

APPENDIX

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APPENDIX 1

**THE UTE INDIAN TRIBAL COURT OF THE
UINTAH AND OURAY RESERVATION
FORT DUCHESNE, UTAH**

Case No. CV-16253

[Filed: March 14, 2018]

UTE INDIAN TRIBE OF THE UINTAH)
AND OURAY INDIAN RESERVATION, a)
federally recognized Indian tribe and a)
federal section 17 corporation, the)
UINTAH AND OURAY TRIBAL)
BUSINESS COMMITTEE, and UTE)
ENERGY HOLDINGS LLC, a Delaware LLC,)
)
Plaintiffs,)
)
v.)
)
LYNN D. BECKER,)
)
Defendant.)

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**SECOND AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT AND DAMAGES
FOR BREACH OF FIDUCIARY DUTY,
CONSTRUCTIVE FRAUD,
THEFT/CONVERSION OF TRIBAL ASSETS,
UNJUST ENRICHMENT AND/OR EQUITABLE
DISGORGEMENT AND RESTITUTION**

COMES NOW, the Plaintiffs, the Ute Indian Tribe of the Uintah and Ouray Indian Reservation, the Uintah and Ouray Tribal Business Committee, and Ute Energy Holdings, LLC, a Delaware LLC, and allege the following:

PARTIES

1. Plaintiff Ute Indian Tribe (“Tribe” or “Ute Tribe”) is a federally recognized Indian Tribe, organized with a Constitution approved by the Secretary of the Interior pursuant to Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476. In addition to being a federally recognized Indian tribe, in 1938 the Tribe sought and obtained a charter to operate as a federal corporation under Section 17 of the Indian

Reorganization Act, 25 U.S.C. § 477—a so-called “Section 17 Corporation.”

2. Plaintiff Uintah and Ouray Tribal Business Committee (“Business Committee”) is the Tribe’s elected six-member governing body.

3. Plaintiff Ute Energy Holdings LLC was established as tribally commercial entity under Delaware state law. The Tribe owns one hundred percent (100%) of the interest in Ute Energy Holdings LLC and the Tribe is the sole Member of the LLC.

4. Defendant Lynn D. Becker (“Mr. Becker”) is an individual who was employed by the Ute Tribe within the territorial boundaries of the U&O Reservation from 2003 through 2007.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to the Ute Indian Tribe’s inherent sovereign right to regulate activities of all non-Indians who willingly enter onto the Tribe’s Uintah and Ouray (“U&O”) Reservation, and/or who enter into a consensual relationship with the Tribe, and/or whose activities upon tribal lands imperil the Tribe’s political integrity, economic security or health and welfare. *See Montana v. United States*, 450 U.S. 544 (1981).

6. Venue is proper in this Court because the activities undertaken by Mr. Becker that are the subject of this lawsuit occurred on tribal lands within the boundaries of the U&O Reservation.

STATEMENT OF FACTS

7. Plaintiff Ute Tribe has a tribal membership of almost four thousand individuals, and over half of its membership lives on the U&O Reservation. The Ute Tribe operates its own tribal government and oversees approximately 1.3 million acres of Indian trust lands, some of which contain significant oil and gas deposits. Revenue from the development of these oil/gas resources is the primary source of money that is used to fund the Tribe's government and its health and social welfare programs for tribal members.

8. For a period of seven years, from 2000 through 2007, a cabal of unscrupulous non-Indians insinuated themselves into the Ute Tribe's government and its Energy and Minerals Department and, through a pattern of fraud, subterfuge and bullying, attempted to secure for themselves an interest in the Tribe's oil and gas mineral estate.

9. Working ostensibly as tribal "employees" or "Independent Contractors," the coterie of unscrupulous individuals manipulated tribal members, manipulated tribal officers and departments, manipulated facts and numbers, and manipulated the Tribe's oil/gas transactions in a manner that was both fraudulent and a gross breach of the individuals' fiduciary duties as employees and agents of the Ute Tribe.

10. One of those unscrupulous individuals was the Defendant Lynn Becker.

11. Other unscrupulous individuals and entities included John P. Jurrius, the Tribe's purported "Financial Consultant," and his business entities, the

Jurrius Group LLP and Jurrius Ogle Group LLC, whom the Ute Tribe sued in 2008 on multiple counts of civil wrongdoing, including fraud and conversion, in a suit captioned *Ute Indian Tribe v. Jurrius, et al.*, case number 1:08-cv-01888, in the U. S. District Court for the District of Colorado.

12. Mr. Jurrius exercised control over the Tribe's affairs by installing trusted associates in key positions throughout the Tribe's government, and he persuaded the Tribe to hire his associates under "Independent Contractor" Agreements.

13. At Mr. Jurrius' recommendation, Mr. Becker came to work for the Tribe as a petroleum landman in 2003; however, it was not for another two years, on April 27, 2005, that Mr. Becker and the Tribe executed a so-called "Independent Contractor Agreement" (hereinafter "IC Agreement"). The IC Agreement purported to operate retroactively to March 1, 2004, and to provide for Becker's employment as the "Land Division Manager" of the Tribe's Energy and Minerals Department.

14. The United States Internal Revenue Service ("IRS") later challenged the legality of the multiple IC Agreements for calendar years 2005, 2006 and 2007, including the IC Agreement with Becker. The Tribe was able to negotiate a "Closing Agreement" with the IRS, in which, in return for the Tribe paying federal employment tax for calendar year 2007 on Mr. Becker and the other Jurrius associates, the IRS agreed not to seek additional back taxes or penalties. However, the IRS required that Becker and other Jurrius associates

be “treated as *employees* for all federal employment tax purposes” going forward.

UTE HOLDINGS AND UTE ENERGY

15. On May 4, 2005, on the recommendation of Defendant Becker and Messrs. Jurrius and Ogle, the Tribe simultaneously organized Ute Energy Holdings LLC (“Ute Holdings”) and Ute Energy LLC (“Ute Energy”), and entered into a series of complicated, convoluted commercial transactions that the Tribe contends were designed, *inter alia*, to illegally transfer interests in the Ute Tribe’s mineral estate to Defendant Becker and to Messrs. Jurrius and Ogle (hereinafter “Jurrius/Ogle”).

16. The Tribe contends the complex, multi-tiered transactions were planned deliberately to both facilitate and simultaneously obscure and conceal the fraudulent transfer of tribal assets to the unscrupulous non-Indians. These transactions, described below, were the subject of the Tribe’s claims against Mr. Jurrius and his business entities in *Ute Indian Tribe v. Jurrius, et al.*, case number 1:08-cv-01888, U. S. District Court for the District of Colorado, referenced in paragraph 11 above.

17. Before the formation of Ute Holdings and Ute Energy, the Tribe was a party to multiple “Exploration and Development” Agreements (“EDAs”) with various oil and gas producing companies. The Tribe had a dual legal status under the EDAs: not only was the Tribe a lessor of its oil/gas minerals, but in addition, the Tribe had the option to participate as a working interest

owner in production of oil and gas from wells drilled under the EDAs.

18. At the recommendation of Defendant Becker and Messrs. Jurrius and Ogle, the Tribe was persuaded to assign its interest in various EDAs and other tribal trust assets, first to Ute Holdings, and then from Ute Holdings to Ute Energy; however, none of these men acted to insure that the Tribe's capital account was properly credited for the value of the Tribe's capital contributions to Ute Energy LLC.

19. Between 2005 and 2007, Defendant Becker and Jurrius/Ogle proceeded to grossly mismanage the Tribe's oil/gas assets while simultaneously enriching themselves, including without limitation, transferring additional Ute tribal oil/gas assets into Ute Holdings, and from Ute Holdings on to Ute Energy. The Tribe contends the two-tiered transfers were planned deliberately to insure that Defendant Becker and Jurrius/Ogle could both claim their respective "skims" on each tier of the transfer of a tribal oil/gas assets into Ute Holdings and Ute Energy. In addition, Mr. Jurrius—the Tribe's purported Financial Investor—installed himself as the Manager of Ute Energy, and in that capacity Jurrius-assisted by Messrs. Becker and Ogle—proceeded to dissipate Ute Energy's operating capital. Because of their mismanagement, Ute Energy was forced to raise new capital by selling interests in Ute Energy LLC, a move that reduced the Tribe's ownership interest in Ute Energy LLC proportionately.

DEFENDANT BECKER'S EMPLOYMENT FOR
THE TRIBE

20. Mr. Becker worked initially as a landman and then as the "Land Division Manager" of the Tribe's Energy and Minerals Department ("E&M Department"). His job duties were to manage and develop the Tribe's energy and mineral resources, and the Tribe's E&M Department, both of which are located within the boundaries of the Tribe's U&O Reservation.

21. The Independent Contractor Agreement was negotiated between Becker and John Jurrius, and Jurrius then presented the negotiated Agreement to the Tribe's Business Committee for approval during a Business Committee meeting at tribal headquarters in Fort Duchesne on April 27, 2005. Mr. Becker's office was located inside tribal headquarters in Fort Duchesne.

22. In addition to the office, the Tribe supplied Mr. Becker with a vehicle, a computer, a cell phone, office supplies, and mileage.

23. During his employment as Director of the Tribe's E&M Department, Mr. Becker was in charge of the Department's employees and valuable tribal assets, including a proprietary mapping system and geoseismic (underground oil/gas) and geological data with a value of over one million dollars (\$1,000,000.00).

24. The proprietary mapping system and geoseismic/geological data were last in Mr. Becker's custody and control as the Manager of the Tribe's E&M Department.

25. Mr. Becker resigned from the Tribe effective October 31, 2007.

26. Through the discovery process in a case pending in State court, *Becker v. Ute Indian Tribe, et al.*, Case No. 140908394, Mr. Becker produced eight (8) boxes of the Tribe's own files to the tribal parties that are Plaintiffs in this action. Following that production, the Tribe informed Mr. Becker that the Tribe had determined the files belonged to the Tribe and that the Tribe would retain the files. Mr. Becker has not responded to the Tribe's notice regarding the files.

27. Following Mr. Becker's resignation, the Tribe was unable to locate the proprietary mapping system and geoseismic/geological data – all of which were last in Becker's custody and control as the Manager of the Tribe's E&M Department. To this day, Mr. Becker has not accounted for the disappearance of the Tribe's proprietary mapping system and geoseismic/geological data.

**DEFENDANT BECKER'S "PARTICIPATION
INTEREST" IN TRIBAL ASSETS**

28. The Tribe paid Becker a salary of \$200,000.00 annually (\$16,666.67 per month) under the terms of the Becker IC Agreement.

29. In addition to the 200k salary, the Agreement contained a "Participation Plan," that, *inter alia*, granted Becker a "beneficial interest" in all net revenues that were distributed from production of the Tribe's oil/gas resources that were assigned to Ute Energy:

In recognition of Contractor's services, Contractor shall receive a beneficial interest of two percent (2%) of net revenue distributed to Ute Energy Holding (sic) LLC from Ute Energy, LLC (sic)

* * * *

In the future, a) if the Tribe participates in any projects involving the development, exploration and/or exploitation of minerals in which the Tribe has any **participating interest and/or earning rights** ... and Contractor [Becker] is providing services under this agreement, and b) the Tribe elects not to place such interests in Ute Energy Holding, LLC, then Contractor [Becker] shall receive a two percent (2%) beneficial **net revenue interest** in such assets

* * * *

If, at any time, Contractor [Becker] wishes to sell the Contractor Rights, Contractor [Becker] agrees to notify the Tribe of his intention. The Tribe shall have 60 days to exercise this preferential right to purchase with a bona fide, market value offer to purchase on the same terms and conditions that any legitimate offer would entail. (emphasis added)

30. The Becker's IC Agreement—and the purported alienation of restricted tribal assets contained within the Agreement—was never approved by the U.S. Congress or the Secretary of the

Department of Interior, as required by federal law and the Ute Tribe's Constitution and Corporate Charter.

31. In 2005, while Ute Energy LLC was being managed by the Jurrius Ogle Group, Laminar Direct Capital L.P. ("Laminar") paid four million dollars (\$4,000,000.00) to acquire a ten percent ownership interest in Ute Energy LLC. At the time of the Laminar transaction, the sole equity in Ute Energy LLC consisted of the Ute Tribe's EDAs on tribal lands that had been assigned into Ute Energy LLC. Of the \$4,000,000.00 Laminar paid to acquire its equity interest in Ute Energy LLC, \$68,000.00 was disbursed to Mr. Becker. This constitutes an illegal alienation of tribal trust assets because Mr. Becker was neither an employee, nor an equity owner in Ute Energy LLC, and the Secretary of the Interior, or his designee, never approved the disbursement of the \$68,000.00 to Mr. Becker.

MANAGEMENT INCENTIVE UNITS

32. In 2005, the equity owners of Ute Energy LLC consisted of the Ute Tribe (through its ownership of Ute Energy Holdings LLC), the Jurrius Ogle Group LLC and Laminar Direct Capital L.P. Ute Energy LLC was being managed by the Jurrius Ogle Group LLC.

33. That same year, 2005, Mr. Becker received Management Incentive Units (MIUs) from Ute Energy LLC. At no time before his receipt of MIUs was Becker an employee or former employee of Ute Energy LLC. At no time did the Ute Indian Tribe, through Ute Energy Holdings LLC, receive notice of, or approve, Becker's receipt of the MIUs.

34. Mr. Becker ostensibly received the MIUs for the work he performed for the Tribe as a tribal employee under his IC Agreement with the Tribe.

35. In 2010, Ute Energy LLC determined the Repurchase Price of the MIUs to be zero but Ute Energy LLC nonetheless offered to repurchase the MIUs for \$21,000.00 or to reissue 10,000 new MIUs. Mr. Becker opted to receive 10,000 new MIUs.

36. At no time was the Tribe, through Ute Energy Holdings LLC, notified of Ute Energy's 2010 offer to repurchase or reissue the MIUs to Mr. Becker.

37. Between 2012 and 2015, Ute Energy LLC distributed \$183,924.00 to Mr. Becker under the MIUs. This distribution was never approved by the Tribe, who, through its interest in Ute Holdings, was the majority owner of Ute Energy in 2012.

38. The distribution of \$183,924.00 to Mr. Becker constituted an illegal alienation of tribal trust assets because Mr. Becker was neither an equity owner nor an employee in Ute Energy LLC, and the Secretary of the Interior, or his designee, never approved the disbursement of \$183,924.00 to Mr. Becker.

THE LIQUIDATION OF UTE ENERGY

39. On November 29, 2012, Ute Energy LLC liquidated the assets of its two operating subsidiaries, Ute Energy Upstream Holdings LLC and Ute Energy Midstream Holdings LLC, and discontinued its operations. The sales of the subsidiaries was a liquidating event under the terms of the Operating Agreement for Ute Energy LLC (Second Amended).

Upon the liquidation, Ute Energy LLC distributed back to the Tribe the Tribe's capital contributions to Ute Energy LLC and the Tribe's net value in the LLC.

40. Mr. Becker claims that his IC Agreement with the Tribe entitles him to millions of dollars representing two percent (2%) of the capital contributions and net value that Ute Energy LLC distributed back to the Tribe upon the LLC's liquidation.

41. A genuine controversy exists between the parties regarding the legal efficacy and enforceability of the Becker IC Agreement, and the legality of \$251,924.00 in payments made to Becker. The Tribe contends the IC Agreement is a legal nullity, and the \$251,924.00 in payments made to Becker are illegal under federal law and the Ute Tribe's Constitution. The Tribe further contends that there was no valid waiver of the Tribe's sovereign immunity in relation to the IC Agreement. The Tribe contends that any claim asserted by Mr. Becker is barred by the statute of limitations under the Tribe's Law and Order Code, § 1-8-7. Finally, the Tribe contends that the Tribe is entitled to damages in the amount of \$1,251,924.00 representing (i) the value of the Tribe's proprietary mapping and geoseismic/geological data that disappeared while it was in Mr. Becker's custody and control; (ii) the \$183,924.00 that was wrongfully disbursed to Mr. Becker as Ute Energy LLC MIUs, and (iii) \$68,000.00 that was wrongfully disbursed to Mr. Becker from Laminar's acquisition of an equity interest in Ute Energy LLC.

