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Ute Indian Tribe of the Uintah & Ouray Reservation v. U.S. Dep't of Interior

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***Ute Indian Tribe of the Uintah & Ouray Reservation v. U.S. Dep’t of Interior*, No. 1:18-cv-00547, 2021 U.S. Dist. LEXIS 175001 (D.D.C. Sept. 15, 2021)**

Valan Anthos*

The Ute Indian Tribe of the Uintah & Ouray Reservation brought 16 claims against federal agencies and the State of Utah for alleged mismanagement of water resources held in trust and for alleged discrimination in water allocation. The United States District Court for the District of Columbia dismissed several of the claims as time-barred and others as lacking a proper statutory basis to create an enforceable trust duty. The remaining claims were transferred to the United States District Court of the District of Utah because the events occurred in Utah and most of the parties reside there.

I. INTRODUCTION

*Ute Indian Tribe of the Uintah & Ouray Reservation v. United States Department of Interior*¹ concerns the Ute Indian Tribe of the Uintah and Ouray Indian Reservation’s (“the Tribe”) request for declaration and performance of its water rights established through a series of settlements and statutes.² The Tribe sued the United States Department of Interior (“Interior”), the Bureau of Indian Affairs (“BIA”), and the Bureau of Reclamation (“Federal Defendants”) in the District Court for the District of Columbia (“the Court”).³ The Tribe also sued the Central Utah Water Conservancy and the State of Utah (“State Defendants”)⁴ (all of these parties will be referred to collectively as “Defendants”). The issue before the Court was whether to grant the Defendant’s motions to dismiss several of the claims and transfer the remaining claims to the United States District Court for the District of Utah.⁵ The Court dismissed claims one through 11 and claim 16, while granting a transfer of claims 12 through 15 to the District of Utah.⁶

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1. No. 1:18-cv-00547, 2021 U.S. Dist. LEXIS 175001, (D.D.C. Sept. 15, 2021) [hereinafter *Ute Indian Tribe*] see generally <https://perma.cc/NS6A-A7A9> (explaining the Tribe’s intent to appeal).

2. *Id.* at *2–3.

3. *Id.* at *3–4.

4. *Id.* at *3–4.

5. *Id.* at *3.

6. *Id.*

II. FACTUAL AND PROCEDURAL BACKGROUND

The Tribe is a federally recognized tribe in northeastern Utah.⁷ For nearly a century, the federal government has played a role in water management within the Tribe’s reservation (“Reservation”).⁸ First, the 1899 Indian Appropriations Act (“1899 Act”) authorized the Secretary of the Department of Interior (“Secretary”) to grant rights of way for water projects on the Reservation.⁹ Then, Congress passed an act in 1906 (“1906 Act”) authorizing the Uintah Indian Irrigation Project (“UIIP”).¹⁰ The UIIP would provide critical irrigation infrastructure, promote the Tribe’s economic development through agriculture, and allow for full use of its recognized water rights.¹¹ When it became clear that storage facilities were needed to fully make use of the Tribe’s water rights through the UIIP, Congress authorized the Central Utah Project in 1956.¹² The Central Utah Project would construct a series of irrigation and water storage facilities divided into six units, including two—the Uintah and Ute Indian units—that would supply water to the land owned by tribal members.¹³ However, Federal Defendants put off construction on these two units until the late 1970s, then postponed them indefinitely in 1980 because of cost and feasibility concerns.¹⁴

In order to get legal recognition of the Tribe’s water rights and address water storage needs, the Tribe entered into the 1965 Deferral Agreement (“1965 Agreement”) with the U.S. and the Central Utah Water Conservancy.¹⁵ The Tribe deferred use of some of its water in exchange for Federal Defendants recognizing a report commissioned by the Tribe as accurately describing the Tribe’s water rights.¹⁶ The Tribe also obtained a commitment to address its water storage needs and complete the Uintah and Ute units by 2005.¹⁷ In an additional agreement entered into in 1967—the Midview Exchange—the Tribe traded some of its reserved water rights in exchange for a water storage facility called the Midview Property and some state-based water rights to be held in trust for the Tribe.¹⁸ The Federal Defendants never properly transferred The Midview Property into

7. *Id.*

8. *Id.* at *4.

