its 1916 complaints to adjudicate a portion of the Tribe’s Indian Reserved Water Rights, the United States acknowledged that insufficient natural flow exists in the Uinta-Whiterocks and Lake Fork-Yellowstone River Basins to properly irrigate Indian lands. The United States attested to the court:

[t]he water supply of said Uintah River, except when said river is at stages of high flow, is and at all times has been insufficient to supply the needs of the United States and said Indians for the irrigation of the irrigated lands . . . with the consequence that the waters of said river, *unless conserved by storage*, will become progressively less able to supply the needs of the United States and of said Indians. . . (emphasis added).

United States Bill of Complaint at 26, *United States v. Dry Gulch Irrigation Co.*, Docket No. 4418 (1916), incorporated herein as part of **Exhibit A-1**; *see also* United States Bill of Complaint at 33-34, *United States v. Cedarview Irrigation Co.*, Docket No. 4427, ECF No 83, pp. 43-44, incorporated herein as part of **Exhibit A-2**.

44. In its *Dry Gulch* and *Cedarview* complaints, the United States also cited the Presidential Proclamation of July 14, 1905, setting aside 1,010,000 acres of Indian land as an addition to the Uintah Forest Reserve. Under that Proclamation, the “United States...set apart” Reservation lands “at the head-waters of the streams...as forest reserve lands” so that “the water supply [for the] Indians would be maintained” upon unallotted lands being opened for entry by non-Indians.

45. Accepting the United States’ recognition that water storage is an integral necessary component of the Tribe’s Indian Reserved Water Rights, the federal court built water storage into its 1923 decrees adjudicating the Tribe’s water rights in the Lake Fork and Uinta Rivers by extending the period of water use beyond the normal irrigation season and establishing a water duty lower than what is necessary for optimal irrigation. In a 1995 Memorandum, Interior Field Solicitor Lynn R. Collins supplied the following interpretation of the 1923 Decrees vis-à-vis the Tribe’s right to storage. Because it is highly relevant to the Tribe’s present action, the 1995 memorandum is incorporated herein and quoted at length as follows:

Water for irrigation may be diverted during an irrigation season from March 1 through November 1 of each year even though crops are only in the field from late April to late September. Insofar as irrigation is concerned, the amount of water which may be diverted is 3 acre-feet per acre and in an amount not to exceed a flow of 1 second foot per 70 acres. One reason a maximum diversion flow is stated in the decree is because at least a portion of these irrigation diversions are designed to be storage rights. The storage character of the right is evident from the court’s designating an 8 month 1906 Project irrigation season, which exceeds the actual historical irrigation season by about 2 ½ months. In other words, the court granted a right to divert water when there are no crops in the fields in order to allow for

storage to enable a total diversion of 3 acre-feet per acre for 1906 Project lands. It is these additional 2 ½ months of diversion, including carry over water diverting during October, that will enable the United States to put 3 acre-feet on 1906 Project lands. We believe that there was no other way to accomplish the purpose of the 1906 Project Act, and that all of this was understood and is part of the fabric of the decree.

U.S. Department of Interior Solicitor’s Memorandum to Program Director, Central Utah Project Completion Act at 10 (October 13, 1995) (“Collins Memorandum”), incorporated herein and attached hereto as **Exhibit B**.

46. In spite of the United States’ own position that the storage of Tribal water is “part of the fabric” of the 1923 decrees, the Tribe’s federal trustee has never supplied the Tribe with storage infrastructure and has never taken any meaningful action to facilitate Tribal access to water storage. As a result, the Tribe remains without access to storage for UIIP water rights to this day.

47. A diversion duty of 4.0 acre-feet per acre per year (33% more than that issued in the federal decrees) is the amount of water needed to provide irrigation for economically beneficial agricultural pursuits.

48. Without storage, the Tribe’s Indian Reserved Water Rights are (i) wasted and lost as Tribal water flows downstream to non-Indian water users without any economic benefits or compensation to the Tribe, and (ii) insufficient, under a 3.0-acre foot water duty, for sustainable crop cultivation.