COUNT I

**DECLARATORY JUDGMENT – NULLITY OF
THE BECKER IC AGREEMENT AND
ILLEGALITY OF PAYMENTS MADE TO
BECKER UNDER FEDERAL LAW AND THE
TRIBE’S CONSTITUTION AND CORPORATE
CHARTER**

42. Plaintiffs reallege paragraphs 1 through 41 and incorporate them by reference.

43. Under long-standing federal common law and statutes, certain transactions between Indians and non-Indians require the approval of the U.S. Congress or the Secretary of Interior for their validity, especially when, as here, the transactions involve Indian property interests and the alienation of those property interests.

44. Both the Becker IC Agreement and the payments of \$200,100.00 from Ute Energy LLC to Becker are void for lack of necessary federal approval as required under (i) the Ute Tribe’s Constitution and Federal Charter, and (ii) federal common law and Congressional statutes that prohibit the alienation, or encumbrance of, or claims against Indian property and interests in Indian property. That body of federal statutory law includes, without limitation:

(i) the Indian Mineral Development Act, 25 U.S.C. § 2102(a), which requires the Secretary of the Interior to approve any “service” or “managerial” agreement related to the “exploration for, or extraction, processing, or other development of” Indian oil and gas mineral resources;

(ii) the Non-Intercourse Act, 25 U.S.C. § 177, which prohibits any “purchase, grant, lease, or other conveyance of lands, *or of any title or claim thereto*,” unless authorized by Congress (emphasis added);

(iii) the Indian Reorganization Act, 25 U.S.C. § 464, which prohibits the “sale, devise, gift, exchange or other transfer of restricted Indian lands or of shares in the assets of any Indian Tribe,” unless authorized by Congress; and

(iv) 25 U.S.C. § 81 which states that “[n]o agreement or contract with an Indian tribe that encumbers Indian lands for a period of 7 or more years shall be valid unless that agreement bears the approval of the Secretary of the Interior or a designee of the Secretary.”

45. The Ute Tribe is organized in two ways under the Indian Reorganization Act (“IRA”), both as a tribal government and as a federal corporation. The Tribe’s Constitution, adopted under the IRA in 1937, established the Ute Indian Tribal Business Committee as the Tribe’s governing body. ART. III, SEC. 1. The Business Committee’s delegated powers are enumerated in ART. VI, but constrained by “*any limitations imposed by the statutes or Constitution of the United States, and subject further to all express restrictions upon such powers contained in this Constitution and By-laws and subject to review by the Ute Bands themselves at any annual or special meeting*.” (emphasis added). Among the enumerated powers of the Business Committee are the following two powers:

1. The Business Committee has the power to “approve or veto any sale, disposition, lease or encumbrance of tribal lands, interest in tribal lands, or other tribal assets, which may be authorized or executed by the Secretary of the Interior ” ART. VI, SEC. 1(c); and
2. The Business Committee has the power to “regulate all economic affairs and enterprises in accordance with the terms of a Charter that may be issued to the Ute Indian Tribe . . . by the Secretary of the Interior.” ART. VI, SEC. 1(f).

46. The Tribe adopted and ratified a Corporate Charter, which was approved by the Secretary of the Interior on July 6, 1938. Under that Charter, the Tribal Business Committee exercises all corporate powers of the Tribe. Sec. 4. The Business Committee’s corporate powers are limited by federal law, as well as any limitations imposed by the Tribe’s Constitution. Sec. 5. Specific corporate powers include:

1. To hold, manage, operate and dispose of property of every description, real and personal, subject to the limitation that no sale or mortgage may be made of any land, or interests in land, including mineral rights. Sec. 5(b)(1).
2. To make and perform contracts and agreements of every description, not inconsistent with law and provided that any contract that requires payment from the

corporation “shall not exceed \$10,000 in total amount except with the approval of the Secretary of the Interior. Sec. 5(f).

3. To pledge or assign chattels or future tribal income due or to become due to the Tribe and provided that “any such pledge or assignment shall be subject to the approval of the Secretary of the Interior or his duly authorized representative.” Sec. 5(g).

47. Neither the Becker IC Agreement, nor the payments of \$200,100.00 from Ute Energy LLC to Becker was (i) reviewed by the Ute Bands themselves at any annual or special meeting as required by the Tribe’s Constitution, art. VI, § 1, nor (ii) authorized by the U.S. Congress or approved by the Secretary of the Department of Interior, as required by federal law and the Tribe’s Constitution and Corporate Charter.

48. The payments of \$200,100.00 from Ute Energy LLC to Becker and the attempted conveyance of a “Participation Interest” in revenues from the Tribe’s restricted oil and gas assets was an *ultra vires* act, committed in contravention of the Business Committee’s delegated authority under the Tribe’s Constitution and Corporate Charter.

49. By this complaint, the Plaintiffs seek a declaration that the Business Committee’s approval of the Becker IC Agreement was an *ultra vires* action, made in contravention of federal law and in circumvention of the limited constitutional powers vested in the Business Committee, and that,

consequently the Agreement is void and unenforceable in this Court or any other adjudicatory tribunal.

50. By this complaint, the Plaintiffs also seek a declaration and judgment that Defendant was not entitled to receive any payment under the void and unenforceable IC Agreement.

51. Finally, Plaintiffs also seek a declaration and judgment that the payments of \$251,924.00 from Ute Energy LLC to Becker are void for lack of necessary federal approval.

COUNT II

DECLARATORY JUDGMENT – INVALIDITY OF THE ATTEMPTED WAIVER OF SOVEREIGN IMMUNITY IN RELATION TO THE BECKER IC AGREEMENT

52. Plaintiffs reallege paragraphs 1 through 51 and incorporate them by reference.

53. The Ute Tribe's Law and Order Code explicitly describes the specific process that must be followed in order to effectuate a valid waiver of the Tribe's sovereign immunity. Section 1-8-5 provides:

[e]xcept as required by federal law, or the Constitution and bylaws of Ute Indian Tribe, or as specifically waived by a resolution or ordinance of the Business Committee specifically referring to such, the Ute Indian Tribe shall be immune from suit in any civil action, and its officers and employees immune from suit for any

liability arising from the performance of their official duties.

See Toole v. Ute Water Settlement Accounting Services, LLC, Case No. CV-09-061, p. 7 (Ute Indian Tribal Court 2010), citing U.L.O.C. § 1-8-5.

54. No resolution or ordinance waiving sovereign immunity by the Business Committee exists for the contract between Mr. Becker and the Ute Tribe.

55. The Becker IC Agreement contains a purported waiver of the Tribe's sovereign immunity. The IC Agreement was signed by a tribal official, former Chairwoman Maxine Natchees; however, Chairwoman Natchees, individually, had no constitutional or statutory power under tribal law to waive sovereign immunity—only the six-member Tribal Business Committee, sitting in legal session, through a majority vote of a quorum of the Committee members, could do that.¹

56. The Business Committee's resolution approving Mr. Becker's IC Contract does not waive sovereign immunity.

57. By this complaint, the Plaintiffs seek a declaration that (i) former Chairwoman Maxine Natchees, individually, lacked authority under the Tribe's Constitution, By-Laws, and Law and Order Code to waive the Tribe's sovereign immunity, and (ii) that there was no valid waiver of the Tribe's

¹ Tribal Constitution, art. III, § 1; Tribal By-Laws, art. VI, §§ 3, 5; and Tribal Law and Order Code, § 1-8-5.

sovereign immunity in relation to the Becker IC Agreement.

COUNT III

DECLARATORY JUDGMENT – MR. BECKER’S CLAIMS ARE TIME-BARRED

58. Plaintiffs reallege paragraphs 1 through 57 and incorporate them by reference.

59. Mr. Becker’s last day of employment for the Ute Tribe was October 31, 2007.

60. By this complaint, the Plaintiffs seek a declaration that Mr. Becker’s claims against the Ute Tribe and its Tribal Business Committee became barred on November 1, 2008, and his claims against Ute Energy Holdings LLC became barred on November 1, 2010 under Section 1-8-7 of the Tribe’s Law and Order Code.

COUNT IV

BREACH OF FIDUCIARY DUTY, FRAUD, CONSTRUCTIVE FRAUD, THEFT/CONVERSION OF TRIBAL ASSETS, UNJUST ENRICHMENT, AND/OR EQUITABLE DISGORGEMENT AND RESTITUTION

Common Law Civil Claims for Damages Against Lynn D. Becker

65. Plaintiffs reallege paragraphs 1 through 64 and incorporate them by reference.

66. The relationship between Defendant Becker and the Ute Tribe was that of a Master/Servant and/or

Principal/Agent. As the Tribe's employee and agent, Becker owed the Tribe the duties of loyalty, good faith, and honesty. Becker breached those duties by engaging in a course of conduct that was dishonest, disloyal, and in bad faith.

67. Becker encouraged the Tribe to establish both Ute Energy LLC and Ute Energy Holdings LLC and to assign the Tribe's restricted oil/gas properties to the two LLCs. Becker assured the Tribe that creating the two LLC was the most optimal and most financially advantageous way for the Tribe to develop its oil/gas assets. However, Becker failed to insure that the Tribe's capital account was properly credited for the value of the Tribe's capital contributions to Ute Energy LLC. Ultimately, the Tribe lost significant amounts of money as a result of these transactions, and in the end, Ute Energy LLC was liquidated. Becker's representations to the Tribe were material and they were false, or alternatively, were made with a reckless disregard for the truth. Becker made these false and/or reckless representations to the Tribe for the purpose of inducing the Tribe to establish Ute Energy and Ute Holdings and to grant Becker a Participation Interest in the net revenues of Ute Energy.

68. Based on their discussions with Becker, the Tribe reasonably believed that Becker's right to compensation under the IC Agreement would terminate when Becker's employment with the Tribe ended. Becker never advised the Tribe that he understood the Participation Interest to continue beyond the termination of his employment for the Tribe. Becker made these false and/or reckless

representations to the Tribe for the purpose of inducing the Tribe to establish Ute Energy and Ute Holdings and to execute the IC Agreement. In reliance upon Becker's misrepresentations, the Tribe executed the IC Agreement and established Ute Holdings and Ute Energy, and as a consequence, the Tribe has suffered damages in an amount to be proven at trial.

69. Following Becker's resignation, the Tribe was unable to locate valuable tribal assets having a value of over one million dollars (\$1,000,000.00). These assets consisted of a proprietary mapping system and geoseismic/geological data. These assets were last in Becker's custody and control as the Manager of the Tribe's Energy and Minerals Department. Mr. Becker has never accounted for the disappearance of these assets.

70. Becker received \$183,924.00 from Management Incentive Units issued by Ute Energy LLC for work that Becker performed as an employee of the Ute Tribe (not as an employee for Ute Energy LLC)—work for which Becker was fully compensated by the Tribe under the IC Agreement and for which no additional compensation was warranted.

71. Becker also received \$68,000.00 from the \$4,000,000.00 Laminar purchase proceeds, i.e., the money Laminar paid to acquire a ten percent equity interest in Ute Energy LLC, to which Becker was not entitled.

72. The distribution of these amounts—totaling \$251,924.00—to Mr. Becker constituted an illegal alienation of tribal trust assets because Mr. Becker was

neither an equity owner in, nor an employee of, Ute Energy LLC, and because the distribution (i) was never reviewed by the Ute Bands themselves at any annual or special meeting as required by the Tribe's Constitution, art. VI, § 1, and (ii) the Secretary of the Interior, or his designee never approved the disbursements as required by the Tribe's Constitution and its Corporate Charter.

73. Plaintiffs seek actual and punitive damages in an amount to be proven at trial for Becker's breach of fiduciary duty, fraud, constructive fraud, theft/conversion of tribal assets, unjust enrichment and equitable disgorgement and restitution.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully pray that the Court will enter judgment against Lynn D. Becker as follows:

1. For appropriate damages and declaratory relief, including:
 - i. a declaration that the Business Committee's approval of the Becker IC Agreement was an *ultra vires* act, made in contravention of federal law and in circumvention of the limited powers vested in the Business Committee under the Tribe's Constitution and its Corporate Charter, meaning that the Agreement is void and unenforceable in this Court or any other tribunal;

- ii. a determination that the Becker IC Agreement is void *ab initio* for lack of federal approval, that Becker was not entitled to any payment under the IC Agreement and is therefore, disgorged of the same;
- iii. a determination that Becker was not entitled to payments totaling \$251,924.00 from Ute Energy LLC and is, therefore, disgorged of the same (the value of the MIUs that was distributed to him in 2012 and the \$68,000.00 paid to him in 2005);
- iv. a declaration that former Chairwoman Maxine Natchees, individually, lacked authority under the Tribe's Constitution, By-laws, and Law and Order Code to waive the Tribe's sovereign immunity, and that there was no valid waiver of the Tribe's sovereign immunity in relation to the Becker IC Agreement;
- v. a declaration that under Section 1-8-7 of the Tribe's Law and Order Code, Becker's claims against the Ute Tribe and its Tribal Business Committee became barred on November 1, 2008, and his claims against Ute Energy Holdings LLC became barred on November 1, 2010;
- vi. a determination that Becker owes damages to the Tribe for the value of the tribal assets (the proprietary mapping system and geoseismic/geological data),

that were last in Mr. Becker's custody and control, that were never returned or accounted for;

- vii. a determination that Becker owes damages to the Tribe for the penalty the Tribe paid to IRS for Becker's incorrect self-designation as an independent contractor rather than an employee;
- viii. a determination that the Ute Tribe is entitled to punitive damages: and

2. For such other further relief as the Court deems just and proper.

Dated this 26th day of September, 2017.

/s/ Frances C. Bassett

Frances C. Bassett

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APPENDIX 2

**THE UTE INDIAN TRIBAL COURT OF THE
UINTAH AND OURAY RESERVATION
FORT DUCHESNE, UTAH**

Case No. CV-16253

[Filed: December 7, 2017]

UTE INDIAN TRIBE OF THE UINTAH)
AND OURAY INDIAN RESERVATION,)
a federally recognized Indian tribe; the)
UINTAH AND OURAY TRIBAL)
BUSINESS COMMITTEE; and UTE)
ENERGY HOLDINGS LLC, a Delaware LLC,)
)
Plaintiffs,)
)
vs.)
)
LYNN D. BECKER)
)
Defendant.)

**ORDER (1) DENYING MOTION TO DISMISS;
(2) DENYING MOTION FOR SUMMARY
JUDGMENT; (3) GRANTING LEAVE TO FILE
FIRST AMENDED COMPLAINT; (4) DENYING
MOTION TO STRIKE REPLY BRIEF; AND (5)
TO SHOW CAUSE WHY THIS CASE SHOULD
NOT BE DISMISSED OR STAYED**

Judge Pro Tem Thomas Weathers

THIS MATTER comes before the Court primarily on Defendant Lyon D. Becker's Motion to Dismiss filed on September 14, 2016. However, Plaintiffs have also filed a Motion for Summary Judgment, Motion for Leave to File a First Amended Complaint, and Motion to Strike the Defendant's Reply Memorandum in Support of Motion to Dismiss Plaintiffs Ute Indian Tribe of the Uintah and Ouray Reservation, the Uintah and Ouray Tribal Business Committee, and Ute Energy Holdings, LLC ("Plaintiffs" or "Ute Tribe") are represented by the law firm of Fredericks Peebles & Morgan LLP; Defendant Lynn D. Becker ("Defendant" or "Becker") is represented by the law firm of Allred, Brotherson & Harrington, P.C. The Court will resolve these motions on the papers without oral argument.

