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Attorneys for Plaintiffs

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

MICHAEL ABDO, an individual; and
SOUTHERN UTAH WILDERNESS
ALLIANCE, a nonprofit corporation,

Plaintiffs,

- vs -

SEAN D. REYES, in his official capacity as
Attorney General of Utah; TOOELE COUNTY;
J. BRUCE CLEGG, in his official capacity as
Tooele County Commissioner; JERRY HURST
in his official capacity as Tooele County
Commissioner; and SHAWN MILNE in his
official capacity as Tooele County Commissioner,

Defendants.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Case No. _____
Judge _____

Plaintiffs Michael Abdo and the Southern Utah Wilderness Alliance bring this action against defendants Sean D. Reyes, in his official capacity, the Tooele County Commission, each individually in his official capacity, and Tooele County (collectively “Defendants”), seeking a judgment declaring Defendants’ federal court quiet title action involving alleged R.S. 2477 rights-of-way in Tooele County 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, plaintiffs show this Honorable Court as follows:

INTRODUCTION

1. Since 2012, Tooele County’s Commissioners, through the Utah Attorney General, have pursued a quiet title action against the United States claiming title to alleged R.S. 2477 rights-of-way throughout public lands in Tooele County. These alleged rights-of-way course through some of Tooele County’s most pristine and protected wilderness areas, including the Cedar Mountains Wilderness, the Deseret Peak Wilderness, and the Stansbury Mountain Wilderness. Other rights-of-way claimed by Tooele County run through Wilderness Study Areas and lands proposed for wilderness designation in America’s Red Rock Wilderness Act—areas possessing wilderness character, but awaiting official wilderness designation.

2. The State and Tooele County seek ownership of these rights-of-way in order to widen, grade, and pave them, thus destroying the wilderness character of surrounding lands. Kathleen Clarke, Director of the Utah Public Lands Policy Coordination Office (“PLPCO”), recently described this massive and improper litigation as the “largest litigation ever taken on by the State of Utah.”

3. The State's and Tooele County's massive litigation is brought directly contrary to a clear statutory mandate that dictates that the State "may not bring" any action more than seven years after the State's alleged rights in the property accrued. In direct contravention of this mandate the Attorney General and Tooele County have launched this litigation assault outside of their authority because they are bringing claims at least 30 years after Utah law directs that they be brought.

4. The State and County now waste taxpayer dollars to pursue a misguided anti-wilderness agenda in contravention of Utah law. Utah's and Tooele County's rights could not have accrued any later than 1976, when R.S. 2477 was repealed. Thus, the Attorney General and Tooele County were prohibited from using state and county resources to pursue these claims after 1983.

5. This lawsuit has been filed to halt the illegal and wasteful claims asserted by the State and Tooele County. The Attorney General and Tooele County's Commissioners have acted *ultra vires*, or beyond their authority, in pursuing these stale anti-wilderness claims, in direct violation of Utah Code Ann. § 78B-2-201 and the Attorney General's authority under the Utah Constitution.

6. Plaintiffs therefore seek declaratory and injunctive relief halting the Attorney General's and other Defendants' ill-advised and wasteful lawsuit against the United States. Such relief will spare Utah taxpayers millions of dollars, while preserving the wild and pristine character of Tooele County's public lands.

JURISDICTION AND VENUE

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

8. Venue is proper in this case pursuant to Utah Code Ann. §§ 78B-3-301 and 78B-3-303, which control venue in an action against the state.

PARTIES

9. Plaintiff Michael Abdo is an individual, and a citizen, resident, and taxpayer of the State of Utah and Tooele County. Mr. Abdo regularly visits designated wilderness and wilderness-quality lands in Tooele County for aesthetic enjoyment and recreation.

10. Mr. Abdo has been a Utah resident and state taxpayer from 1986-1994 and from 2000 to the present.

11. Mr. Abdo has been a Tooele County resident and county taxpayer from 2000 to the present.

12. Mr. Abdo regularly hikes and backpacks in and near the Tooele County areas affected by the R.S. 2477 litigation individually, with friends and family, and in his capacity as a Boy Scout troop leader. These areas include the Cedar Mountain Wilderness which Mr. Abdo last visited in the Fall of 2013, the Deseret Peak Wilderness, which Mr. Abdo last visited in the Spring of 2012, the North Stansbury Wilderness Study Area, which Mr. Abdo last visited in May 2014, the Big Hollow proposed wilderness area, which Mr. Abdo last visited in April 2006, and the Indian Peaks proposed wilderness area, which Mr. Abdo last visited in October 2010. Mr. Abdo visited these areas, and plans to visit them again, because they are unmarred by roads or other signs of human development.

13. As a professional pilot, Mr. Abdo overflies Utah numerous times each year and the industrial devastation encroaching on some of the State's most beautiful wilderness areas is clearly evident from such aerial reconnaissance.

14. Mr. Abdo has been a member of the Southern Utah Wilderness Alliance since July 2011, and has done volunteer work for SUWA, including participating in Wilderness Week in Washington, DC.

15. Plaintiff Southern Utah Wilderness Alliance ("SUWA") is a nonprofit corporation with approximately 13,000 members throughout the United States, many of whom live and recreate in Utah, including Tooele County. SUWA is dedicated to preserving the outstanding wilderness throughout Utah, and encouraging management and preservation of those lands in their natural state. SUWA has worked in a number of ways to protect wilderness-quality lands in Tooele County, including but not limited to: aiding the Utah Wilderness Coalition in identifying lands with wilderness characteristics; aiding the Utah Wilderness Coalition's efforts to pass America's Red Rock Wilderness Act (in the 113th Congress, S.769 and H.B. 1630), and aiding in the 2006 designation of the Cedar Mountains Wilderness Area.

