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First name: Ute Indian Tribe
Last name: of the Uintah and Ouray Reservation
Organization:
Title:
Comments: Please see attached objections from the Ute Indian Tribe.
Ute Indian Tribe of the Uintah and Ouray Reservation Objections to Ashley National Forest - Land Management Plan, Draft Record of Decision, and Final Environmental Impact Statement for the Revised Land Management Plan June 20, 2023 The Ute Indian Tribe of the Uintah and Ouray Reservation ("Tribe") would like to take this opportunity, as an entity which previously submitted substantive formal comments during earlier comment periods and is therefore eligible to file objections, to submit the Tribe's objections to the Ashley National Forest Land Management, Draft Record of Decision, and Final Environmental Impact Statement for the Revised Land Management Plan (hereafter referred to together as the "Revised Forest Plan Documents"). In accordance with the objection requirements, these objections shall be submitted to the Ashley National Forest Plan Revision filings and the Responsible Official, Susan Eickhoff, Forest Supervisor.The Tribe's position regarding the Revised Forest Plan Documents, 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 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, and the Tribe's oversight of the Ashley National Forest lands for centuries promoted growth and stability.The United States Forest Service ("Forest Service") has been made well aware of the Tribe's successful historical management of the Ashley National Forest. The Tribe has repeatedly provided its comments and input to the Forest Service for years to attempt to continue that success, but the Forest Service has refused to heed the Tribe's expertise in this area. One need only check the national news, including its headlines of smoke covering the entire northeastern United States, to see how the lack of reliance on tribal management techniques has affected the country's ecosystem. The National Interagency Fire Center recently reported that the 10-year average in the last decade for fires and acres burned (from January 1 through June 16 each year) is 22,946 wildfires and 1,125,626 acres burned. To reiterate, this means that over a million acres of lands are unintentionally burned each beginning half of the year since 2013. The United States' methodology for ecological sustainability is failing, and the key to restoration of the balance with the land is tribal management, including management of the Ashley National Forest by the Tribe.The Tribe is the rightful overseer of these lands and has been since time immemorial. The Tribe's partnership with these lands and its resources goes beyond any foreign government's temporary claims of dominion over the lands. Long after the United States is disbanded and foregoes any claim of legal authority over the Ashley National Forest's lands, the Tribe's exclusive management of the Ashley National Forest lands will remain, and its people will continue the centuries of management techniques that allows the lands to thrive.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 other interested entity, party, or agency. The management of areas which include Tribal lands and resources should be currently orchestrated through a partnership between the federal government and the Tribe. 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.In summation, 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. As the traditional owner and caretaker of significant portions of the Ashley National Forest, the Tribe is uniquely positioned to focus 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.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 September 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[mdash] "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).Accordingly, one of the purposes for the original creation of the Ashley National Forest was to protect the watershed of the Tribe. The watershed sections of the Revised Forest Plan Documents must address the Tribe's water rights and prioritize the protection of the Tribe's water supply and water storage. Management of the Ashley National Forest lands must first recognize and respect the historical and continuing purpose and significance of these lands to the 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.The Revised Forest Plan Documents should expressly recognize the Tribe's jurisdiction and establish a communication foundation between the Forest Service and Tribe to maintain the Tribe's jurisdictional input on all Ashley National Forest matters. The Forest Service should commit, through language in the Revised Forest Plan Documents, to meet with the Tribe's staff level employees monthly, or as needed, and meet with the Tribe's elected leadership quarterly, or as needed.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.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 Revised Forest Plan 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 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 Ashley National Forest, and especially all activities within the Indian Country portion of the Ashley National Forest. Absent the grant of exclusive management of the Ashley National Forest by the Tribe, 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 Revised Forest Plan Documents should reflect that type of management.