Having reviewed the motions and briefs in support and in opposition thereto, and having reviewed the pleadings and papers on file herein, the Court hereby rules as follows:

1. Defendant's Motion to Dismiss filed September 14, 2016 is DENIED;
2. Plaintiffs' Motion for Summary Judgment filed September 12, 2016 is DENIED without prejudice to refile at a later date;
3. Plaintiffs' Motion for Leave to File First Amended Complaint is GRANTED. Plaintiffs shall promptly file and serve their First Amended Complaint;

4. Plaintiffs' Motion to Strike the Defendant's Reply Memorandum in Support of Motion to Dismiss is DENIED; and

5. Plaintiffs shall SHOW CAUSE why this case should not be dismissed or stayed as a matter of comity and preservation of limited tribal judicial resources given the identical suits pending (for some time) in state and/or federal court. Plaintiffs shall file their response by March 31, 2017. Defendant may file a response to that response by April 14, 2017. Plaintiffs may file a reply by April 21, 2017.

I. BACKGROUND

On August, 18, 2016, Plaintiffs filed a complaint for declaratory judgement asking this Tribal Court to declare as void the independent contractor employment agreement between Defendant and the Ute Tribe. According to the complaint, Becker started work for the Ute Tribe in 2003 in the Tribe's Energy and Minerals Department. Becker's job duties were to manage and develop tribal energy and mineral resources on the Tribe's reservation. Becker's office was located inside the tribal headquarters on the Reservation. In 2005, the Tribe entered an independent contractor agreement with Becker that was negotiated and executed at the Tribe's headquarters on the Reservation. Plaintiffs now contend in the complaint that this independent contractor agreement is void for lack of valid federal and tribal approval. Plaintiffs assert that this Tribal Court has jurisdiction based on the consensual relationship between Becker and the Plaintiffs.

On September 12, 2016, Plaintiffs filed a Motion for Summary Judgment and requested expedited review. This Tribal Court denied expedited review. On September 14, 2016, Becker filed a Motion to Dismiss arguing that the Plaintiffs had waived in the agreement all rights to have any claim adjudicated in this Tribal Court. Before Plaintiffs could file an opposition brief to the Motion to Dismiss (or Becker could file an opposition brief to the Motion for Summary Judgment), the U.S. District Court for the District of Utah entered a preliminary injunction enjoining Plaintiffs from taking further action in this Tribal Court.

The U.S. District Court ruled that the Ute Tribe waived any requirement that any action about the agreement be brought in this Tribal Court. While the U.S. District Court agreed that Defendant's consensual relationship with the Tribe ordinarily would have subjected him to tribal-court jurisdiction, the U.S. District Court nonetheless held that the waiver of sovereign immunity in the agreement deprived this Tribal Court of jurisdiction.

On appeal, the U.S. Court of Appeals for the Tenth Circuit stayed the preliminary injunction. Noting that the issue of tribal-court jurisdiction must first be resolved by the tribal court, the Tenth Circuit was not so certain that the agreement had waived the Ute Tribe's right to pursue its suit against Becker in this Tribal Court or that the agreement was not void for lack of federal approval (thus invalidating the waiver). That appeal is pending on the merits at the Tenth Circuit.

Upon notice of the stay, this Tribal Court ordered briefing on the Motion to Dismiss. With its opposition brief, Plaintiffs filed a Motion for Leave to File a First Amended Complaint to add new counterclaims and pertinent facts regarding alleged fraud, fraudulent inducement, constructive fraud, theft/conversion of tribal assets, and breach of fiduciary duty. No opposition was filed (but even had an opposition been filed, this Tribal Court would have been inclined to grant such leave anyway). Becker filed a reply brief supporting his dismissal motion. Plaintiffs then filed a motion to strike the reply brief as raising new arguments.

II. DISCUSSION ON MOTION TO DISMISS

A. *Motion to Dismiss Standards*

A plaintiff generally bears the burden of proof that a court has jurisdiction to hear his or her claims. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 104 (1998). A motion to dismiss for lack of jurisdiction “generally take one of two forms: (1) a facial attack on the sufficiency of the complaint’s allegations as to subject-matter jurisdiction; or (2) a challenge to the actual facts upon which subject matter jurisdiction is based.” Ruiz v. McDonnell, 299 F.3d 1173, 1180 (10th Cir. 2002).

In reviewing a facial attack on the complaint, a court must accept the allegations in the complaint as true without regard to mere conclusory allegations of jurisdiction. See Holt v. United States, 46 F.3d 1000, 1002 (10th Cir. 1995); Groundhog v. Keeler, 442 F.2d 674, 677 (10th Cir. 1971). By contrast, when reviewing

a factual attack on a complaint, the court “may not presume the truthfulness of the complaint’s factual allegations.” Holt, 46 F.3d at 1003.

With a factual attack, the moving party challenges the facts upon which subject-matter jurisdiction depends. Id. The court therefore must make its own findings of fact. Id. In order to make its findings regarding disputed jurisdictional facts, the “court has wide discretion to allow affidavits, other documents, and a limited evidentiary hearing to resolve disputed jurisdictional facts.” Davis v. United States, 343 F.3d 1282, 1296 (10th Cir. Okla. 2003).

Here, Becker makes a factual attack on this Tribal Court’s jurisdiction. Even if this Tribal Court has jurisdiction under a consensual relationship, Becker argues nonetheless that the Plaintiffs waived that jurisdiction by waiving sovereign immunity in the agreement. Plaintiffs counter, in part, that the agreement is void and so the sovereign immunity waiver language is also void.

B. Tribal Court Jurisdiction

Ordinarily, a tribal court has no jurisdiction over civil disputes arising on tribal lands between a non-tribal member (such as Becker) and a tribe (such as the Ute Tribe) unless (1) the non-tribal member has entered into a consensual relationship with the tribe or (2) activities directly affect the tribe’s political integrity, economic security, health or welfare. Strate v. A-1 Contractors, 520 U.S. 438, 446 (1997). But, if a non-tribal member has entered a consensual relationship with a tribe, that relationship will give

rise to tribal court jurisdiction. See Dolgencorp, Inc. v. Miss. Band of Choctaw Indians, 746 F.3d 167, 169 (5th Cir. 2014). An employment relationship is such a consensual relationship. See MacArthur v. San Juan County, 497 F.3d 1057, 1071 (10th Cir. 2007).

The U.S. District Court found that Becker had entered a consensual relationship with the Ute Tribe when he entered the independent contractor employment agreement. This Tribal Court agrees. Becker consented to tribal jurisdiction by working for the Tribe, by working on the Reservation, and by negotiating and executing the agreement on the Reservation. Absent an agreement to the contrary, this Tribal Court has jurisdiction.

However, Becker argues in his Motion to Dismiss that the Tribe waived jurisdiction when it waived sovereign immunity in the agreement and agreed to dispute resolution in the federal courts or any other “court of competent jurisdiction” if the federal courts lacked jurisdiction. It turns out the federal courts lack jurisdiction. See Becker v. Ute Indian Tribe of the Uintah & Ouray Reservation, 770 F.3d 944 (10th Cir. 2014). In the pending Tenth Circuit matter staying the preliminary injunction, the Tenth Circuit noted that “it is not clear that the Agreement waived the Tribe’s right to pursue its suit against Becker in the tribal court” because the court of competent jurisdiction language within the meaning of the agreement could include this Tribal Court. The Tenth Circuit also noted that the waiver language may be void ab initio anyway for failure to obtain federal approval of the agreement. In that case, the waiver language would also be void. See

Wells Fargo Bank, N.A. v. Lake of the Torches Econ. Dev. Corp., 658 F.3d 684, 702 (7th Cir. 2011) (void agreement invalidates waiver of sovereign immunity).

At this early stage of this litigation, this Tribal Court finds that it has jurisdiction. If the agreement is void, this Tribal Court clearly has jurisdiction under the consensual relationship exception. If the agreement is not void, this Tribal Court may still have jurisdiction under the “court of competent jurisdiction” language in the agreement as suggested by the Tenth Circuit. Had the parties wanted to explicitly exclude any tribal court jurisdiction, they could have said so in the agreement. Cf. Stifel v. Lac DU Flambeau Band of Lake Superior Chippewa Indians, 807 F.3d 184, 197-98 (7th Cir. 2015) (language expressly limiting jurisdiction to Wisconsin federal or state courts excluded tribal courts). The meaning of “court of competent jurisdiction” may turn on the intent of the parties which may require a trial. See Derma Pen, LLC v. 4EverYoung Ltd., 76 F. Supp.3d 1308, 1316 (D. Utah 2014) (“In interpreting a contract, the intentions of the parties are controlling”). But for now, that language is sufficient for this Tribal Court to find that it has jurisdiction.

However, Becker suggests in his reply brief that this Tribal Court dismiss this action as a matter of comity given that the parties have already been litigating these exact same issues for over four years in federal and state courts. This suggestion has some merit given the limited tribal judicial resources and the risk of conflicting judgments. Rather than strike the reply brief or allow Plaintiffs to file a sur-reply to the reply, Plaintiffs are ordered to show cause why this

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Tribal Court should not dismiss or at least stay this lawsuit pending resolution of the state and federal lawsuits as a matter of comity, preservation of limited tribal judicial resources, and avoidance of conflicting judgments. The parties shall file their briefs as set forth above.

IT IS SO ORDERED.

Dated: 3/9/17

/s/ Thomas Weathers

Thomas Weathers

Tribal Court Judge Pro Tem

APPENDIX 3

**THE UTE INDIAN TRIBAL COURT OF THE
UINTAH AND OURAY RESERVATION
FORT DUCHESNE, UTAH**

Case No. CV-16253

[Filed: December 7, 2017]

UTE INDIAN TRIBE OF THE UINTAH)
AND OURAY INDIAN RESERVATION,)
a federally recognized Indian tribe; the)
UINTAH AND OURAY TRIBAL)
BUSINESS COMMITTEE; and UTE)
ENERGY HOLDINGS LLC, a Delaware LLC,)
)
Plaintiffs,)
)
vs.)
)
LYNN D. BECKER)
)
Defendant.)

**ORDER DENYING OSC TO SHOW CAUSE WHY
THIS CASE SHOULD NOT BE DISMISSED
OR STAYED**

Judge Pro Tem Thomas Weathers

THIS MATTER comes before the Court on the
Court's Order to Show Cause Why this Case Should

Not Be Dismissed or Stayed for comity. Plaintiffs appeared through Thomasina Real Bird of Fredericks Peebles & Morgan LLP; Defendant appeared through Clark Allred of Allred, Brotherson & Harrington, P.C. Having reviewed the briefs submitted and the pleadings on file, IT IS HEREBY ORDERED:

1. The Tribal Court DENIES the Order to Show Cause and will not dismiss or stay this lawsuit.

2. The Tribal Court hereby sets a telephonic scheduling conference for June 28, 2017 at 11:00 a.m. PDT. The Tribal Court clerk will provide the call-in information.

3. The Tribal Court hereby orders Defendant to file and serve his answer to the first amended complaint by June 23, 2017. Defendant shall not file a motion to dismiss or other responsive pleading, but instead may reserve those arguments, if any, for a motion for summary judgment if Defendant is so inclined to file such a motion.

In its Order of March 9, 2017, this Court asked the parties to brief why this case should not be stayed or dismissed primarily for comity given that the parties have already been litigating the same issues for over four years in federal and state courts. After reviewing the briefs, this Tribal Court believes that it should rule on this lawsuit, particularly the tribal law questions.

“[T]he doctrine of comity teaches that one court should defer action on causes properly within its jurisdiction until the courts of another sovereignty with concurrent powers, and already cognizant of the litigation, have had an opportunity to pass upon the

matter.” Harris v. Champion, 15 F.3d 1538, 1554 (10th Cir. 1994) (internal quotes omitted). However, comity “is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will upon the other.” Hilton v. Guyot, 159 U.S. 113, 163-64 (1895). “The doctrine of comity is a prudential consideration that arises when there is a tension between courts having concurrent jurisdiction over the same matter.” Mullally v. Havasu Landing Casino, 2011 U.S. Dist. LEXIS 151209, *17-18 (C.D. Cal. May 4, 2011 “At its core, comity involves a balancing of interests.” Wilson v. Marchington, 127 F.3d 805, 809-810 (9th Cir. 1997).

In balancing the interests, comity does not require this Tribal Court to dismiss or stay this action. The ultimate resolution of this case may well turn on whether the Ute Indian Tribe lawfully waived its sovereign immunity in its agreement with Defendant. Plaintiffs assert no valid waiver under the Tribe’s Constitution and By-Laws and its Law and Order Code. Because “tribal courts are best qualified to interpret and apply tribal law,” this Tribal Court should be the court to rule on this issue of tribal law. See Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9, 16 (1987); see also Findleton v. Coyote Valley Band of Pomo Indians, 1 Cal. App. 5th 1194, 1213 (Cal. Ct. App. 2016) (when a tribal court interprets its tribal law, other courts should give deference to that interpretation). Accordingly, this Tribal Court will not stay or dismiss this lawsuit as a matter of comity.

IT IS SO ORDERED.

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Dated: 6/9/17

/s/ Thomas Weathers

Thomas Weathers

Tribal Court Judge Pro Tem

APPENDIX 4

**THE UTE INDIAN TRIBAL COURT OF THE
UINTAH AND OURAY RESERVATION
FORT DUCHESNE, UTAH**

Case No. CV-16253

[Filed: April 27, 2018]

UTE INDIAN TRIBE OF THE UINTAH)
AND OURAY INDIAN RESERVATION,)
a federally recognized Indian tribe; the)
UINTAH AND OURAY TRIBAL)
BUSTNESS COMMITTEE; and UTE)
ENERGY HOLDINGS LLC, a Delaware LLC,)
)
Plaintiffs,)
)
vs.)
)
LYNN D. BECKER)
)
Defendant.)

SCHEDULING ORDER

Judge Pro Term Thomas Weathers

THIS MATTER comes before the Court on the Court's notice setting a scheduling conference. Plaintiffs appeared through Thomasina Real Bird and Frances Bassett of Fredericks Peebles & Morgan LLP;

Defendant appeared through Clark Allred of Allred, Brotherson & Harrington, P.C. and David Isom of Isom Law Firm. Having heard from counsel and reviewed the file in this case, IT IS HEREBY ORDERED:

1. Count V of the First Amended Complaint for Declaratory Judgment filed March 15, 2017 is bifurcated from Counts I-IV. The parties shall complete fact and expert discovery on Counts I-IV by December 31, 2017.

2. The parties shall file and serve dispositive motion(s) by January 31, 2018. The parties shall file and serve opposition brief(s) by February 23, 2018. The parties shall file and serve reply brief(s) by March 9, 2018. The Court may or may not entertain oral argument after reviewing the briefs.

3. Depending on how the Court rules on the dispositive motion(s), the Court will then consider and address how to proceed with discovery and trial on Count V.

IT IS SO ORDERED.

Dated: 6/28/17

/s/ Thomas Weathers
Thomas Weathers
Tribal Court Judge Pro Tem

APPENDIX 5

**IN THE UTE INDIAN COURT OF THE UINTAH
AND OURAY RESERVATION,
FORT DUCHENSE, UTAH**

Case No. CV 16-253

[Filed: March 1, 2018]

UTE INDIAN TRIBE OF THE UINTAH)
AND OURAY RESERVATION, et al.,)
)
Plaintiffs,)
)
v.)
)
LYNN D. BECKER,)
)
Defendants.)

