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Attorneys for Plaintiff Southern Utah Wilderness Alliance

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

SOUTHERN UTAH WILDERNESS ALLIANCE, Plaintiff, v. **SPENCER J. COX, in his official capacity as Governor of the State of Utah, SEAN D. REYES, in his official capacity as Attorney General of Utah,** Defendants.	**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** Case No. Judge

Plaintiff Southern Utah Wilderness Alliance brings this action against Defendants Governor Spencer J. Cox, in his official capacity, and Sean D. Reyes, in his official capacity (collectively, "Defendants"), seeking a judgment declaring Defendants' Motion for Leave to File Bill of Complaint, Bill of Complaint, and Brief in Support in the United States Supreme Court illegal, unconstitutional, and an ultra vires action brought outside the authority of the Office of Attorney General, as well as an order enjoining the implementation and funding of this litigation. For causes of action, Plaintiff alleges as follows:

INTRODUCTION

1. Utah's federal public lands are the envy of the nation. From Labyrinth Canyon to Fisher Towers to Nine Mile Canyon to the Dirty Devil, these public lands inspire visitors, are popular for hunting, fishing and many other types of recreation, contain innumerable cultural resources and are home to native flora and fauna. These lands are also a core component of Utah's economic engine and generate billions of dollars of revenue and investment in the State. Utah's federal public lands are collectively owned by all Americans and managed on their behalf by the United States, including by the United States Department of the Interior and its agency, the Bureau of Land Management (BLM).

2. Indigenous peoples have lived in what is present day Utah and across the western United States from time immemorial. Today, several Tribal reservations throughout Utah are the result of treaties between Tribal Nations and the United States.

3. In 1848, the federal government acquired all the lands within the current borders of the State of Utah through the Treaty of Guadalupe Hidalgo with Mexico. Congress established the Utah Territory established shortly thereafter.

4. In 1894, the Utah Enabling Act laid out a path for the Utah Territory to be admitted into the Union. Included among these preconditions was the express provision that the people living within the Utah Territory "forever disclaim all right and title" to unappropriated public lands and lands held by "Indians or Indian tribes" within the Territory's boundaries. Sec. III, Cl. 2.

5. In 1896, the Utah Constitution expressly reiterated the Enabling Act's commitment: "The following ordinance shall be irrevocable without the consent of the United States and the people of this State … The people inhabiting this State do affirm and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries hereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States." Utah Const. Article III, Cl. 2.

6. Between 1894 and 1976 the United States outright granted to Utah and/or disposed of millions of acres of federal public lands within Utah's borders.

7. In 1976, Congress passed the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701 *et seq.*, and announced a policy of retention of public lands.

8. Nearly fifty years later, on August 20, 2024, Utah Governor Spencer J. Cox and Utah Attorney General Sean D. Reyes acted beyond their authority and violated the Utah Constitution when they caused to be filed a Motion for Leave to File Bill of Complaint, Bill of Complaint, and Brief in Support with the United States Supreme Court.

9. Utah's Bill of Complaint seeks to renege on the express commitments made in the Utah Enabling Act and Utah Constitution by asking the Supreme Court to issue an order directing that

the United States begin to dispose of unappropriated public lands in Utah, as well as an order that it is unconstitutional for the United States to even retain such lands in the State.

10. In promoting the lawsuit at a press conference held that same morning, Governor Cox said that "Utah deserves priority when it comes to managing its lands" and asserted that these unappropriated public lands should be "under the careful stewardship of the state of Utah." *See* https://www.ksl.com/article/51105143/the-right-time--cox-reyes-file-supreme-court-lawsuit-claiming-185m-acres-of-federal-land. Attorney General Reyes complained that "[t]he fact that the federal government controls nearly 70% of Utah land seriously limits our state sovereignty, or our ability to self-govern" and explained that "[t]his case is a critical first step towards Utah more actively being able to use, manage, and protect its own lands as a responsible steward." *See* https://standforourland.utah.gov/#next.

11. The present action has been filed to halt the illegal and wasteful claims asserted by the State. In pursuing these anti-public lands claims, Governor Cox and Attorney General Reyes have acted *ultra vires* and in violation of the Utah Constitution, Article III, Cl. 2, and the Attorney General's authority to act under the Constitution.

12. Plaintiff therefore seeks declaratory and injunctive relief declaring that the Governor and Attorney General's lawsuit against the United States is illegal and in conflict with the Utah Constitution and restraining their *ultra vires* pursuit of that lawsuit. Such relief will ensure that America's federal public lands in Utah are not "disposed of" into State or private hands through an effort that contravenes the very conditions by which Utah entered statehood.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this dispute pursuant to Utah Code Ann. § 78A-5-102(1).

