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Ute Indian Tribe of the Uintah and Ouray Reservation

**Comments on Ashley National Forest – Draft Environmental Impact
Statement for the Revised Land Management Plan**

February 15, 2022

The Ute Indian Tribe of the Uintah and Ouray Reservation (“Tribe”) would like to take this opportunity to submit the Tribe’s comments on the Draft Environmental Impact Statement (“DEIS”) for the Ashley National Forest Revised Land Management Plan. Separate comments addressing specific issues in the DEIS have been concurrently submitted, but as the traditional owner and caretaker of significant portions of the Ashley National Forest, the Tribe is uniquely centered on ensuring that the management of the Ashley National Forest is conducted in a manner that honors the Ashley National Forest’s history and the Tribe’s jurisdiction and sovereignty.

The Tribe appreciates the work that has been done to date within the DEIS towards recognition of the Tribe’s interests in the Ashley National Forest, but there is significant work still to be performed towards the creation of a management system over the Tribe’s lands within the Ashley National Forest that truly demonstrates the level of significance the Tribe holds over these lands.

The Tribe’s position regarding the DEIS, and the Ashley National Forest in its totality, is that the most appropriate and effective management of the Ashley National Forest lands is management conducted exclusively by and through the Ute Indian Tribe. The Tribe is an independent sovereign government that possesses the necessary knowledge, resources, and capability to effectively manage the Ashley National Forest lands. The traditional practices of the Tribe effectuate Tribal land management in a way that maintains sustainable ecological balance. The Tribe oversaw the Ashley National Forest lands for centuries in a manner which promoted growth and stability, and the Tribe’s exclusive management of the Ashley National Forest lands would continue this partnership between the Tribe and its resources.

Even if exclusive Tribal management of the Ashley National Forest lands is not granted under the current administration, the Tribe’s role in the management of these lands must exceed that of any

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other interested entity, party, or agency. The management of areas which include tribal lands and resources is best performed through a partnership between the federal government and Indian tribes. This type of partnership would be best expressed in a joint-management system for the Ashley National Forest lands which includes the methodology and practice of free, prior informed consent with the Tribe.

History

The Tribe's ancestral lands, cultural resources and sacred sites extend into much of modern-day Utah and include the Ashley National Forest lands. The Ashley National Forest as it exists in modern history was created from part of the Uintah Forest Reserve which overlaps the Tribe's Uintah and Ouray Reservation ("Reservation"). The Uintah Forest Reserve was originally established on February 22, 1897, from the Uinta and Wasatch Mountains and bordered the Tribe's Uintah Valley Reservation to the north. Only later, in 1905, was the Forest Reserve expanded into the Tribe's Reservation and later became the Ashley National Forest.

Importantly, by the Act of March 3, 1905, 33 Stat. 1069, which extended the time for the opening of the Uintah Valley Reservation to Sept. 1, 1906, Congress authorized the President to reserve an addition to the Uintah Forest Reserve (now the U.S. Forest Service's Ashley National Forest) of such portion of the Indian land as he thought necessary, and to reserve any reservoir sites— "or other lands necessary to conserve and protect the water supply for the Indians or for general agriculture developments, and may confirm such rights to water thereon as have already secured."

On July 14, 1905, by Presidential proclamation, 1,010,000 acres of Indian land was set aside as an addition to the Uintah Forest Reserve: "[T]he United States . . . set apart" Reservation lands "at the head-waters of the streams . . . as forest reserve lands" so that "the water supply" for the "Indians would be maintained[,]" and, then, the President opened the unreserved and unallotted lands to entry on August 28, 1905, which amounted to about 1,004,285 acres.

The addition to the Ashley National Forest of these one million acres of Indian Country lands was solely for the purpose of ensuring water storage for the reserved water rights of the Tribe. Two 1923 Court Decrees adjudicating water rights for the Tribe included discussion of this need for water storage and the purpose of the forest reserve. *United States v. Cedarview Irrigation Company et al.*, No. 4427 (D. Utah 1923), and *United States v. Dry Gulch Irrigation Company et al.*, No. 4418 (D. Utah 1923). The United States recognized that insufficient natural flow exists in the Uinta-Whiterocks and Lake Fork-Yellowstone River Basins to properly irrigate Indian allotted lands. In its Bill of Complaint, the United States attested to the court that

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

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Management of the Ashley National Forest lands must first recognize and respect the historical and continuing purpose and significance of these lands to the Ute Indian Tribe.