OPINION AND ORDER

BACKGROUND

This is an action against defendant, Lynn Becker, that revolves around the employment of Becker from 2003 through 2007 by plaintiffs. Plaintiffs are the Tribe, its Business Committee, and a Tribal Limited Liability Company. Becker worked under an Independent Contractor Agreement (IC Agreement) from 2005 until he resigned in October, 2007. App., Vol. I, 37. Under that IC Agreement, he served as the Land

Division Manager of the Tribe's Energy and Minerals Department to manage and develop the Tribe's energy and mineral resources.

Plaintiffs moved this Court for partial summary judgment on whether the IC Agreement was void ab initio under Federal or Tribal law and the Agreement waived sovereign immunity under Tribal law. Plaintiffs asked for reconsideration of this Court's previous order denying summary judgment on whether Tribal sovereign immunity had been waived by the IC Agreement. Plaintiffs asked for expedited consideration of its motions. Defendant moved to allow time to conduct additional discovery and to compel discovery. Defendant also renewed his motion to dismiss and to defer to the action pending before the State Court in Utah on grounds of comity.

Oral argument was held on the motions on Friday, February 16, 2018. Plaintiffs were represented by Francis Bassett and Thomasine Real Bird. Defendant was represented by David Isom and Clark Allred.

In determining the motions before the Court references are to the Appendix to plaintiffs motions for summary judgment or to other materials made clear by there context. Parties may move for summary judgment on all or part of any claim, defense, or the entire lawsuit. Summary judgment is to be granted if the record shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment. See *Beard v. Banks*, 548 U.S. 521, 529 (2006); *Celotek Corp. v. Catrett*, 477 U.S. 317, 322 (1996). The material facts surrounding plaintiffs' motions are not in dispute. Defendant Becker is a non-

Indian who entered into a consensual agreement with the Tribe to manage trust properties on the Reservation. The Agreement that Becker had with the Tribe and the circumstances leading up to it are not in dispute, nor is the fact that the Agreement was never approved by any person or agency of the United States. There is no dispute that no resolution by the Tribe waived sovereign immunity. The Federal and Tribal law pertaining to waiver of sovereign immunity and the Federal and Tribal law requiring approval of transfers, assignments, or conveyances of Tribal trust properties by the United States or its agency or designee is settled. Lastly, both parties have engaged in substantial and extensive discovery in this Court, the State Court, and the Federal Court. Further discovery is not required for the Court to rule on the present motions and the request of defendant to continue this matter to allow further discovery is denied.

COMPLAINT

Defendant Becker as alleged in Plaintiff's Amended Complaint was paid an annual salary of \$200,000 per year) 2% of net revenue from production of the Tribe's oil and gas revenue, \$68,000 from the purchase price of \$4,000,000 paid by a company to the Tribe to acquire a 10% interest in the Tribe's Ute Energy Holdings, LLC, and \$183,924 from the sale of Management Incentive Units (MIU). It is also alleged that Becker retained a proprietary mapping system and geoseismic and geological data with a total value of over \$1,000,000. Plaintiffs seek damages in the amount of \$1,251,924 and a ruling that Becker cannot claim millions of dollars representing 2% of the capital contributions and

net value that Ute Energy, LLC distributed back to the Tribe upon the LLC's liquidation.

TRIBAL COURT JURISDICTION

Defendant is a non-Indian doing business with the Tribe. Defendant was a tribal employee or independent contractor. He entered into an IC Agreement with the Tribe to manage and develop the Tribe's energy and mineral resources. The IC Agreement was negotiated and entered into on the Uintah and Ouray Indian Reservation. He was given an office in the Tribal business complex in Ft. Duchesne. The resources that were to be managed and developed were on land belonging to the Tribe and held in trust for the Tribe and its members by the United States. This Court clearly has jurisdiction over defendant under Title I, Chapter 2, §§ 1-2-1 to 1-2-4, Ute Indian Law and Order Code, Amended and Restated, Ordinance 13-010. Under the Montana exceptions, an Indian Tribe has jurisdiction over non-Indians who enter into consensual relationships with the Tribe or whose activities upon tribal lands imperil the Tribe's political integrity, economic security, or health and welfare. This Court has jurisdiction over defendant under the above exceptions. *Montana v. U.S.*, 450 U.S. 544, 565- 566 (1981) ("A tribe may regulate, through taxation, licensing, or other means, the activities of non-members who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements)." See *Dollar General Corp. v. Mississippi Band of Choctaw Indians*, 136 S.Ct. 2159 (2016), affirming 746 F3d 167 (5th Cir. 2014), by equally divided Court; *Water Wheel Camp*

Recreational Area, Inc. v. LaRance, 642 F3d 802, 811-814 (9th Cir. 2011).

Defendant at oral argument asked the Court to reconsider its previously filed motion to dismiss for lack of jurisdiction. On March 7, 2017, this Court denied defendant's motion to dismiss the Tribe's suit against him for lack of jurisdiction. The United States District Court of Utah in *Becker v. Ute Indian Tribe*, Civ. 16-00958 (Judge Waddoups), also has ruled that this Court possesses jurisdiction over this Tribal Court action based on Becker's consensual relationship with the Tribe. Preliminary Injunction Order, September 28, 2016, Dkt. 50, page 5. No new law or facts have been presented that changes the Court's opinion that this Court possesses jurisdiction over this action for the reasons stated in the preceding paragraph and the Court's previous denial of the motion to dismiss.

On June 9, 2017, the Court declined to stay the suit in Tribal Court on grounds of comity. Defendant asks that the Court decline jurisdiction over this action on the grounds of comity. Comity is the recognition that one court affords to the decision of another not as a matter of obligation, but out of deference or respect, *Black's Law Dictionary* 242 (5th ed. 1979), and is limited to situations where two tribunals simultaneously possess concurrent jurisdiction. See *Hilton v. Guyot*, 159 U.S. 113 (1895) (refusal to grant comity to judgment against American citizen). Comity has no application where one tribunal lacks jurisdiction of a cause or where a contract is illegal under the laws of one jurisdiction. *Id.* at 205-206. There has been no final judgment by any court that it has jurisdiction over

this action. The Federal Courts have directed this Court to consider whether Tribal jurisdiction exists. The facts of this case present a clear case of consensual jurisdiction in this Tribal Court. Moreover, this Court also finds, for the reasons stated below, that the IC Agreement at issue here is void ab initio for failure to be properly approved by the Department of Interior or Bureau of Indian Affairs. For these reasons, this Court declines, as it did and for the further reasons stated in its June 9, 2017, Order, to abstain from hearing this case or grant comity to any other jurisdiction to hear this matter.

SOVEREIGN IMMUNITY

On April 27, 2005, the date that the IC Agreement was passed by the Unitah and Ouray Business Committee, Section 1-8-5 of the Tribe's Law and Order Code, governing the waiver of tribal sovereign immunity, provided that:

Except as required by federal law, or the Constitution and Bylaws of the Ute Indian Tribe, or as specifically waived by a resolution or ordinance of the Business Committee specifically referring to such, the Ute Indian Tribe shall be immune from suit for any liability arising from the performance of their official duties.

App., Vol. III, 557.

The validity of an Indian tribe's waiver of sovereign immunity is governed by its tribal law. E.g., *Memphis Biofuels, LLC v. Chickasaw Nation Indus., Inc.*, 585 F3d 917, 921-922 (6th Cir. 2009) (because the written resolution of the board of directors did not expressly

authorize a waiver, there was no effective waiver of sovereign immunity); *World Touch Gaming, Inc. v. Massena Mgmt., LLC*, 117 F.Supp. 2d 271, 176 (N.D. N.Y. 2000) (holding that a senior vice president's signature to an agreement with an express waiver of sovereign immunity provision did not waive sovereign immunity because that right was reserved exclusively to the tribal council); *Dilliner v. Seneca-Cayuga Tribe*, 258 P3d 516-519-521 (Okla. 2011) (tribal law controls the way sovereign immunity can be waived by the Tribe). Indeed, every court that has considered the issue has ruled that a waiver of immunity that is invalid under tribal law is no valid waiver at all. E.g., *Native Am. Distrib. v. Seneca-Cayuga Tobacco Co.*, 546 F3d 1288 (10th Cir. 2008); *Sanderlin v. Seminole Tribe*, 243 F3d 1282, 1288 (11th Cir. 2001); *Calvello v. Yankton Sioux Tribe*, 584 NW2d 108, ¶ 12 (S.D. 1998) (waiver must issue from tribe's governing body, not from some unapproved acts of tribal officials).

This Court has previously interpreted Section 1-8-5 to require that any waiver of sovereign immunity must be expressly authorized within the text of the written resolution or ordinance itself: *Toole v. Ute Water Settlement Accounting Servs., LLC*, Ute Indian Tribal Court, case number CV-09-061, Ruling and Order dated August 10, 2010. Toole explained that it was insufficient under Section 1-8-5 for a contract containing a waiver of immunity to be simply appended to a resolution or ordinance if the resolution or ordinance does not itself expressly authorize a waiver of sovereign immunity within the text of the resolution or ordinance.

The Business Committee authorized the hiring of Plaintiff, but nothing suggests that they contemplated a waiver of sovereign immunity. As the chief executive body, the Business Committee is called upon to authorize hiring on a usual basis. Thus, the [Ute Indian] Law and Order Code sets forth a very specific standard for when executive actions are accompanied by a waiver of the Tribe's immunity. No resolution was passed specifically authorizing the waiver. Nothing in the transaction resembled the normal process for waiving immunity. The actions of the Business Committee were not similar to those it undertakes when the Tribe waives immunity in matters involving Ute Oil, LLC. There, the Business Committee waives immunity by passing a resolution or ordinance which specifically refers to the express waiver as required by U.L.O.C. (Ute Law and Order Code) § 1-8-5 . . . How can the Court find a waiver when the record is bereft of evidence that the Business Committee considered immunity and elected to waive the same? A decision to hire is not the same as a deliberate choice to waive immunity.

Toole, Ruling and Order 7-9; App., Vol. III, 566.

In this case, there is nothing in the resolution approving the IC Agreement specifically waiving sovereign immunity and specifically referring to that waiver. A copy of 05-147, the resolution approving the IC Agreement, can be found at App., Vol. I, 35. A comparison of resolution 05-147 with § 1-8-5 shows the

failure of the 05-147 to waive sovereign immunity in the manner required by Tribal law. As the Eighth Circuit said in *Am. Indian Ag. Credit Consortium, Inc. v. Standing Rock Sioux Tribe*, 780 F2d 1374, 1379 (8th Cir. 1985), “persons dealing with ... (Indians) long have known how to waive sovereign immunity when they wish to do so.” A valid waiver of sovereign immunity must comply with the law of the Tribe. The normal process of the Tribe in waiving sovereign immunity is to set forth the waiver in the resolution or ordinance in which the Business Committee is taking such action. See Resolutions 11-328 and 10-085, Appendix VIII, 568-572. And the IC Agreement itself at Article 23 specifically recognized that a resolution complying with § 1-8-5 was required: “The Tribe’s limited waiver of sovereign immunity shall be further evidenced by a Tribal resolution” No such resolution complying with § 1-8-5 ever came into existence.

The IC Agreement in this case was signed by Maxine Natchees, Chairperson of the Tribe at the time. App., Vol. I, 46. Resolution 05-147 provides that the “Chairman, or in her absence, the Vice-Chair, is authorized to execute any and all documents necessary or appropriate to carry out the terms and intent of this resolution.” But the resolution says nothing about any waiver of sovereign immunity, not alone giving the Chairman the authorization to waive such immunity even if she could under 05-147. A waiver of sovereign immunity must be expressed clearly and unequivocally. It cannot be implied or made subject to official discretion. E.g., *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 59 (1978); *Hydrothermal Energy Corp. v. Fort Bidwell Indian Cmty. Council*, 216 Cal. Rptr. 59, 63

(1985) (tribal chairman could not waive tribe's immunity absent express delegation from tribe); *Calvello v. Yankton Sioux Tribe*, 584 NW2d 108, ¶ 12 (S.D. 1988) (without clear expression of waiver by tribal council, acquiescence of tribal officials cannot waive immunity because "waiver must be clear and unequivocal and must issue from a tribe's governing body, not unapproved acts of tribal officials"); *Chance v. Coquille Indian Tribe*, 963 P2d 638, 640-642 (1988)(rejecting apparent authority theory and holding that, even if contract's language waiving immunity was express, contract was not valid where the signing official lacked authority under tribal law to waive immunity); and *MM&A Prods., LLC v. Yavapai-Apache Nation*, 316 P3d 1248, 1252-1254 (Az. Ct. App. 2014). Chairperson Natchees had no authority under 05-147 to waive the sovereign immunity of the Tribe.

This Court on December 18, 2017, denied plaintiffs' motion for partial summary judgment claiming that the waiver of sovereign immunity in the IC Agreement is invalid under Tribal law as set forth above in this opinion. Plaintiffs ask for reconsideration. After reconsideration, this Court reverses its December 18, 2017, opinion for the following reasons. First, the Court relied upon *Yazzie v. Ute Indian Tribe*, Ute Indian Tribal Court, Case No. CV 09-118 (February 24, 2011). However, the Court in *Yazzie* found that it lacked subject matter jurisdiction but then proceeded to make substantive determinations. Thus, any rulings made by *Yazzie* is dicta at best. Second, if *Yazzie* is permitted to be the prevailing law incorporation by reference would be sufficient to allow sovereign immunity to be waived. In other words, a resolution stating nothing about the

waiver of sovereign immunity but at the same time authorizing an agreement to be signed which contained a waiver would be sufficient under § 1-8-5. This result runs contrary to the requirements of § 1-8-5 and would essentially render § 1-8-5 meaningless. Third, the Court assumed erroneously that the Business Committee knew about the purported waiver of sovereign immunity contained in the Becker IC Agreement and therefore knew it was waiving sovereign immunity by Resolution 05-147. This assumption is speculation. There is nothing in the April 27, 2015, minutes to show the Business Committee read the IC Agreement. App., Vol. I, 63-67. The minutes are absent of any mention about sovereign immunity. Four, *Toole v. Ute Water Settlement Accounting Services, LLC*; Case No. CV 09-061, Ute Indian Tribal Court, citing § 1-8-5, is clearly the more accurate statement of the law and interpretation of § 1-8-5. For the reasons set forth in this paragraph and the reasons set forth above, plaintiffs' motion for partial summary judgment on the sovereign immunity issue is granted and the December 18, 2017, Order is reversed. There was no waiver of sovereign immunity.

FEDERAL APPROVAL

Plaintiffs have also moved for entry of partial summary judgment claiming that the Becker IC Agreement is invalid and void ab initio because it was never approved by the United States as required under Federal law or Tribal law.

Defendant Becker sent a letter dated December 30, 2003, to John Jurrius setting out the terms under which Becker would work for the Tribe. App., Vol. I, 31.

Under that part of the letter dealing with a Participation and Growth, he asked for a percentage of the growth and energy related production, pipeline, and severance revenues, excluding lease based income. He also wanted the ability to invest with the Tribe on the same terms as the Tribe up to 5% of the Tribe's interest on a carried basis. His proposal, then, was to receive a share of the Tribe's oil and gas production from tribal properties. Jurrius responded proposing by memo dated February 9, 2004, that Becker receive the right to participate for 2% in two projects on the same terms as the Tribe. *Id.*, 26. If the Tribe had a 33% working interest under an exploration and development agreement (EDA), Becker could participate for 2% of that interest. An EDA is a real property interest that requires the approval of the Department of Interior. Becker accepted. A final IC Agreement was to be drafted with a 2% Participation Plan. Terms such as "participation interest" and "net revenue interest" have defined meanings in the oil and gas industry. *App.*, Vol. II, 308, 311; 314. Becker had a right under his Agreement to a share of the Tribe's oil and gas production. The above letters leading up to the final IC Agreement and the IC Agreement itself are not disputed.