14. Venue is proper in this case pursuant to Utah Code Ann. §§ 78B-3a-201 and 78B-3a-203 which control venue in an action against the State.

PARTIES

15. Plaintiff Southern Utah Wilderness Alliance ("SUWA") is a nonprofit corporation with approximately 12,000 members throughout the United States, many of whom live in Utah and recreate, explore and appreciate the State's remarkable BLM-managed lands, including those alleged by the State of Utah to be "unappropriated public lands."

16. Founded in 1983, SUWA is dedicated to preserving the outstanding wilderness throughout Utah and the management of wilderness-quality lands in their natural state for the benefit of all Americans. SUWA is headquartered in Salt Lake City, Utah. SUWA members and supporters enjoy BLM-managed lands throughout Utah for a variety of purposes, including recreation, cultural appreciation, wildlife viewing and aesthetic enjoyment.

17. SUWA works in a number of ways to protect BLM-managed wilderness-quality lands in Utah, including but not limited to: identifying lands with wilderness characteristics, working to pass America's Red Rock Wilderness Act (in the 118th Congress, S.1310 and H.R. 3031), and defending wilderness-quality and other significant BLM-managed land from irresponsible development and/or inappropriate or destructive uses.

18. Defendant Spencer J. Cox ("Governor") is the Governor of the State of Utah. In his official capacity, Mr. Cox is the chief executive office of the State.

19. The Utah Constitution, Article VII, § 5, provides: "The executive power of the state shall be vested in the Governor who shall see that the laws are faithfully executed."

20. Defendant Sean G. Reyes ("Attorney General") is the Attorney General of the State of Utah. In his official capacity, Mr. Reyes in the chief legal officer of the State of Utah. It is also his duty to see that the laws of the State are enforced.

21. The Utah Constitution, Article VII, § 16 provides: "The Attorney General shall be the legal adviser of the State officers, except as otherwise provided by this Constitution, and shall perform such other duties as provided by law."

GENERAL ALLEGATIONS

As a Condition of Statehood, Utah Forever Disclaimed All Interest in "Unappropriated" Public Lands Within It

22. Indigenous people have lived in what is present day Utah from time immemorial.

23. The political entity now known as Utah was created by, and has never existed separate from, the United States.

24. Prior to 1848, all of present-day Utah was owned by Mexico.

25. On February 2, 1848, the United States and Mexico ended the Mexican-American War by signing the Treaty of Guadalupe-Hidalgo. 9 Stat. 922 (July 4, 1848). In that Treaty, Mexico ceded all of present-day Utah (and lands which would later comprise several other states) to the United States.

26. In 1850, Congress designated a portion of the land received from Mexico as the Utah Territory. 9 Stat. 453 (Sept. 9, 1850).

27. In 1894, the Congress passed the Utah Enabling Act, which charted a path for Utah to attain statehood. The Enabling Act proclaims that Congress granted hundreds of thousands of acres of federal public lands to the Utah Territory for several purposes, including: "erecting public buildings at the capital of said State, when permanently located, for legislative, executive,

and judicial purposes;" establishing and supporting the University of Utah as well as other colleges and schools; and, constructing reservoirs and hospitals. 28 Stat 107, §§ 6-13 (July 16, 1894).

28. In return, the Enabling Act included an express provision

> *[t]hat the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof;* and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States.

Id. § 3, cl. 2 (emphasis added). *See also id.* § 12 ("The said State of Utah shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act.").

29. The Enabling Act also provides that "five per centum of the proceeds of the sales of public lands lying within [Utah], which shall be sold by the United States subsequent to the admission of [Utah] into the Union after deducting all the expenses incident to the same, shall be paid to the State, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within [Utah]." *Id.* § 9.

30. The text of Sections 3, 9 and 12 of Utah's Enabling Act is similar to language in other contemporaneous western state enabling acts. *See, e.g.*, Enabling Act for New Mexico, 36 Stat. 557 §§ 2(B), 9 (June 10, 1910).

31. Utah entered the Union in 1896 and enshrined the disclaimer of "all right and title to the unappropriated public lands lying within [its] boundaries" in the State Constitution. Specifically, the Utah Constitution provides as follows:

> The following ordinance shall be irrevocable without the consent of the United States and the people of this State:
>
> …

> The people inhabiting this State do affirm and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries hereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States.

Utah Const. Art. III, cl. 2.