Jurisdiction

All lands of the Ashley National Forest within the exterior boundary of the Tribe's Reservation are Indian Country, and the Tribe retains jurisdiction over these lands. In a series of cases known as *Ute v. Utah*, the U.S. Supreme Court and the Tenth Circuit Court of Appeals repeatedly held that the Ashley National Forest is within the Tribe's Reservation and under the Tribe's jurisdiction.

In *Ute III*, the Tenth Circuit addressed "the status of the 1,010,000 acres of the Uintah Forest Reserve, which was set aside under the authority of the 1905 Act." *Ute Indian Tribe v. State of Utah et.al.*, 733 F.2d 1087, 1089-90 (10th Cir. 1985) ("*Ute III*"). Examining the 1905 Act and its legislative history, the Tenth Circuit explained that there was nothing that established:

'a total surrender of tribal interests' or a 'widely-held contemporaneous understanding that the affected reservation would shrink.' The act merely authorized President Theodore Roosevelt to set apart reservation lands as a forest reserve. This he did. Indeed the 1905 Act specifically reserved the Utes' timber interests in the lands by authorizing forest officials to sell as much timber as could be safely sold for fifteen years and to pay the money to the Utes.

In fact, the Tenth Circuit found that "[t]here is clear evidence that Congress did not intend to extinguish the forest lands of the Uintah Reservation," and therefore held that the "Uintah Reservation was not diminished by the withdrawal of the national forest lands."

The Tenth Circuit's decision in *Ute V* did not disturb this holding. *Ute V* only modified *Ute III*'s holding that the entire Uintah Valley Reservation remained Indian Country to provide that "lands that passed from trust to fee status pursuant to non-Indian settlement under the 1902-1905 allotment legislation" were no longer Indian Country. Because the Forest Reserve Lands (as that term is used in the *Ute v. Utah* cases) were not opened to non-Indian settlement under the 1902-1905 allotment legislation, all Forest Reserve Lands remain Indian Country under *Ute III* and *Ute V*.

Law Enforcement

The Tribe remains concerned that cross-deputized forest service officers may enforce state laws and ordinances on forest service lands that are within the boundaries of the Reservation. The Tribe is aware that the United States Department of Agriculture ("USDA") has a Memorandum of Understanding with the Uintah County Sheriff's Office ("MOU"), which confers local law enforcement jurisdiction to qualifying forest service officers. The Tribe is uncertain whether the USDA has a similar cross-deputization agreement in place with the State of Utah. The Tribe objects to any agreement for law enforcement services that allows cross-deputized officers onto the Indian Country lands of the Ashley National Forest.

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According to the terms of the MOU, qualifying forest service officers have the authority to issue citations, make arrests, and perform other enforcement actions pursuant to local county or state laws. Although the MOU does not contain any provisions that explicitly address tribal authority or interests, the Tribe takes notice of a provision that states that the MOU does not alter, limit, or expand the agencies' statutory and regulatory authority. The Tribe interprets this provision as implicitly stating that tribal regulatory authority remains intact and unaltered relative to federal and state authority.

The Tribe requests that the DEIS and any associated documents contain explicit language that acknowledges any current and future memorandum of understanding agreements between the USDA and state agencies do not alter, limit, or expand state authority relative to tribal authority, and that cross-deputized officers will not exercise their powers within the Indian Country lands of the Ashley National Forest. This includes the ability of forest service officers to perform law enforcement actions pursuant to state or local laws within the exterior boundaries of the Reservation against tribal members.

Conclusion

The Ute Indian Tribe is the traditional, rightful manager of the Ashley National Forest and maintains jurisdiction over all lands of the Ashley National Forest within the exterior boundary of the Tribe's Reservation. Management of these lands is a priority for the Tribe. Tribal interests extend to all activities in the National Forest, and especially all activities within the Indian Country portion of the National Forest. Accordingly, a joint-management system over the Ashley National Forest that fully honors the Tribe's history and jurisdiction is the proper management process for these lands and, as a starting point, the DEIS should reflect that type of management.