9. *Id.* (citing 30 Stat. 941 (1899)).

10. Plaintiff’s Second Amended and Supplemented Complaint ¶¶ 25, 27, 37, Ute Indian Tribe of the Uintah & Ouray Reservation v. U.S. Dep’t of Interior, No. 1:18-cv-00547, (D.D.C. April 3, 2020) [hereinafter Complaint].

11. *Id.*

12. *Id.* ¶¶ 83-84, 150.

13. *Id.* ¶¶ 78-85; Ute Indian Tribe, 2021 U.S. Dist. LEXIS 175001 at *5.

14. *Ute Indian Tribe*, 2021 U.S. Dist. LEXIS 175001 at *5 (citing Complaint ¶¶ 53, 155, 169, 175-76, Ute Indian Tribe, No. 1:18-cv-00547).

15. *Id.* at *6.

16. *Id.*

17. *Id.*

18. Complaint ¶¶ 123-26, Ute Indian Tribe, No. 1:18-cv-00547.

trust for the Tribe, and full use of the state-based water rights for the benefit of the Tribe never happened.¹⁹

After decades of delay, Congress passed the Central Utah Protect Completion Act of 1992 (“1992 Act”) to settle obligations under the 1965 Agreement.²⁰ The 1992 Act gave the Tribe \$2 million per year in exchange for a waiver of the Tribe’s water rights from the 1965 Agreement.²¹ The Tribe alleged the compensation under the 1992 Act severely underestimated the value of the resources never built and that the waiver of water rights was conditional upon receiving full payment, which has never happened.²²

In 2012, the Tribe and the U.S. entered another settlement to resolve a dispute about the “Interior’s alleged mismanagement of [the Tribe’s] nonmonetary trust assets” related to water.²³ The 2012 Settlement gave the Tribe \$125 million in exchange for waiving any claims that the U.S. mismanaged or failed to preserve trust funds and non-monetary trust assets.²⁴ However, the settlement also reserved the Tribe’s water rights and ability to sue for “damages for loss of water resources caused by [Federal] Defendant’s failure to establish, acquire, enforce or protect such water rights.”²⁵

In 2018, the Tribe filed this lawsuit against the Defendants.²⁶ The lawsuit alleged 16 claims related to mismanagement of water projects in the Green River Basin and “breaches of rights established by statute, contract and the Constitution.”²⁷ Claims one, two, four, and five seek clarification and relief related to Defendant’s obligations left under the 1965 Agreement and related acts.²⁸ Claims three and six through 11 seek relief from Federal Defendant’s alleged breach of trust obligations related to the UIIP, the Tribe’s reserved water rights, and other obligations related to storage, water quality, and accounting of trust recourses.²⁹ Claims 12 through 15 allege failure to consider the Tribe’s water rights and violations of the Administrative Procedure Act (APA) in a water exchange deal between the State of Utah and the U.S. named the Green River Block Exchange Contract.³⁰ Claim 16 alleged violations of the right to equal

19. *Id.* ¶¶ 127–29.

20. *Ute Indian Tribe*, 2021 U.S. Dist. LEXIS 175001 at *6.

21. *Id.*

22. Complaint ¶¶ 196–201, *Ute Indian Tribe*, No. 1:18-cv-00547; *Ute Indian Tribe*, 2021 U.S. Dist. LEXIS 175001 at *5.

23. *Ute Indian Tribe*, 2021 U.S. Dist. LEXIS 175001 at *7.