32. From 1896 to 1976, Congress oversaw the disposal of millions of acres of federal lands across the western United States, including Utah. This disposal occurred under the authority of a variety of federal statutes intended to encourage settlement, homesteading, and development of the West.

33. The United States attempted to dispose of additional lands in Utah and other western states but was rebuffed because of concerns over expenses that would be borne by the states to administer those lands, as well as a commensurate loss of federal funding for reclamation projects and highways, among other projects.

34. At the same time, the United States made deliberate decision between 1896 and 1976 to retain ownership of millions of acres of federal lands and minerals across the West, including in Utah.

Congress Establishes a Policy of Retaining Federal Public Lands

35. In 1976, following more than a decade of study by the bipartisan Public Land Law Review Commission, Congress enacted the Federal Land Policy and Management Act or "FLPMA." 43 U.S.C. §§ 1701 *et seq.* FLPMA marked the end of the federal policy of widespread disposal of public lands and replaced it with a policy that "the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided in

this Act, it is determined that disposal of a particular parcel will serve the national interest." *Id.* § 1701(a)(1).

36. FLPMA also directed that the BLM pay close attention to concerns raised by State and local governments and to keep those officials apprised of rules, plans, and activities on federal lands in their state. "[T]o the extent consistent with the laws governing the administration of the public lands, [the Secretary of the Interior shall] coordinate the land use inventory, planning and management activities … of the States and local governments within which the lands are located … and shall provide for meaningful public involvement of State and local government officials, both elected and appointed in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands." *Id.* § 1712(c)(9). *See id.* ("Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.").

37. As of 2024, the United States owns and manages 64.4%, or approximately 37.4 million acres, of Utah's total land base. Of that, the United States Interior Department, through BLM, manages 22.7 million acres or a little over 65% of the total federal estate in Utah. Other federal agencies and Departments, including the National Park Service and Department of Agriculture (and United States Forest Service) also manage millions of acres of federal lands within Utah.

38. Far from being a vassal state, Utah derives significant benefits from this arrangement, including: federal funds through Payment in Lieu of Taxes (PILT); a percentage of bonus bids, rents and royalties from the leasing and development of certain federal minerals; extensive

wildland fire management and suppression efforts; construction of federal irrigation projects; and predictable and low-cost livestock grazing fees and costs.

39. Utah also has an extensive advertising campaign built around encouraging tourists to visit the State and explore and recreate on federal lands, including what Utah calls "unappropriated public lands." *See* https://www.visitutah.com/ (last visited Dec. 17, 2024).

Utah's Motion for Leave to File Bill of Complaint at the United States Supreme Court

40. On August 20, 2024, the Governor and Attorney General announced that the State of Utah had initiated a new case – *State of Utah v. United States in America* – before the United States Supreme Court by filing a Motion for Leave to File Bill of Complaint, a Bill of Complaint, and Brief in Support. Copies of these documents, with the Appendix, are attached hereto as Exhibits 1-4 respectively.

41. In its Motion, Utah asserts that "[t]he federal government has no constitutional authority to indefinitely retain the 18.5 million acres of unappropriated land that it holds within Utah over Utah's objections without reserving or using those lands to carry out any of its enumerated powers." Utah Motion at ¶ 58. Utah continues that "[t]he federal government therefore has a clear and indisputable obligation to begin the process of disposing of those 18.5 million acres of unappropriated public lands." *Id.* ¶ 59.

42. Utah's Bill of Complaint purports to define the term "unappropriated public lands," concocting a definition that lacks any basis in law. Utah defines the term to mean "land that the United States is simply holding, without formally reserving it for any designated purpose or using it to execute any of its enumerated powers." Bill of Complaint ¶ 1. Under this definition,

there are at least 18.5 million acres of BLM-managed lands in Utah that the State is seeking to force the United States to dispose.

43. Utah also asserts that, notwithstanding the State's express disclaimer of any interest in unappropriated public lands within the State, "[t]he time has come to bring an end to this patently unconstitutional state of affairs. Nothing in the [United States] Constitution authorizes the United States to hold vast unreserved swaths *of Utah's territory* in perpetuity, over Utah's express objection …" Bill of Complaint ¶ 4 (emphasis added). *See id.* ¶ 5 (complaining that "the United States' perpetual retention of unappropriated lands in Utah over the State's express objection … diminish[es] Utah's sovereignty as compared to its sister States." *Id.* ¶ 6.

44. Utah's Motion for Leave seeks declaratory and injunctive relief against the United States, including an order that "the United States [] begin the process of disposing of its unappropriated federal lands within Utah, consistent with existing rights and state law."