49. In continuing recognition of the Tribe’s need for storage as part of the UIIP irrigation system, the United States has exploited the Tribe’s storage needs to advance its own agenda but has not provided the Tribe with access to storage as part of the UIIP.

50. This duplicity is best exemplified in the September 1965 Agreement (“1965 Deferral Agreement”) between the United States, the Central Utah Water Conservancy District (a political subdivision of the State of Utah). In the 1965 Deferral Agreement, the Tribe agreed to

defer developing a portion of its senior-priority Indian Reserved Water Rights, so that the U.S. could certify to Congress that it had uncontested capability to deliver water from the Uinta Basin to the comparatively populous Wasatch Front, which was the key aim of the Central Utah Project (“CUP”) as authorized by Congress under the 1956 Colorado River Storage Project Act.

51. In exchange, the United States promised to provide access to storage as necessary to supplement the deficient natural flow water rights for the UIIP that were adjudicated in 1923. The United States agreed therein that the planned Upalco and Uintah Units of the CUP would provide the water storage and related infrastructure needed by the Tribe for the delivery of its Indian Reserved Water Rights under the UIIP. The Upalco Unit alone was to provide full-service irrigation water, storage, and/or related infrastructure to a total of 33,450 acres of Tribal land – but was never built. The Uintah Unit was to provide 64% of the nearly 50,000 AFY of storage to the Tribe and would have featured two reservoirs: the 47,000 AF Uintah Reservoir and the 32,000 AF Whiterocks Reservoir. These reservoirs and related infrastructure were to provide full service or supplemental irrigation to a total of 39,648 acres of Tribal lands.

52. Although Congress appropriated construction funds for the Upalco Unit in 1981, by 1986 the United States Bureau of Reclamation (“USBR”) had indefinitely postponed its construction citing “increased costs and lack of demand” for municipal and industrial water. The U.S. Bureau of Reclamation continued “planning” for the Uintah Unit into the 1980s, but eventually decided to “postpone” the Uintah Unit indefinitely.

53. The United States also abandoned the Ute Indian Unit, which was supposed to provide supplemental waters to the Bonneville, Upalco, and Uintah units to fulfill the Tribe’s Indian Reserved Water Rights pursuant to the CUP. In 1980, U.S. Bureau of Reclamation issued a Concluding Report that effectively abandoned study of the Ute Indian Unit.

54. Thus, while the United States was able to leverage the Tribe's longstanding UIIP storage needs to advance its own agenda, the Tribe was once again left with nothing.

55. Acknowledging the United States' failure to supply the Tribe with storage as part of the UIIP irrigation system – and as necessary to render the UIIP fully operational – Congress passed the Central Utah Project Completion Act ("CUPCA") in 1992.

56. Title II, Sections 201(c) and 203 of the CUPCA authorized construction of water storage and infrastructure facilities that would replace the Upalco and Uintah units that were planned to store Ute Tribal waters. Congress specified that CUPCA obligated the United States to provide water storage for the Tribe's Indian Reserved Water Rights.

57. Yet, even in the face of this Congressional directive, the United States has failed to provide storage necessary to establish a fully functional UIIP.

58. Today, the Tribe has no storage facility and related water works from which to supply its Indian Reserved Water Rights to its irrigable trust lands. At the same time, construction of water storage facilities intended to benefit non-Indian water users in the Uinta Basin is nearing completion. It is a manifest injustice that results from the Federal Government's abdication of its fiduciary duties to the Tribe set forth above.

59. The Tribe has suffered immense economic harm from this abdication, including the loss of promised storage and irrigation infrastructure, lost crop yields due to insufficient irrigation, and lost economic opportunities due to the United States' misuse and diminishment of Tribal water meant to be transported and delivered through the UIIP.

b. Deferred Maintenance and Disrepair of the UIIP

60. Over the past several decades the UIIP has fallen into grave disrepair due to the Federal Governments' well-documented neglect. As but one example, HKM Associates prepared

a UIIP Rehabilitation and Betterment Plan for the BIA in 1982 that concluded 84% of UIIP structures needed rehabilitation and noted substantial erosion on UIIP waterways, infestation of brush and trees in the bank areas of UIIP waterways, sections of UIIP canals damaged by livestock, and excessive water seepage. These and other deteriorations have diminished UIIP efficiency and prevented it from delivering water entirely to various areas.