Under the Independent Contractor Agreement signed by Becker and the Tribal Chairperson, *App.*, Vol. I, 37, there was an Exhibit B to the Agreement denominated as a Participation Plan, *Id.*, 49, in which Becker was to receive a beneficial interest of 2% of net revenue distributed to Ute Energy Holding, LLC (and net of any administrative costs of Ute Energy Holdings) ("Contractor's Interest"). Section 1. In the future, if the

Tribe participated in any projects involving the development, exploration and/or exploitation of minerals in which the Tribe had any participating interest and/or earning rights and Becker was providing services, and the Tribe elected not to place such interests in Ute Energy Holding, LLC, then Becker was to receive a 2 percent (2%) beneficial net revenue interests in such assets. Section 2. If Becker wished to sell his rights, he was required to notify the Tribe of his intentions and the Tribe had the right to meet the selling price. Section 4. This latter provision recognizes that the first two sections convey a freely alienable property interest to Becker, meaning the Tribe would have to reacquire the alienated interest at market value. Section 4 represents the sine qua non of a property interest, not merely an undefined stream of revenue with no certain source as claimed by Becker. Expert Report of Michael Wozniak, App., Vol. II, 304, § 10; 306, § 19.

It is undisputed that the revenue upon which Becker's 2%, interest was to be calculated came from oil and gas production on land held in trust by the United States for the Ute Tribe on the Uintah and Ouray Indian Reservation. The Tribe has a tribal membership of almost four thousand individuals, over half of whom live on the Uintah and Ouray Indian Reservation. The Tribe operates its own tribal government and oversees approximately 1.3 million acres of Indian trust lands, some of which contain significant oil and gas deposits. Revenue from the development of these oil/ gas deposits is the primary source of money that is used to fund the Tribe's government and its health and social welfare programs

for tribal members. Irene Cuch affidavit, § 2; App., Vol. I, 2. The entities involved, Ute Energy Holdings, LLC, and Ute Energy, LLC, were capitalized with the Tribe's interest in exploration and development agreements (EDA's) with various oil and gas companies, where the Tribe not only leased its oil and gas minerals but had the option to participate as a working interest owner in the drilling and production of oil and gas from wells drilled on tribal lands under the EDAs. "The only way net revenue interest is distributed is through production from oil and gas wells." Declaration and Expert report of Michael J. Wozniak, App., Vol. II, 303, no. 6 and 306, no. 19. Under Becker's IC Agreement, his primary service was "the restructuring and development of the Tribe's energy and minerals development as set forth in Tribal Ordinance 03.003." Defendant has offered no reasonable or logical explanation of how the money that he was paid and is seeking from the Tribe could have been generated other than by the production of oil and gas.

It is also undisputed that Becker's IC Agreement was never authorized or approved by the United States, Congress, Department of Interior, Secretary of Interior, Secretary's duly authorized designee, or Bureau of Indian Affairs or its designee. App., Vol. II, 261.

Under Tribal law, The Tribe's Constitution delegates specific powers to the Tribal Business Committee and those powers are "subject to any limitations imposed by the statutes or Constitution of the United States, and subject further to all express restrictions upon such power contained in the

Constitution and Bylaws.” Const., Ute Tribe, art. VI, § 1; App., Vol. III, 538. The Constitution further provides that the Business Committee may only “approve ... any sale, disposition, lease, or encumbrance of Tribal lands, interests in Tribal lands, or other Tribal assets” that have been first “authorized or executed by the Secretary of the Interior, Commissioner of Indian Affairs, or any other official or agency of the government. Id., art VI, § 1 (c). The Tribe’s Corporate Charter, § 5 (g), likewise indicates that the Business Committee has the corporate power “(t)o pledger or assign chattels or future tribal income due or to become due to the Tribe and provided that “any such pledge or assignment shall be subject to the approval of the Secretary of the Interior or his duly authorized representative.” App., Vol. III, 552. Resolution 05-147 states that the Business Committee was acting pursuant to its authority to regulate the economic affairs of the Tribe when it agreed to enter into the IC Agreement. The IC Agreement Participation Plan creates a claim against the Tribe’s new revenue from its mineral interests and participation rights and it constitutes a pledge or assignment of the Tribe’s future income from its mineral interest. Without approval by the Department of Interior, Secretary of the Interior, Bureau of Indian Affairs or other official of the United States, the Business Committee could not assign, dispose, or otherwise encumbrance any interests in Tribal lands or other Tribal assets, See Pilar Thomas opinion, App., Vol. II 359-360; Professor Miller, App., Vol. III, 522-525. Without the requisite approval the IC Agreement is void and unenforceable under Tribal law. See Wells Fargo, N.A. v. Lake of the Torches Econ. Dev. Corp.,

658 F3d 684, 702 (7th Cir. 2011) (void agreement invalidates other provisions of the agreement); *Central Transp. Co. v. Pullman Car Co.*, 139 U.S. 24, 23 (1891).

Federal law also imposes restraints on the ability of Indian tribes to alienate or encumber assets held in trust unless approved by the United States. E.g., *Oneida Indian Nation v. Cty. Of Oneida*, 414 U.S. 661, 667-675 (1974), and *Cty. Of Oneida v. Oneida Indian Nation*, 470 U.S. 226 (1985) (conveyance of 100,000 acres was a nullity because never approved by federal government). This includes sale proceeds of trust property, *Chippewa Cree Tribe v. U.S.*, 73 Fed. Cl. (2006) (proceeds from the sale of tribal property still remain tribal property despite their conversion to money); things grown and removed from trust property, *Wooden-Ware Co. v. U.S.*, 106 U.S. 432, 435 (1882) (Indian timber at all stages of conversion remained trust property and its purchase by a third party did not divest title or right of possession); and minerals extracted and removed from trust property as in this case, *U.S. v. Noble*, 237 U.S. 74, 80-81 (1915) (“It is said that the (agreements) contemplate the payment of sums of money, equal to the agreed percentage of the market value of the minerals, and thus that the assignment was of these moneys; but the fact that rent is to be paid in money does not make it any less a profit issuing from the land”), See also *Becker v. Ute Tribe*, 868 F3d 1199, 1204 (10th Cir. 2017). The restraint on the alienation of tribal property rests on the “duty of the Federal Government to safeguard Indian interests and protect them against the greed of others and their own improvidence,” and this power “justifies the interposition of the strong shield of federal law to the

end that (Indians) not be overreached or despoiled in respect of their property of whatsoever kind or nature. *Sunderland v. U.S.*, 266 U.S. 226, 233-234 (1924).

When a contract with an Indian tribe or individual Indian requires federal approval, no portion of the unapproved contract is enforceable. “We think the better view is that, where an (Indian allottee) undertakes to negotiate a (forbidden mineral) lease ... he enters the field where he must be regarded as without capacity or authority to negotiate or act, and the resulting lease is void.” *Smith v. McCullough*, 270 U.S. 456, 463, 465 (1926) (it was beyond the power of the Indian allottee, on his own volition) to grant the mineral lease in dispute). An illegal and void transfer of trust property cannot be ratified even by the allottee owner or state statute. *Bunch v. Cole*, 263 U.S. 250, 254-255 (1923). See also *Johnson v. M’Intosh*, 8 Wheat 543, 573-574 (1823) (where the requisite federal approval was never obtained and the Indians annulled the agreement, we know of no tribunal that can enforce the annulled agreement); *Ewert v. Bluejacket*, 259 U.S. 129, 137 (1922)(the illegal alienation of Indian property confers no enforceable rights); *Wells Fargo Bank N.A v. Lake of the Torches Economic Dev. Corp.*, 658 F3d 684, 698-7000 (7th Cir. 2011)(trust indenture and waiver of sovereign immunity contained therein were void ab initio for lack of federal approval); *Becker v. Ute Indian Tribe*, 868 F3d 1199, 1205 (10th Cir. 2017); *Catskill Dev., LLC v. Park Place Entm’t Corp.*, 547 F3d 115, 127-130 (2nd Cir. 2008) (contracts with Mohawk Indian Tribe were void ab initio for lack of federal approval); *Black Hills Institute of Geological Research v. South Dakota School of Mines and Technology*, 12

F3d 737, 742-743 (8th Cir. 1993)(holding that federal restraints on the alienation of Indian property apply not only to real property but also to interests in Indian land like fossils or minerals that become personal property when severed from the land): and *Quantum Expl., v. Clark*, 780 F2d 1457, 145901460 (9th Cir. 1986)(agreement not approved under the Indian Mineral Development Act is not enforceable).

The principle that the United States is required to approve any extinguishment of Indian title and possessory interests in Indian property was first codified in the Indian Non-Intercourse Act of 1790 (NIA) at 25 USC § 177.

No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or Tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution.

It is unlawful under the NIA to unlawfully induce any Indian to execute any contract, deed, mortgage, or other instrument purporting to convey any land or any interest therein held by the United States in trust for such Indian. 25 USC § 202. As between an Indian and non-Indian in a matter involving the right to property. the burden of proof rests upon the white person. 25 USC § 194.

Because the NIA is so exacting and straightforward on prohibiting the alienation of Indian property, the United States has subsequently enacted certain statutes that allow the NIA to be bypassed but only

pursuant to the prior approval by the Secretary of Interior or the Secretary's duly authorized designee as expressly authorized by Congress. One such Congressional authorization is the Indian Mineral Development Act (IMDA), 25 USC § § 2101-2108. 25 USC § 2102 (a) requires federal approval for, inter alia, any joint venture, production sharing, service or managerial agreements, and any other agreements that involve the exploration, development, sale or other disposition of the production or products of Indian mineral resources. Tribes retain a great degree of flexibility in business arrangements surrounding production and development of their mineral interests subject to the approval of the Secretary of Interior. Absent federal approval, there is no enforceable agreement under IMDA. *Quantum Exploration, Inc. v. Clark*, 780 F2d 1457, 1459 (9th Cir. 1986).

It is immaterial that the Ute Tribe placed its oil/gas assets into one or more limited liability companies. The Federal government's trust responsibility followed the Tribe's oil/gas assets into Ute Energy, LLC, and Ute Energy Holdings, LLC. This point is made clear in *Long Royalty Company, Appellant, MMS-87-0244-IND (FE)*, 1989 WL 1712513 (September 22, 1989), App., Vol. II, 338-340. In *Long*, the Department of Interior ruled that the Federal government's trust responsibility to Indians extends to the collection of revenues from Indian oil/gas minerals, even when an Indian tribe's oil/gas assets are placed into a joint venture with Indians. The Department soundly rejected *Long's* argument that the Federal government's trust responsibility to Indians does not

extend and encompass revenue collection from oil/gas wells on Indian lands. *Id.*, 339-340.

The experts presented by the Tribe on Indian mineral development or Federal Indian law have opined that the Becker IC Agreement was subject to federal review and approval, either under IMDA, or if not IMDA, then under 25 USC § 177. Absent such approval, the IC Agreement is void ab initio, including the purported waiver of sovereign immunity contained in the Agreement. See Pilar Thomas, App., Vol. II, 341-360; Kevin Gambrell, App., Vol. II, 404-428; Professor Alexander Tallchief Skibine, App., Vol. II, 445-479; and Professor Robert J. Miller, App., Vol. III, 500. With due deference, to Becker's expert, it does not appear that Attorney Williams considered Federal law to be implicated by the Becker IC Agreement and she did not consider the IMDA because in her opinion it was not necessary to consider any Federal law or regulation. Williams' opinions are given no weight by the Court.

This Court finds and holds that the Becker IC Agreement was required under both Tribal and Federal law to be approved by the United States or the Department of Interior or its designee. No such required approval was ever given. The Agreement is therefore void ab initio and without effect.

Plaintiffs' motions for summary judgment are granted.

Dated February 28, 2018.

/s/ Terry L. Pechota
Terry L. Pechota
Judge

61a

Ute Indian Tribal Court

ATTEST:

/s/ [Illegible]
Clerk

(SEAL)

APPENDIX 6

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

CASE No. 2:16-cv-00579

[Filed: March 1, 2018]

UTE INDIAN TRIBE OF THE UINTAH &)
OURAY RESERVATION, a federally)
recognized Indian tribe, et al.,)
)
Plaintiffs,)
)
v.)
)
HONORABLE BARRY G. LAWRENCE,)
District Judge, Utah Third Judicial)
District Court, in his Individual and)
Official Capacities, and LYNN D. BECKER,)
)
Defendants.)

Frances C. Bassett, *Admitted Pro Hac Vice*
Jeremy J. Patterson, *Admitted Pro Hac Vice*
Thomasina Real Bird, *Admitted Pro Hac Vice*
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Telephone: (801) 366-6002
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Attorneys for Plaintiffs

**UTE INDIAN TRIBE'S NOTICE OF RULING BY
THE UTE INDIAN TRIBAL COURT**

Judge Clark Waddoups

The Ute Indian Tribe and affiliated parties (the "Tribe" or "Ute Tribe") provide the Court with notice of the partial grant of summary judgment in the Tribe's favor in the parallel Tribal Court proceeding between the parties, *Ute Indian Tribe v. Becker*, CV-16-253, a ruling that was entered on Wednesday, February 28, 2018, attached hereto as Appendix A.

Respectfully submitted this 1st day of March, 2018.

FREDERICKS PEEBLES & MORGAN LLP

s/ Frances C. Bassett

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s/ J. Preston Stieff

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Attorneys for Plaintiffs

*[Certificate of Service and Appendix omitted for
printing purposes]*

APPENDIX 7

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (“Agreement”), is made this 27th day of April, 2005, but shall be effective March 1, 2004 (“Contract Date”), and is entered into by and between the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, and its subsidiaries and affiliates, with its principal executive office at 988 South 7500 East, Ft. Duchesne, Utah 84026, (“the Tribe”), and Lynn D. Becker with an address of 14085 Berry Road, Golden, Colorado 80401 (“Contractor”). The Tribe and Contractor to be collectively referred to as “the Parties” or individually as “Party”.

WHEREAS, the Tribe desires to retain Contractor and Contractor desires to be retained by the Tribe for purposes of performing certain consulting and related services as defined in Article 1 below;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties hereby agree as follows:

Article 1. Description of Services.

Contractor will be retained by the Tribe (“Position”); currently Contractor is serving as Land Division Manager of the Energy and Minerals Department. Contractor agrees to hold the Position pursuant to the terms of this Agreement. Position responsibilities shall include, but shall not be limited to, the implementation

of the restructuring and development of the Tribal Energy and Minerals Department as set forth in Tribal Ordinance 03.003, attached hereto as “Exhibit C – Tribal Ordinance”. The Position, its term, the compensation due Contractor, the participation plan available to Contractor, description of duties, and other pertinent information regarding the Position are set out on “Exhibit A – Services” (“Services”), “Exhibit B – Participation Plan”, and “Exhibit C – Tribal Ordinance”, attached hereto and incorporated herein by reference. Contractor shall report directly to the Business Committee of the Tribe and hereinafter a reference to the Tribe will include the Business Committee.

Article 2. Confidentiality.

A. The Tribe acknowledges that Contractor has or may have business activities and interests outside the scope of this Agreement (“Outside Interests”) which Contractor has the right to pursue during the Contract Term. (Contract Term is defined in “Exhibit A – Services”.) Contractor agrees, however, that said Outside Interests will not include oil and gas activities in the Uintah Basin, Utah.