24. *Id.*

25. Exhibit D: Settlement Agreement Between Plaintiff and the United States ¶ 6, *Ute Indian Tribe of the Uintah & Ouray Reservation v. U.S. Dep’t of Interior*, No. 1:18-cv-00547, (D.D.C. March 22, 2019)

26. *Id.* at *3 (permitting the Tribe to add the State of Utah as a defendant after the Court allowed Utah to intervene in the case).

27. *Id.* at *4.

28. *Id.* at *12.

29. Complaint ¶¶ 250–54, 264–306, *Ute Indian Tribe*, No. 1:18-cv-00547.

30. *Ute Indian Tribe*, 2021 U.S. Dist. LEXIS 175001 at *8.

protection and due process for tribal members in development of water storage facilities and water allocation.³¹

For claims one through 11, the Tribe asserts that a cause of action can be inferred from the existence of the Federal Defendant's trust duty to manage resources held in trust for the benefit of the Tribe.³² When the federal government explicitly takes up fiduciary obligations related to tribal resources, those obligations can be judicially enforced through performance or damages.³³ In order for a trust duty to rise to this level, the government must have expressly taken on a specific, enforceable trust duty by statute or regulation.³⁴ Statutes that simply assert a resource is held "in trust" do not create this duty.³⁵ If control over a resource is extensive and solely for the benefit of a tribe, the court can find the regulatory network created a specific enforceable trust duty even in the absence of an express duty in the statute.³⁶

The Defendants moved to dismiss claims one through 11 and 16 for lack of subject-matter jurisdiction, personal jurisdiction, and failure to state a claim upon which relief could be granted.³⁷ Additionally, The Federal Defendants moved to transfer claims 12 through 15 to the United States District Court for the District of Utah, since the claims implicate local issues in the state and relate to a pending case being decided by that court.³⁸ Around the same time, the Tribe filed a case concerning the same breaches of fiduciary trust in United States Court of Federal Claims, which was dismissed.³⁹

III. ANALYSIS

The Court first considered whether the statute of limitations bars any claims from being heard, and concluded that claims one, two, four, five and eight are all time-barred.⁴⁰ The Court then addressed whether the remaining claims up through 11 have a cause of action by virtue of there being an enforceable trust duty in one of the statutes the Tribe alleged created trust duties.⁴¹ The Court held the 1899 Act, 1906 Act, and 1992 Act do not create an enforceable trust duty, so all remaining claims up through 11 are dismissed for failure to state a cause of action.⁴² Next, the

31. *Id.* at *27.

32. *Id.* at *19.

33. *United States v. Mitchell*, 463 U.S. 206, 225–27 (1983) [hereinafter *Mitchell II*] (concerning the second Mitchell case about Indian trust law, after *United States v. Mitchell*, 445 U.S. 535 (1980) often referred to as *Mitchell I*).

34. *Ute Indian Tribe*, 2021 U.S. Dist. LEXIS 175001 at *20.

35. *Id.*

36. *Id.* at 34–35.

37. *Id.* at *8.

38. *Id.* at *31–32.

39. *Ute Indian Tribe of the Uintah & Ouray Indian Reservation v. United States*, No. 18-359 L, 2021 U.S. Claims LEXIS 741 (Fed. Cl. Feb. 12, 2021).

40. *Ute Indian Tribe*, 2021 U.S. Dist. LEXIS 175001, at *12, 15–16.

41. *Id.* at *18–19.

42. *Id.* at *26–27.