61. In 2008 the BIA itself admitted:

The Uintah [Indian] Irrigation Project has deferred maintenance needs in excess of \$86.1 million to bring the aging, deteriorated infrastructure up to current standards. The majority of our diversion structures lack any safety features to keep personnel safe while operating gates and cleaning debris for the upstream side of the structures. There is no fencing or gates to prevent the general public from getting on any of our structures of features.

U.S. Dept. of Interior, BIA, Western Region, “Operation and Maintenance Guidelines: Uintah Indian Irrigation Project, Uintah and Ouray Agency” (Dec. 23, 2008).

62. In 2015, the U.S. Government Accountability Office published a report on unresolved issues surrounding deferred maintenance of Indian Irrigation Projects nationally. The federal officials responsible for the administration of the UIIP failed to provide data detailing the project’ deferred maintenance costs.

63. The UIIP’s grave state of disrepair has been continuous and expansive. Significant deferred maintenance continues to adversely impact the efficiency and functionality of the Project. The deterioration of the UIIP has resulted in the inability of the UIIP to deliver available water to irrigable lands within the Project and such lands being rendered temporarily or permanently non-assessable.

64. Moreover, some of this deterioration has been caused by use of UIIP facilities to deliver water to non-Indian water users outside the UIIP pursuant to outdated carriage agreements. The United States has failed to renegotiate these carriage agreements for decades and thus has

allowed outdated fixed annual per-acre rates to persist long after they ceased to reflect market value for the water delivered.

65. The United States' failure to complete and maintain the UIIP has prevented the Tribe from establishing a viable agricultural economy to uphold and further the purpose of the Reservation as a permanent homeland for the Tribe.

c. Non-Assessable Tribal and Indian Lands within the UIIP Service Area

66. Since the UIIP was authorized by Congress under the 1906 Act, the BIA has been vested with the exclusive authority to designate lands to receive irrigation water delivered through the UIIP. Currently, over half of the lands in the UIIP service area are tribal lands held in trust by the United States.

67. Pursuant to federal regulation, the BIA is exclusively responsible for determining whether lands within the UIIP service area are assessable, i.e., capable of receiving and utilizing irrigation water delivered from the UIIP and thus assessed an operation and maintenance fee.

68. Since the BIA began operating the UIIP to irrigate 78,950 acres of land within the Tribe's Reservation boundaries, the BIA has designated a substantial portion of this designated acreage as either temporarily non-assessable ("TNA") or permanently non-assessable ("PNA").

69. According to the BIA's 2008 National Irrigation Handbook, the primary reasons for designating lands as non-assessable are limiting factors such as topography, soil conditions, or the inability of the UIIP to deliver water.

70. These purportedly non-assessable lands have been deemed by the BIA as either temporarily or permanently incapable of being irrigated under the UIIP, despite being included within the acreage that the BIA initially designated as lands to be irrigated under the UIIP.

71. These TNA/PNA designations have resulted in a reduction of irrigated trust acreage under the UIIP, adverse economic impacts to the Tribe, and a reduction of funding available to maintain the UIIP.

72. A significant portion of UIIP acreage designated non-assessable is directly attributable to the mismanagement of the UIIP by the United States, including its failure to maintain and rehabilitate UIIP lands and facilities.

73. A disproportionately high portion of the UIIP lands designated as non-assessable are Indian trust lands. While approximately half of the UIIP lands are Tribal or allotted lands, over 98% of the UIIP lands designated TNA are Tribal or allotted lands. Similarly, over 93% of the UIIP lands designated PNA are Tribal or allotted lands.