B. During the Contract Term and for a period of two (2) years after Contract Termination (“Confidential Period”), Contractor shall not, either directly or indirectly, for competitive or other purposes, disclose or cause to be disclosed to a third party, any information, materials, systems, procedures, processes, manuals, forms, customer lists, employee lists, or other trade secrets, property information, prospect information, or other confidential information regarding the business activities of the Tribe or of any of the Tribe’s affiliates

(“Confidential Information”) unless otherwise directed by the Tribe. Such disclosure to third parties will not include those parties with whom the Tribe is engaged in business transactions or with whom the Tribe is negotiating nor will it include any individual at the Tribe who is authorized to receive such Confidential Information. The Tribe may direct Contractor to disclose Confidential Information to the Tribe’s legal counsel or to the Tribe’s financial advisor and upon such direction, Contractor may so disclose.

C. During the Confidential Period, Contractor shall not, either directly or indirectly, use or cause to be used such Confidential Information in a manner that conflicts with the best interests of the Tribe and its affiliates, including, without limitation, use of any information related to the geographic area and/or the oil and gas fields within the geologic basin known as the Uintah Basin located in northeastern Utah.

D. Upon Contract Termination as provided for in Article 5 hereof, or at any time during the Contract Term, upon written request by the Tribe, Contractor shall promptly deliver to the Tribe all records, files, memoranda, notes, designs, data, reports, price lists, customer lists, drawings, plans, computer programs, software, software documentation, sketches, maps, property information, prospect information, laboratory and research notebooks and other documents relating to the business of the Tribe and its affiliates, including all copies or reproductions of such materials. All information, equipment, materials and data of every kind and description that Contractor receives, directly or indirectly, from the Tribe or from a third party on

behalf of the Tribe is, and shall remain, property of the Tribe.

Article 3. Independent Contractor Status.

Contractor and the Tribe understand and intend that Contractor shall perform the Services as an independent contractor and not as an employee of the Tribe.

Article 4. Representations and Warranties.

The Tribe and Contractor represent, warrant, and acknowledge as follows:

A. The Tribe will set reasonable goals for the Position that are to be achieved by Contractor and will set such goals in writing. The Tribe does not have the right to control the manner and means by which these goals are to be accomplished nor will the Tribe establish a quality standard for Contractor. Contractor shall adhere to the standards applicable to the energy industry when reasonable and appropriate.

B. Contractor shall determine when, where, and how to perform those activities necessary to fulfill the responsibilities of the Position. There shall be no set hours during which Contractor must work. There shall be no requirement that Services be performed upon the Tribe's premises. The Tribe shall set no order or sequence in which Services by Contractor must be performed. The Tribe retains no right of control in these areas. Such Services shall adhere to such timelines as would apply to a prudent contractor and to avoid delays that would interrupt normal Tribal business activities or stifle Tribal commerce. The Tribe

shall provide Contractor an office in the Tribal business complex in Fort Duchesne, Utah.

C. The Tribe will neither provide nor require more than minimal training for Contractor.

D. In achieving the goals set by the Tribe for the Position, Contractor may hire individuals to be employed directly by the Tribe and, at the Tribe's expense, may draw upon resources within the Energy and Minerals Department. However, Contractor will remain directly responsible for the achievement of such goals, will ensure that work performed meets the specifications set forth by the Tribe, and will be responsible for hiring, supervising, and firing any person he supervises to achieve said goals, subject to the policy and procedures of the Tribe. Individuals engaged by Contractor to assist in achieving said goals, as needed, will be subject to the budget approved by the Tribe, and will include but not be limited to petroleum engineers, geologists, reserve engineers, landmen and other industry professionals.

F. Contractor will not be required to submit regular written reports to the Tribe but will periodically report orally and/or in writing to the Tribe on the progress in achieving the goals set forth by the Tribe for the Position and shall provide such other oral and/or written reports as requested by the Tribe.

G. Contractor will be paid in accordance with Article 6 below.

H. Contractor must provide his own tools and materials. The Tribe will provide office supplies, laptop computer and other equipment, an office, and

personnel to Contractor for performance of the responsibilities for the Position under this Agreement.

I. Contractor understands that he shall obtain and keep current at his own expense any applicable permits, certificates and licenses necessary for Contractor to perform the Services.

Article 5. Termination of Agreement / Resignation of Contractor.

A. Termination. The Contract Term of this Agreement is defined in “Exhibit A – Services”. At the end of the Contract Term, this Agreement will renew automatically for an unlimited number of successive one year terms unless one Party gives the other Party written notice of termination no later than thirty days before the end of a yearly Contract Term (“Contract Termination Notice”). In the event this Agreement is not renewed, the Termination Date will be deemed to be the last day of the Contract Term. After the Termination Date, the Parties will no longer be responsible to each other and this Agreement and all obligations, rights, and responsibilities hereunder will terminate, subject to the terms and conditions of this Agreement which survive termination.

B. Termination With Cause. Notwithstanding the foregoing, the Tribe may terminate this Agreement at any time during the Contract Term upon written notice to Contractor in the event Contractor materially violates the terms of this Agreement or fails to achieve the reasonable goals in the written time frames set by the Tribe for the Position. The Termination Date will be set forth in the written notice. At the Termination

Date, the Parties will no longer be responsible to each other and this Agreement and all obligations, rights, and responsibilities hereunder will terminate. At the Termination Date, the Tribe shall pay one month's compensation to Contractor and shall have no further liability hereunder, subject to "Exhibit B – Participation Plan", and subject to the terms and conditions of this Agreement which survive termination.

C. Termination Without Cause. Notwithstanding the foregoing, the Tribe may terminate this Agreement for any reason at any time during the Contract Term upon written notice to Contractor. The Termination Date will be set forth in the written notice. Upon such termination, the Tribe shall pay to Contractor six month's compensation or the compensation due for the remainder of the Contract Term, whichever is the greater amount. At the Termination Date, the Parties will no longer be responsible to each other and this Agreement and all obligations, rights, and responsibilities hereunder will terminate, subject to the "Exhibit B – Participation Plan", and subject to the terms and conditions of this Agreement which survive termination.

D. Resignation With Cause. Notwithstanding the foregoing, Contractor may terminate this Agreement at any time during the Contract Term upon written notice to the Tribe in the event the Tribe violates the terms of this Agreement or fails to adequately support Contractor in achieving the goals set by the Tribe for the Position. The Termination Date will be set forth in the written notice. Upon such resignation, the Tribe

shall pay to Contractor six month's compensation or the compensation due for the remainder of the Contract Term, whichever is the greater amount. At the Termination Date, the Parties will no longer be responsible to each other and this Agreement and all obligations, rights, and responsibilities hereunder will terminate, subject to the "Exhibit B – Participation Plan", and subject to the terms and conditions of this Agreement which survive termination.

E. Resignation Without Cause. Notwithstanding the foregoing, Contractor may terminate this Agreement for any reason at any time during the Contract Term upon written notice to the Tribe. The Termination Date will be set forth in the written notice. At the Termination Date, the Tribe shall pay one month's compensation to Contractor. At the Termination Date, the Parties will no longer be responsible to each other and this Agreement and all obligations, rights, and responsibilities hereunder will terminate, subject to the "Exhibit B – Participation Plan", and subject to the terms and conditions of this Agreement which survive termination.

Article 6. Compensation and Incentives.

A. Consulting Fees. In consideration of Contractor providing the Services and performing the obligations hereunder, the Tribe shall pay Contractor compensation at a monthly rate set forth in "Exhibit A – Services" ("Compensation").

B. Expenses. Unless otherwise agreed to in writing by the Tribe, Contractor shall be responsible for all living expenses incurred while providing the Services

under this Agreement. Travel expenses regarding Contractor's travel back and forth from his home to the Tribe will be borne by Contractor. The Tribe will reimburse Contractor for all expenses related to Tribal business including travel involved in conducting Tribal business. All non-standard expenses must be approved by the Business Committee of the Tribe.

C. Payment. Payment of Compensation shall be made by the Tribe to Contractor by overnight delivery to the address shown above for delivery no later than the first business day of the month in which the Services are to be performed during the Contract Term.

D. Taxes. No income tax or payroll tax of any kind shall be paid by the Tribe for any payment made to Contractor under this Agreement, except as may be required by law, if any. Contractor shall be responsible for all income taxes and similar payments due on any monies paid to Contractor under this Agreement, including without limitation, federal, state, and local income tax, social security tax (FICA), self employment taxes, unemployment insurance taxes and all other taxes and fees.

E. Benefits. Contractor is not an employee of the Tribe and, therefore, shall not be entitled to any benefits, coverages or privileges, including, without limitation, social security, unemployment, workers' compensation, medical or pension payments, made available to employees of the Tribe.

F. Participation Plan. The Tribe will offer Contractor the participation rights set forth in "Exhibit B – Participation Plan".

Article 7. Cooperation.

The Tribe shall provide such access to its information and property as may be reasonably required in order to permit Contractor to provide the Services and perform the obligations hereunder. Contractor shall cooperate with the Tribe's personnel, shall not interfere with the conduct of the Tribe's business and shall observe all policies, rules and regulations of the Tribe and applicable law.

Article 8. Inspection.

The Tribe may inspect Contractor's performance hereunder from time to time. The Tribe's inspection (or lack thereof) will not constitute an acceptance of any Services or waiver of any right or warranty of the Tribe or any obligation of Contractor or preclude the Tribe from rejecting any defective Services.

Article 9. Warranties of Performance.

Contractor warrants that he will perform the Services using his best efforts in a professional manner consistent with oil and gas industry standards. Contractor further warrants that Contractor has adequate education and training to perform the Services. At the request of the Tribe, Contractor will correct defects in the Services within a reasonable period of time after the Tribe's notice to Contractor of such defects.

Article 10. Assignment of Intellectual Property.

All materials, research, plans, specifications, works of authorship and other data and intellectual property

generated, conceived or developed in connection with this Agreement and any resultant patents, copyrights or other intellectual property rights thereto including works of authorship in any form of expression, including but not limited to, manuals, plans, specifications and software development in connection with this Agreement are “works for hire” and belong exclusively to the Tribe (“Developed Material”). In the event Contractor should acquire rights in or to the Developed Material, Contractor will take reasonable action to transfer all of such rights to the Tribe.

Article 11. License.

Contractor grants to the Tribe a fully paid-up, perpetual, worldwide and royalty free license to utilize in any manner any work performed or created for the Tribe by Contractor but delivered to the Tribe under this Agreement. Contractor will not disclose or deliver any proprietary information of any third party to the Tribe except pursuant to a written license agreement between the Tribe and Contractor or such third party, as appropriate.

Article 12. Financial Ability, Proceedings and Obligations.

Contractor represents and warrants that he is capable of fulfilling the obligations under this Agreement, that there are no legal or administrative proceedings pending or threatened against him that could adversely affect his performance hereunder and that he is not prohibited by any arrangements or any document or obligation from entering into or performing under this Agreement.

Article 13. Indemnification By Contractor.

Contractor shall indemnify and hold the Tribe harmless from all liabilities, including taxes, insurance costs, and benefit costs, arising from claims that Contractor is an employee of the Tribe. Moreover, Contractor shall indemnify and hold the Tribe harmless from any and all claims or liabilities associated with the Tribe's failure to provide insurance coverage as set forth below.

Article 14. Indemnification By Tribe.

A. **The Tribe shall** be liable to Contractor for all losses, costs, damages and legal and other expenses of whatsoever nature ("Costs") which Contractor may suffer, sustain, pay or incur by reason of any act, matter or thing arising out of or in any way attributable to a breach of this Agreement by the Tribe or to the negligent acts or omissions, or willful misconduct, of the Tribe in the performance or non-performance of this Agreement, including, without limitation, any Costs relating to environmental damage or the breach of any environmental legislation, any Costs resulting from infringement of any patent, copyright, trademark, trade secret or other intellectual property right or any Costs resulting from any cause whatsoever, except to the extent caused by the negligence of Contractor; and, in addition,

B. **The Tribe shall** indemnify and save harmless Contractor from and against all actions, proceedings, claims, demands, losses, costs, damages and legal and other expenses of whatsoever nature ("Actions") which may be brought against or suffered by Contractor or

which he may sustain, pay or incur by reason of any matter or thing arising out of or in any way attributable to a breach of this Agreement by the Tribe or to the negligent acts or omissions, or willful misconduct, of the Tribe in the performance or non-performance of this Agreement, including, without limitation, any Actions relating to environmental damage or the breach of any environmental legislation, any Actions resulting from infringement of any patent, copyright, trademark, trade secret or other intellectual property right or any Actions resulting from any cause whatsoever, except to the extent caused by the negligence of Contractor.

C. For the purposes of this Agreement, Contractor shall not be held liable for any act or omission with respect to his performance of the Services hereunder and with respect to Contractor's work for the Tribe since April 1, 2002 if such act or omission is done or omitted pursuant to the specific instruction of, or with the concurrence of, the Tribe or its advisors, including but not limited to any work done under the Research Consulting Agreement dated April, 2002 between the Tribe and FIML Natural Resources LLC.

D. Notwithstanding the foregoing, the Tribe's indemnification of Contractor shall be effective from April 1, 2002.

Article 15. Insurance Coverages.

Contractor shall be solely responsible for all of his own insurance coverage. No workers' compensation insurance shall be obtained by the Tribe concerning

Contractor. Contractor shall comply with all applicable workers' compensation laws concerning Contractor.

Article 16. Background Checks.

The Tribe may require that a background/security check be performed on Contractor.

Article 17. Contraband.

Contractor understands that it is the policy of the Tribe that:

A. The use, possession and/or distribution of illegal or unauthorized drugs, or drug related paraphernalia on Tribal premises is prohibited and the use or possession of alcoholic beverages is also prohibited; and

B. Entry onto or presence on Tribal premises by any person constitutes the consent of such person to allow the Tribe to conduct searches, whether announced or unannounced, on Tribal premises, of the person, and his or her personal affects for such prohibited items, to the extent permitted by law. Contractor agrees to comply with all postings and notices located on Tribal premises and with all policies, rules and regulations of the Tribe, whether or not relating to security matters, and including without limitation those regarding safety, security and weapons.

Article 18. Notices.

All notices required or permitted under this Agreement shall be in writing and, unless otherwise noted in this Agreement, shall be deemed effective upon personal delivery, upon delivery by a nationwide

overnight delivery service or upon deposit in the United States Post Office, by registered or certified mail, postage prepaid, addressed to each party at the following:

The Tribe:

Ute Indian Tribe
Uintah and Ouray Reservation
988 South 7500 East
Fort Duchesne, Utah 84026
Attention: Business Committee

The Contractor:

Lynn D. Becker
14085 Berry Road
Golden, Colorado 80401

Article 19. Entire Agreement.

This Agreement contains the entire agreement between the Parties with respect to the matters contemplated herein. No promises or representations have been made by the Tribe or Contractor other than those contained in this Agreement.

Article 20. Amendment.

This Agreement may be amended or modified only by a written instrument executed by both the Tribe and Contractor.

Article 21. Governing Law and Forum.

This Agreement and all disputes arising hereunder shall be subject to, governed by and construed in accordance with the laws of the State of Utah. All

disputes arising under or relating to this Agreement shall be resolved in the United States District Court for the District of Utah.

Article 22. Waiver.

No delay or omission by the Tribe or Contractor in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by the Tribe or Contractor on any one occasion shall be effective only in that instance (unless explicitly stated or written otherwise) and shall not be construed as a bar or waiver of any other right on any other occasion.

Article 23. Limited Waiver of Sovereign Immunity; Submission to Jurisdiction.

If any Legal Proceeding (definition follows) should arise between the Parties hereto, the Tribe agrees to a limited waiver of the defense of sovereign immunity, to the extent such defense may be available, in order that such legal proceeding be heard and decided in accordance with the terms of this Agreement. For purposes of this Agreement, a “Legal Proceeding” means any judicial, administrative, or arbitration proceeding conducted pursuant to this Agreement and relating to the interpretation, breach, or enforcement of this Agreement. To the extent the course of dealing between the Parties might be interpreted to have modified or extended the terms of this Agreement, the limited waiver of sovereign immunity shall apply to such modification or extension. A Legal Proceeding shall not include proceedings related to royalty or similar interests in lands held by the Tribe that are not

expressly subject to the terms of this Agreement. The Tribe specifically surrenders its sovereign power to the limited extent necessary to permit the full determination of questions of fact and law and the award of appropriate remedies in any Legal Proceeding.