Court held that the Tribe does not have standing to bring an equal protection claim on behalf of its members against the federal government.⁴³ Lastly, the Court held that convenience and justice weigh in favor of transferring claims 12 through 15 to the United States District Court for the District of Utah.⁴⁴

A. Statute of Limitations

The Court first addressed whether any of the Tribe's claims were time-barred.⁴⁵ Since they involve rights under the 1965 Act, the Court started with claims one, two, four, and five.⁴⁶ Civil claims against the U.S. have a six-year statute of limitations after the cause of action is known or should reasonably be known.⁴⁷ The Defendants argued the claims are time-barred since it has been well over six years since the 1992 Act that released Federal Defendants from their obligations under the 1965 Agreement.⁴⁸ The Tribe argued that its claims did not accrue until 2012 when the second settlement took place.⁴⁹ Alternatively, the Tribe asserted its claims were saved by the continuing-violations doctrine or a tolling provision in the Indian Trust Accounting Statute.⁵⁰ The continuing-violations doctrine allows for delaying the accrual of the time for the statute of limitations when either a violation could not clear until repeated or if a statute imposes a continuing obligation to act or refrain from acting that is violated.⁵¹

The Court found that the "Tribe's claims accrued as soon as it knew or should have known that Defendants would not meet or honor its alleged rights under the 1965 Deferral Agreement."⁵² The Court reasoned that the Tribe should have known by the 1980s and definitely knew by 1992 that Defendants would not fulfill their obligations upon abandonment and settlement over the claims.⁵³ The Court rejected the Tribe's alternative arguments, reasoning the 2012 Settlement Agreement contained no tolling provision and the statute cited only tolls monetary trust funds.⁵⁴ Further, though the Court agreed with the Tribe that the continuing-violations doctrine encompasses unreasonable delay of agency action, the Tribe failed to plead that claim under APA §706(1), as required

43. *Id.* at *27–28.

44. *Id.* at *36.

45. *Ute Indian Tribe*, 2021 U.S. Dist. LEXIS 175001, at *12.

46. *Id.* at *12.

47. *Id.* at *13 (citing 28 U.S.C. § 2401(a) (2021)).

48. United States' Motion for Partial Dismissal and Memorandum in Support at *17, *Ute Indian Tribe of the Uintah & Ouray Reservation v. U.S. Dep't of Interior*, No. 1:18-cv-00547, (D.D.C. July 16, 2020).

49. *Id.* at *14

50. *Id.*

51. *Earle v. District of Columbia*, 707 F.3d 299, 306–7 (D.C. Cir. 2012).

52. *Id.* at *13.

53. *Id.* at *14.

54. *Id.* at *14–15.

if alleging unreasonable delay of agency action.⁵⁵ As such, the Court dismissed claims one, two, four, and five as time-barred.⁵⁶

The Court also held that claim eight was time-barred. Claim eight sought to assert rights under the 1967 Midview Exchange Agreement to challenge federal management of the Midview Property or to void the conveyance.⁵⁷ The Court reasoned claim eight was similar to the previous claims, in that accrual of the time for the statute of limitations started with the unlawful conveyance.⁵⁸ Since the harm stemmed from a singular event—the conveyance—the statute of limitations started running in 1967.⁵⁹ With the statute of limitations starting in 1967 and only being six years, the claim was time-barred.⁶⁰

B. Trust Claims and Motion to Dismiss

The Tribe must provide a specific and cognizable cause of action for its first 11 claims in order to survive the motion to dismiss.⁶¹ The Tribe argued a cause of action can be inferred from a breach of fiduciary trust duties by the Federal Defendants.⁶² In order for trust violations to be a cause of action, the Federal Defendants must have expressly accepted specific trust duties through statute, regulation, or treaty.⁶³ The Tribe asserted three statutory sources for this specific trust duty: the 1899 Act, the 1906 Act, and the 1992 Act.⁶⁴

1. The 1899 Act

The Tribe argued the language of “duty” and the statement that the Secretary “protect[s] the rights and interests of the Indians” created a specific trust relationship to build water storage facilities.⁶⁵ Further, the Tribe claimed the 1899 Act obligates the Secretary to ensure adequate irrigation, preserve unused water to economically benefit the Tribe, and prevent downstream users from infringing on the Tribe’s water rights without compensation.⁶⁶

The Court found that the 1899 Act gave the Secretary discretion to let non-Indians divert tribal water limited by a general duty to protect

55. *Id.* at *37, n.5 (citing *The Wilderness Soc. v. Norton*, 434 F.3d 584, 588 (D.C. Cir. 2006)).