74. These lands were rendered non-assessable due to the Federal Government's failure to maintain those portions of the UIIP, and these non-assessable lands are disproportionately Tribal lands because the UIIP operation and maintenance fees have been used primarily to benefit downstream non-Indian landowners whose water rights are inferior to the Tribe's.

d. Deficient Water Quality Control Measures

75. Since the conception of the UIIP, the Tribe has relied upon its trustee, the United States, to administer the UIIP in a manner that yields economic benefits commensurate with the Tribal water rights being delivered and consumed through the Project.

76. The water supplied by the United States for the UIIP is both polluted and high in salinity, making such water unsuitable for efficient agricultural cultivation.

77. Despite the availability of quality control measures at the irrigation facility level, the United States has not taken measures to ensure that the Tribal water delivered to trust lands

through the UIIP is suitable for irrigation, despite ample knowledge and data at its disposal on the water quality requirements for satisfactory crop cultivation.

78. The poor water quality of the waters delivered and utilized under the UIIP has reduced the irrigability of the UIIP lands, reduced crop yields, and limited the Tribe in the types of crops it can grow, all resulting in economic losses to the Tribe and its members.

D. THE UNITED STATES' REPUDIATION OF ITS ROLE AS TRUSTEE AND THE STATUS OF THE UIIP AS A TRUST ASSET

79. In addition to the egregious deficiencies in the United States' operation, maintenance, oversight, and administration of the UIIP, the United States engaged in a pattern of conduct reflecting an outright repudiation of its role as trustee or the trust status of the UIIP and its associated Indian Reserved Water Rights. As a result of this pattern of conduct, detailed further *infra*, the Tribe has suffered substantial economic damages.

a. Unlawful Secretarial Transfers of Project Water Rights

80. In the Act of May 28, 1941, 55 Stat. 209, Congress authorized the Secretary to “transfer water rights, with the consent of the interested parties, to other lands under [the UIIP] and to make necessary contracts to effectuate such transfers,” a federal statute that reinforces the Federal Government’s pervasive and exclusive control over the Tribe’s Indian Reserved Water Rights under the UIIP.

81. It was not until 2013, that the Tribe learned for the first time that the Secretary has violated the 1941 Act by transferring Tribal waters to non-Indian owned lands outside of the UIIP Project serviced area.

82. The Secretary ultimately transferred Tribal water rights from about 10,000 acres of trust lands to other non-Indian lands in violation its fiduciary duties to the Tribe as trustee. The Tribe has never been compensated for these losses.

a. Midview Exchange Agreement

83. In 1967, the United States entered into an agreement with the Tribe and an organization of non-Indian secondary water rights irrigators known as the Moon Lake Water Users Association (“Association”) to provide for water right exchanges and transfer of irrigation facilities (n/k/a the “Midview Exchange”). Under the Midview Exchange, the BIA transferred a portion of the Tribe’s federally-decreed, Indian Reserved and federally-decreed water rights in the Lake Fork River to the USBR “for the use and benefit of the Moon Lake Project.”

84. As set forth in the 1923 Decrees, these Indian Reserved Water Rights have a priority date of October 3, 1861. The Midview Exchange Agreement guaranteed that the minimum Association acreage to be served by the Tribe’s Lake Fork River rights “shall not be less than” the total acreage serving the UIIP from the Duchesne River, but “in no event less than 7,500 acres”—providing the Association with a minimum acreage of Reserved Water Rights regardless of whether the UIIP was irrigating fewer than 7,500 acres under the agreement.

85. In exchange for use of the Tribe’s water rights in the Lake Fork River, Defendant USBR agreed to transfer to the BIA, for the use and benefit of the UIIP, two state-based water rights in the Duchesne River with inferior priority dates of June 22, 1918, and August 3, 1922.

86. The Tribe’s receipt of *state*-based water rights under the Exchange is significant because, in contrast to Indian Reserved Water Rights, these state-based rights can be forfeited through non-use under Utah state law.