45. In an opinion piece explaining Utah's motivation for filing its lawsuit, Attorney General Reyes explained that "[t]he [S]tate's preeminent purpose in this case is to protect Utah's [unappropriated] lands today and for generations to come … and [keep them] in the hands of those who know and love them best – the people of Utah." He continued that "[p]erpetual federal control over Utah's unappropriated areas is unsustainable now and into the future." *See* https://www.ksl.com/article/51120799/why-utah-is-asking-for-clarity-from-the-us-supreme-court (last visited Dec. 17, 2024).

46. On August 20, the State also kicked off a sweeping media campaign entitled "Stand for Our Land: Let Utah Manage Utah Land." *See* https://standforourland.utah.gov/#next (last visited Dec. 17, 2024).

47. Contrary to these misleading statements, the federal public lands in Utah have never been "state lands," and were never owned by the State of Utah. And contrary to the State's assertions, it is not the United States that has contravened the Constitution by failing to grant them to the State, but the State that has contravened the Utah Constitution by seeking ownership of federal lands when it long ago disclaimed any such rights.

FIRST CAUSE OF ACTION

(Ultra Vires Action)

48. Plaintiff incorporates by reference all prior allegations in the Complaint.

49. The Utah Constitution states that "[t]he people inhabiting this State do affirm and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof; and to all lands lying within said limited owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States." Utah Const. Art. III. Cl. 2.

50. In direct violation of this constitutional mandate, Defendants are spending millions of dollars of State monies and dedicating enormous other resources to pursuing litigation in an attempt to assert right and title to unappropriated public lands lying within Utah's boundaries.

51. The mandate of the Utah Constitution, Article III, Clause 2, could not be clearer or more unambiguous, and yet the Governor, the elected official charged with ensuring that the laws are faithfully executed, and the Attorney General, the chief law enforcement officer of the State, are violating its express terms.

52. The State's Motion for Leave to File Bill of Complaint, Bill of Complaint, and Brief in Support, which were filed August 20, 2024, were brought in direct contravention of an express constitutional prohibition; it is an ultra vires action and the Court should enjoin the Governor and the Attorney General from pursuing the Bill of Complaint in contravention of the Utah Constitution.

SECOND CAUSE OF ACTION

(Violation of Utah Constitution)

53. Plaintiff incorporates by reference all prior allegations in the Complaint.

54. The Governor is a constitutional officer charged with ensuring that the laws of the State are faithfully executed. Art. VII, § 5.

55. The Attorney General is a constitutional officer and empowered by the Utah Constitution to perform such duties as provided by law. Art. VII, § 16.

56. The Utah Constitution states that the people of Utah "forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof." Art. III, Cl. 2.

57. This provision of the Constitution expressly prohibits Utah from seeking to wrest right and title to "unappropriated" public lands within the State's boundaries from the United States.

58. Plaintiff is entitled to a declaration that the Governor and Attorney General violated Article VII, §§ 5 and 16, respectively, of the Utah Constitution and thus should be enjoined from implementing, funding, or otherwise pursuing legal action seeking title to "unappropriated public lands lying within the boundaries" of the State.

REQUEST FOR RELIEF

Whereof, having asserted the causes of action set forth above, Plaintiff asks the Court to enter an order in favor of Plaintiff against Defendants which shall provide the following relief:

1. A declaration of illegal, ultra vires action on the part of the Governor and the Attorney General, as set forth above.
2. A declaration that the Governor and Attorney General violated the Utah Constitution, Article III, Clause 2, in bringing a Motion for Leave to File Bill of Complaint, Bill of Complaint and Brief in Support in the matter captioned *State of Utah v. United States of America*.
3. A declaration that the Governor violated Article VII, § 2 of the Utah Constitution in bringing the Motion for Leave to File Bill of Complaint, Bill of Complaint and Brief in Support in federal court.
4. A declaration that the Attorney General violated Article VII, § 16 of the Utah Constitution in bringing the Motion for Leave to File Bill of Complaint, Bill of Complaint and Brief in Support in federal court.
5. An injunction prohibiting the Governor and the Attorney General from implementing, funding or otherwise pursuing the Motion for Leave to File Bill of Complaint, Bill of Complaint and Brief in Support on behalf of the State using state appropriated funds.
6. Attorney's fees and costs of court.
7. Such additional relief as the Court may deem equitable or appropriate under all of the facts and circumstances of this civil action.

DATED this 18th day of December, 2024.

Respectfully submitted,

/s/ Jess M. Krannich

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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2024, I caused a true and correct copy of the foregoing document to be filed with the Court's electronic filing system.

/s/ Jessica M. Johnsen
Executive Assistant