56. *Id.* at *15.

57. *Id.* at *16.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.* at *18–19 (citing *Floyd v. District of Columbia*, 129 F.3d 152, 155 (D.C. Cir. 1997)).

62. *Id.* at *19.

63. *Id.* (citing *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 177 (2011)).

64. *Id.* at *20.

65. *Id.* at *21.

66. *Id.* at *21–22.

the rights of the Tribe.⁶⁷ The Court further found that none of the obligations the Tribe claimed were expressly mentioned in the 1899 Act; therefore, the 1899 Act could not have created a specific trust duty.⁶⁸

2. *The 1906 Act*

The Tribe argued that the 1906 Act states the irrigation systems are to be held in trust for the Tribe while the Secretary and BIA have managerial control sufficient to establish an enforceable trust duty.⁶⁹ The Court, though, emphasized that statutes which merely claim assets are held “in trust” are not enough to create “specific, enforceable trust duties.”⁷⁰

However, the Court acknowledged extensive control and management of a project for the benefit of a tribe by the government can create a specific trust duty.⁷¹ It applied the reasoning of the landmark case *Mitchell II*,⁷² in which the Supreme Court found the Interior’s control over all aspects of forest management for the benefit of the tribe created a specific trust duty.⁷³ The Court contrasts the 1906 Act with the situation in *Mitchell II*, noting that for the 1906 Act, Federal Defendants were supposed to manage the project for both tribal members and non-tribal members, and the Tribe retained some control over the water resources.⁷⁴ The Court held the 1906 Act did not create such extensive management by the Federal Government as to make an enforceable trust duty.⁷⁵

3. *The 1992 Act*

Lastly, the Tribe contended that the 1992 Act created a trust duty to implement a replacement water storage project in lieu of the units that were never created under the Central Utah Project.⁷⁶ The Court, instead, read the 1992 Act as simply authorizing the Secretary to manage any “irrigation facilities associated the Central Utah Project” and retain trust responsibilities related to the Uintah Indian Irrigation Project;⁷⁷ it did not create a new trust responsibility.⁷⁸ The Court reiterated that bare trust language is insufficient, and that another section of the statute explicitly contemplated noncompletion of the project.⁷⁹ The Court held that the 1992

67. *Id.* at *22.

68. *Id.*

69. *Id.* at *23.

70. *Id.* (citing *United States v. Mitchell*, 445 U.S. 535 (1980)).

71. *Id.* at *24.

72. *Id.* at *24–25 (citing *United States v. Mitchell*, 463 U.S. 206, 224–26 (1983)).

73. *Id.* at *24–25 (citing *Mitchell II*, 463 U.S. at 224–26).

74. *Id.* at *25.

75. *Id.* at *26. (citing *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 177 (2011)).

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

Act did not establish a specific trust duty.⁸⁰ The Court thus concluded that none of the three acts expressed an enforceable trust duty.⁸¹ Therefore, the Tribe's first eleven claims failed to state a cause of action.⁸²

C. Equal Protection

Next, the Court addressed the Tribe's 16th claim that the Defendants allegedly discriminated against the Tribe under the Equal Protection Clause and the Civil Rights Act in allocating water to the Tribe and non-Indians.⁸³ The Tribe alleges that both Federal and State Defendants have engaged in systematically benefiting non-Indians at the expense of tribal members in allocating water, which has resulted in economic harm.⁸⁴ The Federal Defendants asserted the Tribe lacks standing to bring these claims on behalf of its members since rights are held by individuals.⁸⁵

The Tribe relied on the *parens patriae* doctrine, which allows sovereigns to stand in for their members when bringing claims involving "quasi-sovereign interests."⁸⁶ The Tribe further argued it was trying to make Defendants follow federal law rather than alleging the federal government directly violated constitutional rights in order to avoid issues with the "Mellon bar."⁸⁷ The *Mellon* bar prohibits a sovereign from having standing under *parens patriae* when bringing an action against the federal government.⁸⁸