87. As part of the agreement to transfer the Tribe’s senior-priority water rights for the use and benefit of the Association, Defendant USBR and the Association agreed to transfer the right, title, and interest in the Midview Dam and Reservoir, Duchesne Diversion Dam, Duchesne

Feeder Canal, and Midview Lateral together with all facilities and property appurtenant thereto (collectively, the “Midview Property”) to the BIA to operate and maintain “as part of the [UIIP]”.

88. Because the Midview Property was to be transferred to Defendant BIA as part of the UIIP—a Tribal asset held by the United States in trust—the Tribe was effectively promised that beneficial ownership in the Midview Property would be transferred to the Tribe. However, the United States never fulfilled this promise breaching their contractual obligations under the Midview Exchange Agreement and their fiduciary duties to the Tribe.

89. As a result of the BIA’s decisions to designate Indian trust lands served under the Midview Exchange Agreement as temporarily or permanently non-assessable and, therefore, ineligible to receive water, about 1,500 acres of trust lands are no longer irrigated under the Midview Exchange Agreement. Meanwhile, the Moon Lake Water Users Association continues to use the Tribe’s Indian Reserved Water Rights in the Lake Fork River to serve the 7,500-acre minimum set forth in the Midview Exchange Agreement.

90. The Midview Exchange Agreement has been and continues to be an inequitable exchange for the Tribe. Ignoring the Tribe’s demands, The United States has failed to address this inequity, resulting in substantial economic losses to the Tribe.

91. In 1968, the parties to the Midview Exchange Agreement signed a Transfer Agreement providing for the internal transfer of the Midview Property from the USBR to the BIA to become part of the UIIP, stating:

Pursuant to Article 8 of the [Midview Exchange], the Bureau of Reclamation and the Moon Lake Water Users Association hereby transfer to the Bureau of Indian Affairs the jurisdiction of the right, title, and interest in and to the Midview Dam and Reservoir, Duchesne Diversion Dam, Duchesne Feeder Canal, and Midview Lateral together with the facilities and property appurtenant thereto.

92. Through this 1968 Transfer Agreement, the BIA expressly accepted jurisdiction over the Midview Property and agreed to “operate and maintain said facilities including necessary replacements as a part of the Uintah Indian Irrigation Project.”

93. Yet, unbeknownst to the Tribe, the United States never actually transferred the Midview Property from USBR to the BIA. The Tribe did not learn of this omission until the BIA was asked to approve an easement for rights-of-way to Duchesne County in 2014.

94. The United States has since denied the Tribe’s beneficial ownership and trust status of the Midview Property. In 2016, the Bureau of Indian Affairs advised the Tribe that it would not hold the Midview Property as a Tribal trust asset under the UIIP as promised in the Midview Exchange Agreement and instead would continue to hold the property as government fee property. Efforts by the Tribe to convince the BIA otherwise have been fruitless.

95. Despite documentation of the UIIP’s significant deferred maintenance needs, the UIIP remains burdened by its obligation to deliver water to non-Indian irrigators in the Association through UIIP facilities, a cost that is absorbed exclusively through the operation and maintenance fees that are charged to the Indian water users of the UIIP. The BIA assesses no additional costs for carrying water to non-Indian Association water users, an untapped revenue stream that would support the rehabilitation and betterment of the UIIP.

96. In violation of the Midview Exchange Agreement, the BIA is now using water from the Midview Reservoir to irrigate lands other than those designated for irrigation under the Agreement. The BIA’s diversion of water to other lands reduces the amount stored Duchesne River to which the Tribe is entitled under the Agreement.

c. Carriage Agreement and Informal Operating Practices

97. The United States has administered the UIIP, a Tribal trust asset, to advance the interest of non-Indian water users, at the expense of the Tribe as the trust beneficiary. This is exemplified through both carriage agreements and “informal operating practices.”

98. The United States frequently enters carriage agreements, under which the U.S. agrees to use UIIP infrastructure to deliver non-tribal water to non-Indian water users.

99. Implementation of these carriage agreements has resulted in significant additional deterioration of the UIIP with no accompanying benefit to the Tribe or its members.