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Cmt #	Page #	Row # or Line # or Table #	Reviewer Name & Dept.	Comment	A/R/M¹	Remarks / How Resolved (Reviewers: Leave this column blank)
1.	4	35-38	Ute Indian Tribe	The Ute Indian Tribe relies on revenue from oil and gas leasing to provide essential government services to its membership. The Forest Service and National Forest representatives must consult with the Tribe before making suitability determinations regarding oil and gas exploration and development.		
2.	2	11		The Ute Indian Tribe does not allow the use of ATVs on its Reservation. The National Forest and Forest Service should work with the Tribe to enforce this rule on Indian Country lands within the National Forest regardless of the alternative selected.		
3.	96	19		See Comment #2.		
4.	289	21-25		See Comment #2.		
5.	11	8-12		Wildfires in the area within a mile of Reservation or Indian Country lands must be suppressed immediately, and this should be included in all alternatives.		
6.	20	29-34		The Ute Indian Tribe does not support maximizing timber harvesting. The National Forest was created with the intention to protect the Tribe's watershed and water supply. Protection of the watershed must be prioritized under any alternative.		
7.	21	36		The Ute Indian Tribe's Reservation is the "Uintah and Ouray Reservation," not the "Uintah and Ouray Ute Indian Reservation."		
8.	61	36-39		See Comment #7.		
9.	2	4		See Comment #7.		
10.	21	33-39		Federal courts have determined that the parts of the Ashley National Forest that overlap with the Tribe's Reservation remain Indian Country and were not diminished. The USFS can and should rely on the determinations of the 10th Circuit Court of Appeals when determining these boundaries. The National Forest and Forest Service must consider the Tribe's laws and regulations for the parts of the Ashley National Forest within the Tribe's Reservation boundary and work with the Ute Indian Tribe in management of these areas.		
11.	38	25-26		The Ashley National Forest should work to minimize emissions in and near the 70-acre portion of the National Forest that lies in the northwest boundary of the marginal ozone attainment area under all alternatives. Pollutants do not recognize boundaries, and ozone precursor emissions from vehicles and equipment from the National Forest can settle in the Uinta Basin, worsening air quality issues.		

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12.	55	34-40		One of the purposes for the creation of the Ashley National Forest was to protect the watershed of the Tribe. The watershed section of the DEIS must address the Tribe's water rights, and the need for the management plan to directly address the priority of the protection of the Tribe's water supply and water storage.		
13.	83	25		See Comment #12.		
14.	61	31-32		State water quality standards do not apply to water bodies within the Reservation boundary because those areas remain Indian Country, not subject to state jurisdiction.		
15.	122	1-4		The National Forest and USFS must work to immediately suppress wildfires in areas within and adjacent to the Uintah and Ouray Reservation and tribal communities, and a process for this should be included in all alternatives. See Comment #5.		
16.	143	9-41		The National Forest must also consider tribal management plans on flora and fauna including the Greater Sage Grouse Conservation Ordinance, Tribal Management Plan on Hoodless Cactus, Conservation Strategy for the Yellow-Billed Cuckoo, and Conservation Agreement on Cutthroat Trout.		
17.	221	6		The Ute Indian Tribe is the proper name for the Tribe, not the "Ute Tribe."		
18.	221	17		See Comment #16.		
19.	277	4		See Comment #10.		
20.	177	38-42		Environmental Justice requires that the needs of the Ute Indian Tribe be prioritized, and that the National Forest seek free, prior, and informed consent from the Tribe when making decisions that could impact the Tribe or its interests.		
21.	178	1-9		See Comment #20.		
22.	186	1-5		The Ute Indian Tribe relies on mineral and energy development to provide essential government services to its membership. For the Tribe, mineral and energy development is a social and economic sustainability and environmental justice issue. Again, the National Forest was created to protect the Tribe's ability to maintain its homeland through water storage. It is a requirement of environmental justice for this watershed to be maintained.		
23.	217	1-18		The National Forest must consult with the Ute Indian Tribe on any activity in areas of Tribal Importance.		

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24.	223	26-29		The Ashley National Forest and USFS should commit, through language in the DEIS, to meet with the Ute Indian Tribe's staff level employees monthly or as needed and meet with the Tribe's elected leadership quarterly or as needed.		
25.	227	10-22		Ashley National Forest should work closely with the Tribe's THPO and Cultural Rights and Protection Department regarding cultural and historic resources.		
26.	304	37-40		The Ute Indian Tribe maintains jurisdiction, in addition to treaty rights, over portions of the Ashley National Forest.		
27.	305	1-2		See Comment #26.		