The Court references a case where the U.S. Court of Appeals for the District of Columbia Circuit held that a state's *parens patriae* claims that challenged agency actions and alleging constitutional violations were *Mellon*-barred.⁸⁹ Analogizing to *Government of Manitoba*, the Court held the Tribe's argument also fails the "Mellon bar."⁹⁰

The Court further explained that even if the Tribe could overcome the *Mellon* bar, claim 16 fails for insufficiently alleging animus or discriminatory intent.⁹¹ The Tribe only alleged water allocations disproportionately benefited non-Indians but offered no proof or reasonable inference that there was the required discriminatory intent.⁹²

80. *Id.* at *26.

81. *Id.* at *26–27.

82. *Id.*

83. *Id.* at *27.

84. Complaint ¶¶ 349–59, Ute Indian Tribe, No. 1:18-cv-00547.

85. *Ute Indian Tribe*, 2021 U.S. Dist. LEXIS 175001, at *27.

86. *Id.* (citing *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel. Barez* 458 U.S. 592, 601–2 (1982)).

87. *Id.* at *28.

88. *Id.* at *28 (citing *Massachusetts v. Mellon*, 262 U.S. 447, 485–86 (1923)).

89. *Id.* at *28–29 (citing *Gov't of Manitoba v. Bernhardt*, 923 F.3d 173, 181–183 (D.C. Cir. 2019)).

90. *Id.* at *27–28.

91. *Id.* at *29.

92. *Id.* at *27–28.

The Tribe's argument against the State Defendants also failed because the Civil Rights Act § 1981 "does not create a private right of action against state actors."⁹³ In regards to the statutes pleaded that would have given a private right of action, the Court reasoned the Tribe had not raised facts that would plausibly show the State Defendants intentionally discriminated based on race as required for an equal protection claim.⁹⁴ Therefore, claim 16 failed to properly allege discriminatory conduct that would entitle the Tribe to relief.⁹⁵

IV. CONCLUSION

In *Ute Indian Tribe of the Uintah & Ouray Reservation v. United States Department of Interior*, the Court held claims one, two, four, five, and eight were time-barred. The first 11 claims aside from the time-barred ones were dismissed for failure to state a cause of action under a specific trust duty. Claim 16 was dismissed for being *Mellon*-barred and failing to allege discriminatory intent. The remaining claims were to be transferred to the District of Utah.⁹⁶ The remaining claims about the Tribe's water rights and violations of the National Environmental Policy Act and the APA in the Green River Block Exchange Contract will be decided by the District of Utah. With all the claims except for those pertaining to the Green River Block Exchange dismissed, the Tribe is left with no way to enforce the building of needed water storage against Defendants. The Tribe has publicly stated its intent to appeal the decision.⁹⁷

The case also maintains the high bar that tribes must overcome to establish the creation of a specific trust duty. Despite decades of mismanagement that led to huge economic losses for the Tribe and its members, an enforceable trust duty was not found.⁹⁸ This case implies that when resources are managed not solely for tribal benefit, there cannot be an enforceable trust duty even where there was a clear, ongoing obligation to a tribe to manage a nonmonetary resource for their benefit.

93. *Id.* at *29–30 (citing *Campbell v. Forest Preserve Dist. Of Cook Cnty.*, 752 F.3d 665, 671 (7th Cir. 2014)).

94. *Id.* at *30.

95. *Id.* at *31.

96. *Id.* at *36.

97. *Ute Indian tribe rejects court's dismissal of lawsuit to recognize and protect water rights, plans to appeal*, Indian Country Today, Sept. 23, 2021.

98. *Ute Indian Tribe*, 2021 U.S. Dist. LEXIS 175001, at *26–27.