100. The United States does not consult with, much less obtain consent from, the Tribe prior to entering into these carriage agreements.

101. Furthermore, the United States has failed to renegotiate these carriage agreements for decades and thus has allowed outdated fixed annual per-acre rates to persist long after they ceased to reflect market value for the water delivered.

102. In addition to carriage agreements to deliver non-tribal water, the BIA regularly engages in what it terms “informal operating practices” directly involving Tribal water rights. These “informal operating practices” entail informal agreements allowing non-Indians to utilize UIIP water and infrastructure, doing so without consulting the Tribe and in violation of the BIA’s duty of undivided loyalty to the Tribe as its trustee.

103. The Tribe first learned of these “informal operating practices” no earlier than 2013, after the Tribe had filed suit against a non-Indian water users illegally diverting water from UIIP infrastructure using an unauthorized buried pipe. During the Tribe’s pretrial investigation, the Tribe received documentation from the BIA acknowledging that the BIA utilizes informal, “unwritten” operational practices in its annual operation of the Ute Indian Irrigation Project,

including informal arrangements to use UIIP infrastructure to provide Tribal water to non-Indian irrigators residing on privately-owned fee land.

104. Prior to this disclosure in connection with a public legal proceeding, the Tribe was neither consulted on or otherwise made aware of these “informal operating practices.”

STATEMENT OF CLAIMS

FIRST CLAIM FOR RELIEF
Breach of Trust:

Deficient Operation, Maintenance, Oversight, and Administration of the UIIP

1. The Ute Indian Tribe incorporates by reference and repeats the allegations of Paragraphs 1 through 104 of this Complaint.

2. As a result of (i) the Tribe’s forced removal from most of its aboriginal land base to the water-starved Uinta Basin, (ii) the United States’ construction and operation of irrigation systems on Reservation lands, and (iii) the United States’ unilateral action to procure an adjudication of the Tribe’s Indian Reserved Water Rights to establish a water source for the UIIP, the Tribe has involuntarily been rendered reliant upon the UIIP as the exclusive means of delivering irrigation water to develop and sustain an agriculturally viable homeland on the Uintah and Ouray Reservation.

3. Under the statutory language of the 1906 Act, and through the United States’ own actions taken under the authority of the 1906 Act which reinforce the United States’ elaborate, pervasive, and exclusive control over the UIIP, the United States has accepted fiduciary duties to operate, maintain, oversee, and administer the UIIP and its associated infrastructure for the benefit of the Tribe and its members.

4. The United States has engaged in an ongoing series of acts and omissions that violate these fiduciary duties, including:

- a. Failure to establish the UIIP as a complete and fully functional irrigation system by providing storage infrastructure as part of the UIIP irrigation system.
- b. Failing to adequately repair and maintain UIIP infrastructure and, as a result, allowing the UIIP to fall into a grave state of disrepair.
- c. Designating lands within the UIIP service area as temporarily or permanently non-assessable as a result of poor UIIP maintenance, without taking any preventive or subsequent measures to render said lands assessable and, thus, capable once more of receiving irrigation water from the UIIP.
- d. Failing to implement control measures necessary to ensure the UIIP supplies water of a sufficient quality to support crop cultivation.
- e. The unlawful Secretarial transfers of project water rights and the illegal and/or improper acts and omissions related to the Midview Exchange Agreements detailed above.

5. These acts and omissions constitute a breach of trust duties, including, *inter alia*, duties of prudence and care, the duty to protect trust corpus, and the duty not to allow trust corpus to fall into disrepair on the trustee's watch.

6. These breaches are compensable in monetary damages.

7. The United States' breaches have resulted in substantial, multi-million-dollar losses to the Tribe. The United States is liable in damages for such losses. Damages are due from the inception of the United States' breaches through to the present.

8. The United States' breaches are continuing in nature and remain ongoing as of the filing date of this Complaint.

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

SECOND CLAIM FOR RELIEF
Breach of Trust:

Repudiation of Trust Responsibility and the Trust Status of the UIIP

10. The Ute Indian Tribe incorporates by reference and repeats the allegations of Paragraphs 1 through 104 of this Complaint.