The Parties hereto unequivocally submit to the jurisdiction of the following courts: (i) U.S. District Court for the District of Utah, and appellate courts therefrom, and (ii) if, and only if, such courts also lack jurisdiction over such case, to any court of competent jurisdiction and associated appellate courts or courts with jurisdiction to review actions of such courts. The court or courts so designated shall have, to the extent the Parties can so provide, original and exclusive jurisdiction, concerning all such Legal Proceedings, and the Tribe waives any requirement of Tribal law stating that Tribal courts have exclusive original jurisdiction over all matters involving the Tribe and waives any requirement that such Legal Proceedings be brought in Tribal Court or that Tribal remedies be exhausted.

Each Party hereto consents to service of processing for any such Legal Proceeding filed in the court or courts so designated. The Tribe's limited waiver of sovereign immunity and submission to jurisdiction also extends to any arbitration and all review and enforcement of any decision or award of the panel so convened in the court or courts so designated. The Tribe's limited waiver of sovereign immunity shall be further evidenced by a Tribal Resolution delivered at the time of execution of this Agreement in accordance with Tribal laws, that expressly authorizes the

foregoing submission to jurisdiction of the courts so designated and the execution of this Agreement.

Article 24. Severability.

In the event that any provision of this Agreement shall be invalid, illegal or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

Article 25. Miscellaneous.

This Agreement shall be binding upon, and inure to the benefit of, both Parties and their respective successors, including, without limitation, any corporation, company, affiliate or any other entity to which the Tribe may assign its rights hereunder, or into which the Tribe's ownership interests may be transferred or merged or which may succeed to its assets or business; provided, however, that the obligations of Contractor are personal and shall not be assigned by Contractor except as permitted by this Agreement.

The captions of the sections and articles of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section or article of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year set forth above but effective as of the Contract Date.

UTE INDIAN TRIBE

Uintah and Ouray Reservation
988 South 7500 East
Ft. Duchesne, Utah 84026

By the Ute Indian Tribe Business Committee

/s/ Maxine Natchees

Maxine Natchees, Chairman

Date:

Lynn D. Becker

14085 Berry Road
Golden, Colorado 80401

List of Exhibits and Schedules

<u>Exhibits</u>	<u>Description</u>
A.	Services
B.	Participation Plan
C.	Ordinance 03-003 (Reorganization of the Energy and Minerals Department)

EXHIBIT A - SERVICES

1. CONTRACT TERM:

Contractor will be retained by the Tribe for an initial period of twenty-four (24) months commencing with the Contract Date of this Agreement and for an unlimited number of additional twelve (12) month periods thereafter (the "Contract Term(s)"), unless and until this Agreement is terminated as provided for herein. Currently Contractor is retained in the position

of Land Division Manager of the Energy and Minerals Department.

2. COMPENSATION:

To retain the services of Contractor, the Tribe will pay Contractor \$16,666.67 per month for each month of the Contract Term ("Compensation"). Compensation will be paid to Contractor no later than the first business day of the month in which the Services are to be performed. By the end of each month of the Contract Term, Contractor shall submit Compensation invoices to the Tribe or its designated affiliate, the Venture Fund Board, for the next month's Compensation.

3. DESCRIPTION OF DUTIES:

In addition to the services described in Article 1 of this Agreement, the Tribe and Contractor shall work together to set reasonable goals and timelines for achieving the goals for the Position and will set such goals in writing ("Goals").

As part of the Services, Contractor agrees as follows:

(a) When performing the Services, Contractor agrees to use care at all times to avoid interference and damage to existing facilities and installations,.

(b) Contractor agrees to work in Ft. Duchesne, Utah as dictated by the workload and responsibilities of the Position, however, Contractor may work from other locations as permitted by said workload and responsibilities. Contractor may work off-site one week per month.

(c) The Tribe will permit Contractor to devote five weeks during each yearly period to engage in his Outside Interests (“Outside Time”). Contractor shall give the Tribe advance notice of such Outside Time. In the event Contractor requires more time, Contractor shall give the Tribe advance notice of how much time is required and when such time will be taken. Outside Time does not impact or affect Compensation due Contractor.

4. ADDITIONAL COMPENSATION:

The Tribe shall:

(a) pay \$15,000 to Contractor upon the signing of this Agreement for initial startup expenses,

(b) provide a Tribal vehicle for Contractor’s use for Tribal business.

(c) reimburse Contractor for miscellaneous expenses as submitted by Contractor and approved by the Tribe at the Tribe’s sole discretion, which may include, but shall not be limited to, the following:

- (i) Cellular phone: cost per day (if no phone supplied by Tribe)
- (ii) Fax Machine: cost per day (as required)
- (iii) Conferences and seminars unique to the Tribe and this engagement
- (iv) Miscellaneous expenses including business meals, office supplies, etc.

EXHIBIT B - PARTICIPATION PLAN

1. In recognition of Contractor's services, Contractor shall receive a beneficial interest of two percent (2%) of net revenue distributed to Ute Energy Holding, LLC from Ute Energy, LLC (and net of any administrative costs of Ute Energy Holdings) ("Contractor's Interest").
2. In the future, a) if the Tribe participates in any projects involving the development, exploration and/or exploitation of minerals in which the Tribe has any participating interest and/or earning rights, or similar commercial interests and Contractor is providing services under this agreement, and b) the Tribe elects not to place such interests in Ute Energy Holding, LLC, then Contractor shall receive a two percent (2%) beneficial net revenue interest in such assets, provided however, that in the event the Tribe should enter into an agreement under which the Tribe would be required to pay any project costs or expenses without the benefit of financing or a form of carried interest, then Contractor agrees that in the event Contractor elects to participate in such projects, Contractor shall in the same manner as the Tribe pay two percent (2%) of any project costs and expenses and receive the net revenue attributable to such participation interest.
3. Contractor shall receive no interests in or incentive payments or payments of any kind based on any fees or revenues paid to the Tribe that are regulatory in nature including, but not limited to, the following: royalties, severance tax, through-put

fees, surface or rights-of-way payments, and lease bonuses.

4. If, at any time, Contractor wishes to sell the Contractor Rights, Contractor agrees to notify the Tribe of his intention. The Tribe shall have 60 days to exercise this preferential right to purchase with a bona fide, market value offer to purchase on the same terms and conditions that any legitimate offer would entail.
5. If Contractor either Resigns without Cause or is Terminated for Cause before the date that is 30 months from the Contract Date of this Agreement, then Contractor shall have the participation rights in this Participation Plan only for projects for which the Tribe has executed the contracts creating the project on or before the date of termination.

Ordinance No. 03.003

**TO PROVIDE FOR THE REORGANIZATION OF
THE ENERGY AND MINERALS DEPARTMENT
OF THE UTE INDIAN TRIBE**

**BE IT ENACTED BY THE UINTAH AND OURAY
TRIBAL BUSINESS COMMITTEE OF THE UTE
INDIAN TRIBE** by virtue of its inherent authority as a sovereign Indian Tribe to oversee and manage economic and taxation activities occurring within the boundaries of the Uintah and Ouray Reservation such vested authority being recognized and confirmed by the Act of Congress of June 18, 1934 48 Stat. 984, and pursuant to the powers of the Tribal Business Committee as enumerated in the Constitution of the Ute Indian Tribe of the Uintah and Ouray Reservation,

Article VI, Sections 1(f), (l), and (s), that it hereby adopts this Ordinance No. 03.003.

ARTICLE I

Purpose

The government of the Ute Indian Tribe of the Uintah and Ouray Reservation (the “Tribe”) currently includes an Energy and Minerals Department. This Ordinance restructures and reorganizes the Energy and Minerals Department to accomplish the following purposes:

- Enhance Collection of Royalties, Severance Taxes and Other Payments;
- Improve Tracking and Management of Tribal Energy Resources;
- Improve Forecasting of Mineral Revenues;
- Provide Ongoing Monitoring of Regulatory Matters;
- Improve Coordination with Other Governmental Agencies.

ARTICLE II

Repeal of Prior Ordinances

This Ordinance is intended to restate and restructure the entire organization of the Energy and Minerals Department and to repeal and supercede all prior ordinances related to the Department and its functions. This Ordinance expressly amends Ordinance No. 88-07 as amended Ordinance No. 91-04 and Ordinance No 95-002, only to the extent necessary to

accomplish the transfer of functions described below in Sections 4.2 and 4.3. Further, if there is any inconsistency or conflict between this Ordinance and any prior Ordinance, the terms of this Ordinance shall control.

ARTICLE III Definitions

The following terms shall have the specified meanings as used in this Ordinance:

“Business Committee” means the Business Committee of the Ute Indian Tribe of the Uintah and Ouray Reservation.

“Business License” means the license required under the Tribe’s Ordinance No. 95-002.

“Department” means the Energy and Minerals Department of the Ute Indian Tribe of the Uintah and Ouray Reservation.

“Land Division Manager” is defined in Section 5.2.

“Mineral Revenue Manager” is defined in Section 5.1.

“Tribe” means the Ute Indian Tribe of the Uintah and Ouray Reservation.

ARTICLE IV
Structure of the Energy and
Minerals Department

The Department shall be comprised primarily of three divisions: the Royalty Division, the Severance Tax Division and the Land Division.

4.1 Royalty Division.

The Royalty Division shall be responsible for the collection, monitoring, auditing, and reconciliation of all royalties paid on Tribal minerals. The Royalty Division Supervisor shall manage this function, and the employees within the Royalty Division. The Royalty Division shall assure the prompt and complete collection and payment of any royalties imposed on Tribal minerals by the United States on behalf of the Tribe, as well as any royalties now or later imposed on the development of Tribal minerals by the Tribe, whether by contract or ordinance.

4.2 Severance Tax Division.

The Severance Tax Division shall be responsible for the collection, monitoring, auditing, and reconciliation of all Severance Taxes due on Tribal minerals, including but not limited to Severance Taxes imposed pursuant to Ordinance No. 88-07 as amended. The Severance Tax Division shall be vested with powers and responsibilities established by Ordinance No 91-04, but only with respect to the assessment and collection of the Severance Tax. Nothing in this Ordinance shall be construed to detract from the authority and duties of the Tax Department created under Ordinance 91-04

except to the extent necessary to transfer responsibility for enforcement of the Severance Tax from the Tax Department to the Severance Tax Division of the Energy and Minerals Department. In addition, as described in 4.3 below, responsibility for the issuance of Business Licenses and the administration thereof formerly vested within the Tax Department is transferred to the Land Division of the Energy and Minerals Department.

4.3 Land Division.

The Land Division shall be responsible for the administration and maintenance of leases, contracts, surface use, sanitization, and all other types of agreements covering Tribal energy, surface, and minerals resources. The Land Division shall assure the prompt and complete collection of any payments, fees, or penalties (other than those explicitly assigned to the Royalty and Severance Tax Divisions) imposed on Tribal surface or minerals by the United States on behalf of the Tribe or by the Tribe on its own behalf, as well as any payments, fees, or penalties now or later imposed on the development of Tribal surface or minerals by the Tribe, whether by contract, resolution or ordinance.

The Land Division shall also be responsible for the issuance, administration and maintenance of Business Licenses, access permits and the supervision of all energy and/or mineral related field operations. Ordinance No. 95-002 is hereby amended to the extent necessary to transfer responsibility for Business Licensing to the Land Division of the Energy and Minerals Department. Duties previously exercised by

the Director of the Tax Department under Ordinance No. 95-002 will hereafter be exercised by the Land Division Manager. The Tribe's ownership database management system and its geographic information systems shall be maintained and administered by the Land Division.

ARTICLE V

Management of the Energy and Minerals Department

5.1 Mineral Revenue Manager. All employees and functions of both the Severance Tax Division and the Royalty Division shall report to the Mineral Revenue Manager. The Mineral Revenue Manager shall be appointed by the Business Committee, and the Mineral Revenue Manager shall report directly to the Business Committee.

(1) Qualifications. The Mineral Revenue Manager shall be selected and employed by the Business Committee at its discretion. The Business Committee expects, however, that the Mineral Revenue Manager will have the following qualifications: (i) at least ten years experience as a commercial petroleum engineer, (ii) at least five years of management experience, (iii) experience or expertise in implementing new financial and computer technology, (iv) ability to execute strategic plans as designed or specified by the Business Committee and its financial advisor, and (v) experience with Indian mineral development.

(2) Duties. The Mineral Revenue Manager shall be charged with the overall management of the

Royalty Division and the Severance Tax Division. The Mineral Revenue Manager shall prepare or cause to be prepared such reports, projections, and planning documents as required by the Business Committee. The Mineral Revenue Manager shall be responsible for preparing budgets for the Royalty and Severance Tax Divisions and implementing those budgets. The Mineral Revenue Manager shall be responsible for all personnel decisions within the Royalty and Severance Tax Divisions, subject to the oversight and control of the Business Committee. The Mineral Revenue Manager shall perform all other duties and functions assigned to that position by the Business Committee; see Appendix A for specific reports, projections, planning documents, duties and functions currently assigned to this position. All reports made by the Minerals Revenue Manager to the Business Committee, whether written or oral, shall be made jointly with the Land Division Manager.

5.2 Land Division Manager. All employees and functions of the Land Division shall report to the Land Division Manager. The Land Division Manager shall be appointed by the Business Committee, and shall report directly to the Business Committee.

(a) Qualifications. The Land Division Manager shall be selected and employed by the Business Committee at its discretion. The Business Committee expects, however, that the Land Division Manager will have the following qualifications: (i) at least ten years experience as a landman, (ii) experience with lands managed by the Bureau of Land Management and the

Bureau of Indian Affairs, (iii) experience or expertise in implementing creative solutions and processes.

(b) Duties. The Land Division Manager shall be charged with the overall management of the Land Division. All functions and employees within the Land Division shall report to the Land Division Manager. The Land Division Manager shall prepare such reports, projections, and planning documents as required by the Business Committee. The Land Division Manager shall be responsible for preparing budgets for the Land Division, and implementing those budgets. The Land Division Manager shall be responsible for all personnel decisions within the Land Division, subject to the oversight and control of the Business Committee. The Land Division Manager shall perform all other duties and functions assigned to that position by the Business Committee; see Appendix B for specific reports, projections, planning documents, duties and functions currently assigned to this position. All reports made by the Land Division Manager to the Business Committee, whether written or oral, shall be made jointly with the Minerals Revenue Manager.

5.3 Supporting Functions.

The Energy and Minerals Department shall employ a Business Analyst, a GIS Coordinator and an Office Coordinator. The Business Analyst shall report directly to the Mineral Revenue Manager and shall also report on an informal basis to the Land Division Manager, the GIS Coordinator shall report directly to the Land Division Manager and shall also report on an informal basis to the Mineral Revenue Manager, and the Office Coordinator shall report directly to the Land Division

Manager and shall also report on an informal basis to the Mineral Revenue Manager. The Business Analyst, the GIS Coordinator and the Office Coordinator shall provide support to the Royalty Division, the Severance Tax Division, and the Land Division as required.

(a) The Business Analyst. The Business Analyst shall have primary responsibility for creating and maintaining an economic analysis of current development projects on Tribal lands, proposed projects and business development opportunities for the Tribe. This position shall make evaluations of and recommendations for determining the fair market value of Tribal resources. This position shall create investment strategies for the Tribe concerning energy and mineral resources both on and off the Reservation. The Business Analyst shall use outside consultants as deemed appropriate by the Mineral Revenue Manager. The Business Analyst shall prepare such reports, analyses, and projects as required by the Land Division, Royalty Division, Severance Tax Division, or the Business Committee.