11. As a result of (i) the Tribe's forced removal from most of its aboriginal land base to the water-starved Uinta Basin, (ii) the United States' construction and operation of irrigation systems on Reservation lands, and (iii) the United States' unilateral action to procure an adjudication of the Tribe's Indian Reserved Water Rights to establish a water source for the UIIP, the Tribe has involuntarily been rendered reliant upon the UIIP as the exclusive means of delivering irrigation water to develop and sustain an agriculturally viable homeland on the Uintah and Ouray Reservation.

12. Under the statutory language of the 1906 Act, and through the United States' own actions taken under the authority of the 1906 Act which reinforce the United States' elaborate, pervasive, and exclusive control over the UIIP, the United States has accepted fiduciary duties to operate, maintain, oversee, and administer the UIIP and its associated infrastructure for the benefit of the Tribe and its members.

13. The United States has engaged in a pattern of conduct reflecting an outright repudiation of its role as trustee or the trust status of the UIIP and its associated Indian Reserved Water Rights, including:

- a. Unlawfully transferring federally decreed Tribal water rights to non-Tribal lands under the color of the May 28, 1941, 55 Stat. 209, without consulting with or compensating the Tribe or Indian landowners.
- b. Entering, implementing, and continuing to uphold the Midview Exchange Agreement, which gives non-Indian water users access to the Tribe's senior priority Indian Reserved Water Rights adjudicated for the UIIP despite the

increasingly inequitable return for the Tribe and refusing to administer the Midview Reservoir as part of the UIIP irrigation system as the agreement contemplates.

- c. Designating a disproportionate quantity of Tribal and Indian-owned land within the UIIP service area as non-assessable, in contrast to non-Indian owned land, without taking any meaningful action to render these lands assessable, resulting in an expanding disparity in access to UIIP water between Indian and non-Indian water users.
- d. Entering into carriage agreements allowing non-Indians to use UIIP infrastructure to transport and receive their water rights without consent or consultation from the Tribe, resulting in additional wear and tear to UIIP with no concomitant benefit to the Tribe or its members.

14. These acts and omissions constitute an ongoing breach of trust duties, including, *inter alia*, a trustee's duty of undivided loyalty to its trust beneficiary, and a trustee's duty to dispose of trust corpus in the best interest of the beneficiary.

15. The United States' breaches have resulted in substantial, multi-million-dollar losses to the Tribe. The United States is liable in damages for such losses. Damages are due from the inception of the United States' breaches through to the present.

16. The United States' breaches are continuing in nature and remain ongoing as of the filing date of this Complaint.

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

THIRD CLAIM FOR RELIEF
Breach of Contract:

Midview Exchange

18. The Tribe realleges Paragraphs 1 through 104 and incorporates them by reference.
19. The United States has breached the Midview Exchange by non-performance in failing to effectuate a transfer of the Midview Property in trust, and as a component part of the UIIP irrigation system, for the benefit of the Tribe.
20. The United States' breach has resulted in substantial economic losses to the Tribe and its members. The United States is liable in damages for such losses. Damages, including punitive damages, are due from the inception of the United States' breaches through the present.
21. The United States' breaches are continuing in nature and remain ongoing as of the filing date of this Complaint.
22. All conditions precedent to the initiation and maintenance of this action have been satisfied or otherwise occurred.

WHEREFORE, THE TRIBE PRAYS FOR THE FOLLOWING RELIEF:

1. Monetary damages in an amount to be determined at trial, together with pre- and post-judgment interest based on the United States' breaches of its common law, constitutional, statutory, regulatory, contractual and fiduciary duties to the Tribe.
2. Declaratory and injunctive relief to the extent necessary or proper to provide the relief otherwise requested.
3. An award of the costs of suit incurred by the Ute Indian Tribe, including without limitation, attorneys' fees, expenses, expert costs and all other costs related to this action.
4. Such other and further relief as the Court shall deem just and proper.

Dated: December 6, 2024

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