(b) The Geographic Information System (“GIS”) Coordinator. The GIS Coordinator shall have primary responsibility for collecting, creating, administering and maintaining spatial data and images. This position shall coordinate with Tribal, federal, state, and county agencies to maintain the data as completely and accurately as possible. The GIS Coordinator shall prepare such maps, presentations, charts, reports, analyses, and projects as required by the Land Division, the Mineral Revenue Branch, or the Business Committee.

(c) The Office Coordinator. The Office Coordinator shall have primary responsibility for tracking the status of all open work documents, focusing specifically on field operations. This position shall process access permits and business licenses, coordinate all inter-agency functions of the Department with the Bureau of Indian Affairs, the Bureau of Land Management, the State of Utah, county agencies and many other agencies, and assure that all actions required from these agencies are achieved expeditiously. The Office Coordinator shall prepare such reports, analyses, and projects as required by the Land Division, Royalty Division, Severance Tax Division, or the Business Committee.

5.4 Supervisors

The Royalty Division and the Severance Tax Division shall each have one Supervisor who shall report to the Mineral Revenue Manager. The Royalty Division Supervisor and the Severance Tax Division Supervisor shall each be responsible for carrying out on a day-to-day basis the objectives described in this Ordinance for each respective Division. The Supervisors shall also be responsible for any additional duties assigned to them by the Business Committee or the Mineral Revenue Manager.

The Land Division shall have one Supervisor who shall report to the Land Division Manager. The Land Division Supervisor shall be responsible for the daily administration and maintenance of the lease and agreement records and the Department's computer systems and software. The Supervisor shall also be responsible for any additional duties assigned to it by

the Business Committee or the Land Division Manager.

5.5 Organization Chart and Remaining Positions

Appendix C is an organization chart for the Department and Appendix D contains job descriptions for each position shown on the organization chart.

ARTICLE VI Functions of the Energy and Minerals Department

The Energy and Minerals Department shall perform all functions delegated to that Department by the Business Committee, including but not limited to those set forth in this Article VI.

6.1 Review of Minerals Agreements.

The Tribe may, from time to time, enter into agreements allowing the development of Tribal minerals, including the leasing of such minerals. The Energy and Minerals Department shall provide such support as required by the Tribe or its financial advisor or the review of such agreements, including review of land issues, surface use and royalty issues, and related analytic support. The Land Division shall:

(a) Administer the leases and maintain the lease records, including 1) auditing payments of rentals, shut-in royalties, compensatory royalties, overriding royalties, through put fees and similar fees; 2) auditing production for thresholds affecting royalties or lease term compliance; and 3) auditing the lease terms annually for general compliance issues.

(b) Administer the contracts and maintain the contract records for exploration and development agreements, cooperative plans of development, communitization agreements and similar pooling/unitization agreements, including 1) auditing contractual obligations and associated payments; and 2) auditing the contract terms annually for general compliance issues.

6.2 Review of Rights of Way and Surface Use Agreements.

The Land Division shall have primary responsibility for performing the functions of the Energy and Minerals Department specified in Ordinance No 01-006, relating to Mineral Access and Surface Use of Oil and Gas Lessees on the Uintah and Ouray Reservation. The actions of the Land Division in the administration of those functions shall be subject to the review and approval of the Mineral Revenue Manager. The Land Division shall:

(a) Administer the surface use and access agreements, rights-of-way and mineral access agreements, and maintain the records thereof, including 1) auditing contractual obligations and associated payments; 2) auditing the contract terms annually for general compliance issues; and 3) auditing field operations to confirm status and compliance with governing agreements, rules and regulations.

6.3 Maintenance of Land Records.

The Land Division shall be responsible for the administration and maintenance of the land records of the Tribe and shall:

(a) Maintain the ownership data of the Tribe in a data base management system (currently the GWiz System);

(b) Maintain the data concerning all documents affecting the Tribe's land ownership;

(c) Acquire, maintain and generate maps depicting the data described in (a) and (b) above and any other necessary features in applicable mapping systems (currently the ESRI ArcView and LandWorks Systems).

6.4 Collection of Severance Taxes.

The Severance Tax Division shall be responsible for the collection, monitoring, auditing, and reconciliation of all Severance Taxes due on Tribal minerals.

6.5 Collection of Royalties.

The Royalty Division shall be responsible for the collection, monitoring, auditing, and reconciliation of all royalties paid on Tribal minerals.

6.6 Preparation of Budgets and Forecasts.

The Department shall prepare budgets and forecasts semi-annually for presentation to the Business Committee, including presentations of actual performance versus projected performance and explanation of the differences. The Department shall prepare such other presentations, reports, charts and maps as requested by the Business Committee.

6.7 Coordination of Regulatory Functions.

The Department shall coordinate all of its activities and regulatory functions with the appropriate Tribal, federal, state, county and municipal agencies, and shall:

(a) Maintain any Tribal responsibilities under Section 202 of the Federal Oil and Gas Royalty Management Act of 1982.

(b) Maintain its responsibilities under Ordinance 88-07, as amended.

(c) Issue, administer and maintain business licenses and access permits for all individuals and business entities performing work or providing services on the Reservation.

(d) Appropriately supervise all field operations related to energy and/or minerals, and access therefore, including 1) participating in field inspections for impacts to environmental, archeological, paleontological, cultural, historical or similar resources, 2) witnessing the constructing on all manner of roads, well sites, pipelines, facilities, communication structures, power lines and similar appurtenances, 3) monitoring all seismic, geophysical or geochemical surveys, 4) enforces Tribal rules and regulations regarding access, and 5) any other access related to energy, minerals, transportation, utilities and general surface access.

6.8 Coordination with the Tribes Designated Advisors.

(a) Coordinate with and support the Tribe's advisors to research, investigate, evaluate, negotiate and finalize all proposals for new activity or requests under existing leases, agreements, rights-of-way or other requests affecting the Tribe's surface or mineral estates, subject to the presentation to and approval by the Business Committee.

(b) Coordinate with and support Tribally owned businesses, to the extent appropriate.

(c) Coordinate with any other advisors designated or authorized by resolution of the Business Committee.

6.9 Miscellaneous Functions.

(a) Research and apply for governmental grants, as appropriate.

(b) Manage Tribal relations with industry and consultants, as appropriate.

(c) Any other duties and functions as the Business Committee deems appropriate, as directed by amendment hereto or by Tribal Resolution.

**ARTICLE VII
Regulations**

The Energy and Minerals Department and its Divisions may promulgate such regulations and guidance documents as needed in the fulfillment of their duties and functions under this Ordinance. All

such regulations shall be subject to the review and approval of the Mineral Revenue Manager. Such regulations shall further be subject to approval by the Business Committee.

ARTICLE VIII Construction

This Ordinance and any related regulations promulgated by the Energy and Minerals Department shall be liberally construed for the benefit of the Tribe consistent with the Ordinance's purposes. To the extent there is any inconsistency between this Ordinance and regulations promulgated by the Energy and Minerals Department, this Ordinance shall control.

ARTICLE IX Severability

Should any part or any application of this Ordinance be held invalid, the remainder of this Ordinance and its application to other situations or persons shall not be affected.

ARTICLE X Effective Date

The Ordinance shall be effective as of November 1, 2003.

/s/ Maxine Natchees
Maxine Natchees, Chairman

/s/ T. Smiley Arrowchis
T. Smiley Arrowchis, Vice-Chair

103a

/s/ O. Roland McCook, Sr.
O. Roland McCook, Sr., Member

/s/ Richard Jenks, Jr.
Richard Jenks, Jr., Member

Vacant
VACANT, Member

Vacant
VACANT, Member

CERTIFICATION

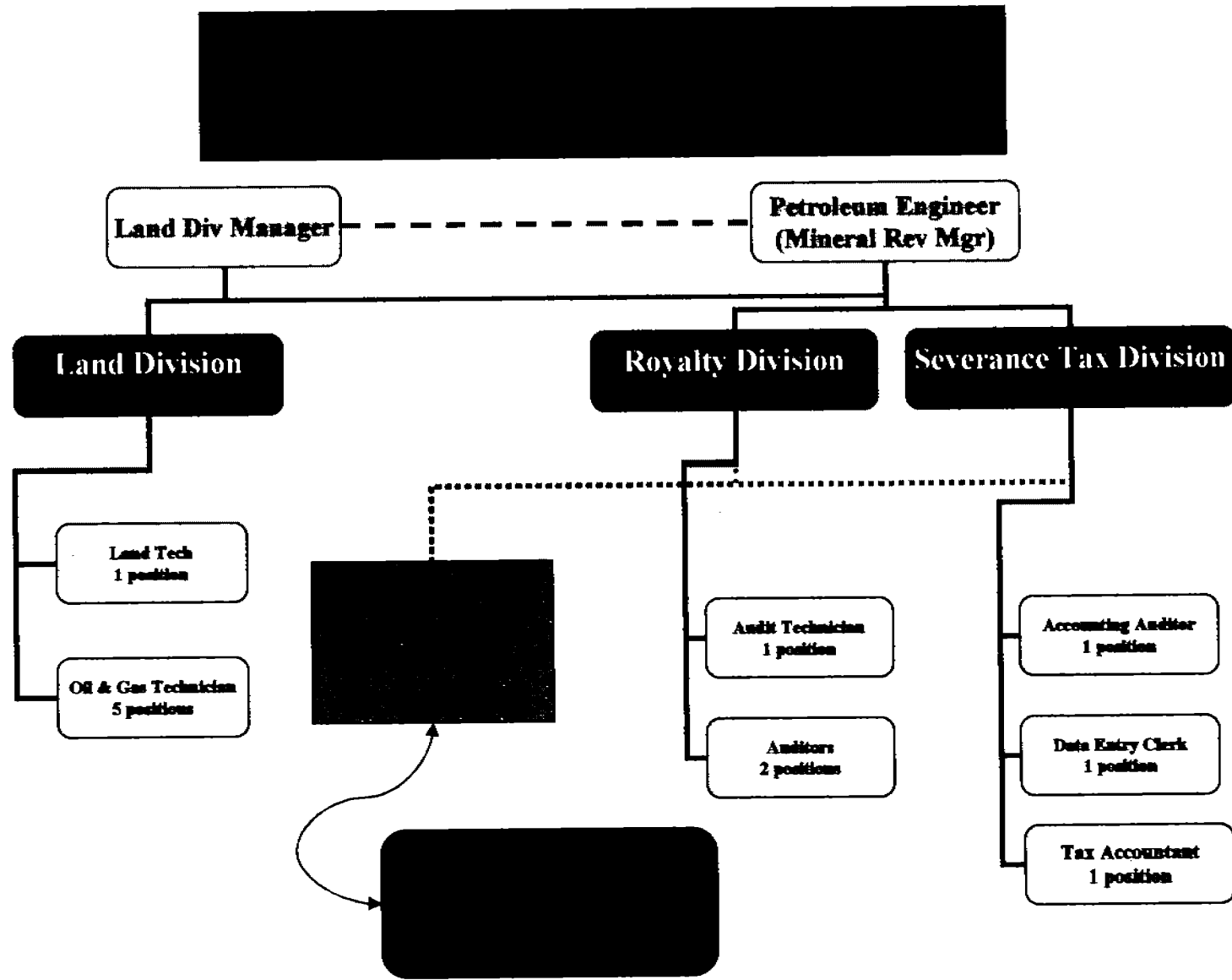
I HEREBY CERTIFY THAT THE FOREGOING ordinance was adopted by the Uintah and Ouray Tribal Business Committee pursuant to the Constitution and By-Laws of the Ute Indian Tribe of the Uintah and Ouray Reservation at a duly called meeting in Vernal ~~Ft. Duchesne~~, Utah on the 27th day of October, 2003, at which time a quorum was present and voted 4 for and 0 against, 0 abstaining and 0 absent.

/s/ Dana West
Dana West
Secretary of the Business Committee

APPENDIX C - E&M dept org chart

[See fold out on next page]

Appendix C - E&M dept org chart



APPENDIX 8

**IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH**

Case No. 140908394

[Filed: December 7, 2017]

Lynn D. Becker,)
Plaintiff,)
)
vs.)
)
Ute Indian Tribe of the Uintah and)
Ouray Reservation, et al.,)
)
Defendants)

David K. Isom (4773)
ISOM LAW FIRM PLLC
299 South Main Street, Suite 1300
Salt Lake City, Utah 84111
Telephone: 801.209.7400
david@isomlawfirm.com
Attorney for Plaintiff

**BECKER'S OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

JUDGE BARRY LAWRENCE

The Utes' motion for summary judgment ("Motion") is frivolous. The Motion is mostly a request for reconsideration of the Utes' earlier motion to dismiss based upon arguments that both this Court and federal courts have rejected. The only new argument appears to be that the Agreement is void under federal law for lack of approval by the U.S. Secretary of Interior ("Secretary"). This argument is not supported by any applicable statute, judicial opinion, or other law. The Motion should be denied.

BECKER'S RESPONSE TO STATEMENTS OF ALLEGED FACTS

Pursuant to Utah R. Civ. P. 56(a)(2), the following is a verbatim statement of each of the Utes' statement of facts ("SOF") that Becker disputes. Becker does not, for the

* * *

[p. 5]

from Ute Energy, LLC (sic) (and net of any administrative costs of Ute Energy Holdings) ("Contractor's interest").

Response 12. Disputed. The Agreement speaks for itself. The Utes' statements are inaccurate distortions of the contract language. The Agreement does not grant an interest in net revenues "distributed from production of the Tribe's oil/gas resources that were assigned to Ute Energy." This paragraph does not purport to state any other fact, and therefore no further response is required.

13. Neither the Becker IC Agreement—nor the purported alienation of restricted tribal assets contained within the Agreement—was ever approved by the U.S. Congress or the Secretary of the Department of Interior, as required by federal law and the Ute Tribe’s Constitution. Exhibit C, Cuch Declaration, ¶¶ 16, 20; Exhibit D, Bassett Declaration, ¶ 14.

Response 13. Disputed. The phrase “nor the purported alienation of restricted tribal assets contained within the Agreement” is wholly unsupported. The Agreement speaks for itself, and does not involve any “alienation of restricted tribal assets.” The testimony of Cuch and Bassett lacks any foundation to support any legal opinion about the meaning of the language of the Agreement. Becker does not dispute that the Agreement was never approved by the U.S. Congress or the Secretary or Department of Interior. The remainder of this paragraph is legal argument, not factual, and therefore requires no response.

14. There also is no lawful waiver of the Tribe’s sovereign immunity in accordance with the Tribe’s Constitution and By-Laws, and it [sic] Law and Order Code.

Response 14. Disputed. This paragraph asserts no fact, and only cites documents that speak for themselves, and therefore requires no response. This paragraph asserts only

* * *

[p. 15]

First, by Article 23 of the Agreement the Utes affirmatively, unambiguously and unconditionally agreed that the Agreement would be governed by Utah state law, not tribal law; that the tribal court would have no jurisdiction of any matter relating to the Agreement; that no exhaustion of tribal remedies is required; that any litigation would be in federal or state court with original and exclusive jurisdiction to determine disputes under the Agreement.

Second, this Court has already held that Article 23 is effective, and the federal court has likewise held that all of the statements in the previous paragraph are correct.²²

CONCLUSION

Becker respectfully requests that the Motion be denied.

Dated: October 10, 2016.

ISOM LAW FIRM PLLC

/s/ David K. Isom

David K. Isom

Attorney for Plaintiff Lynn D. Becker

²² Preliminary Injunction pp. 3–4, 6–7 attached hereto as Exhibit 2.