16. Defendant Sean D. Reyes ("Attorney General") is the Attorney General of the State of Utah. In his official capacity, Mr. Reyes is the chief legal officer of the State of Utah ("State"). It is his duty to see that the laws of the State are adhered to and applied within their inherent bounds.

17. The Utah Constitution, Article 7, § 16, provides: "[t]he 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."

18. In the absence of express legislative restriction to the contrary, the Attorney General exercises broad power and authority. However, the legislature may restrict or modify that power by statute.

19. Defendants J. Bruce Clegg, Jerry Hurst, and Shawn Milne are each members of the Tooele County Commission. The Tooele County Commission is the governing body of Defendant Tooele County (“County”), a political subdivision of the State of Utah. The Tooele County Commission authorizes and oversees Tooele County’s participation in quiet title litigation involving R.S. 2477 rights-of-way.

GENERAL ALLEGATIONS

Revised Statute 2477

20. This action relates to an effort by the State of Utah and its counties to seize from the federal government the ownership of approximately 36,000 miles of alleged “highway” pursuant to Section 8 of the Mining Act of 1866, later codified as Revised Statute 2477 (“R.S. 2477”).

21. R.S. 2477 provided in its entirety “[t]hat the right of way for construction of highways over public lands, not reserved for public uses, is hereby granted.” Act of July 26, 1866, ch. 262, § 8, 14 Stat. 251, 253, *codified at* 43 U.S.C. § 932, *repealed by* Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579 § 706(a), 90 Stat. 2743.

22. The accrual of R.S. 2477 rights-of-way is generally determined as a matter of state law. State law will not be followed to the extent it departs from Congress’ intent in enacting R.S. 2477. Under Utah law, an R.S. 2477 right-of-way can accrue when it has been

continuously and uninterruptedly used as a public highway for a period of ten years prior to October 21, 1976 or an earlier reservation.

23. The Federal Land Policy and Management Act (“FLPMA”), Pub. L. No. 94-579 § 706(a), 90 Stat. 2743, repealed R.S. 2477 on October 21, 1976. Under FLPMA, no further rights-of-way could accrue under R.S. 2477.

24. Regardless of when each particular R.S.2477 claim may have accrued, *all* necessarily accrued before the passage of FLPMA.

The State of Utah and Tooele County’s R.S. 2477 Federal Quiet Title Action

25. On May 30, 2000, the Constitutional Defense Council, a quasi-legislative/quasi-executive state agency, approved a Quiet Title Litigation Plan (“Plan”) that “outlines the broad framework of a working relationship between the state of Utah and participating counties of Utah collectively for the purpose of working together in asserting, defending, or litigating state and local government rights under R.S. 2477.” Tooele Cnty. Corp. Contract # 00-06-15, Plan for R.S. 2477 Rights, at 1 (ratified June 20, 2000).

26. The Plan designated the Attorney General as counsel to the State and participating counties in R.S. 2477 litigation. *Id.* at 2-3.

27. The Plan also provided that “[f]unds appropriated by the Legislature to the Office of the Governor for this effort are for the legal and support expenses of the state and participating counties.” *Id.* at 3.

28. On June 6, 2000, Jan Graham, then Attorney General, signed a Quiet Title Litigation Agreement (“Agreement”) with Tooele County. Tooele Cnty. Corp. Contract # 00-06-16, Quiet Title Litigation Agreement, at 7 (ratified June 20, 2000).

29. The Agreement “sets forth the understanding among the Attorney General’s Office (hereafter “ATTORNEY GENERAL”) and its client, the State of Utah (hereafter “STATE”) and Tooele County (hereafter “COUNTY”) in connection with a lawsuit to be filed in the United States District Court for the District of Utah, to quiet title in the STATE and COUNTY to R.S. 2477 (43 U.S.C. § 932) highways traversing federal lands.” *Id.* at 1.

30. The Agreement provided that “[t]he ATTORNEY GENERAL shall represent both the STATE and the COUNTY in the quiet title action.” *Id.*

31. The Agreement further provided that “[t]he STATE shall provide funding on a continuing basis through the conclusion of the litigation which will include those highways selected by the COUNTY for adjudication under the Plan.” *Id.*

32. On June 20, 2000, Tooele County passed Resolution Number 2000-11 approving and ratifying both the Plan for R.S. 2477 Rights and the Quiet Title Litigation Agreement.

33. On or about June 15, 2000, the State of Utah and Tooele County filed a Notice of Intention to File Suit to Quiet Title to Certain Rights of Way in Tooele County, Utah with the Secretary of the U.S. Department of the Interior.

34. On November 18, 2011, the State and County filed an amended Notice of Intent that supplemented its June 2000 Notice.

35. On May 15, 2012, the State and County filed their original complaint in the United States District Court for the District of Utah to quiet title to R.S. 2477 rights-of-way in Tooele County, in a case captioned *Tooele County, et al. v. U.S.*, Case No. 2:12-cv-477-CW (D. Utah). The Utah Attorney General’s Office provides the only listed attorneys for the plaintiffs.

36. On September 5, 2012, the State and County amended their complaint to include a total of 2,415 miles of alleged roads in Tooele County. *See* Dkt. No. 6. The Utah Attorney General's Office remains the only listed attorneys for the plaintiffs.

37. The State and County's amended complaint seeks to quiet title to rights-of-way bordering and intruding into congressionally-designated wilderness and wilderness-eligible lands, including:

a. Fourteen miles of claimed roads intrude into or border the Cedar Mountains Wilderness, the Deseret Peak Wilderness, and the Stansbury Mountain Wilderness. *See* Map of Tooele County Claimed R.S. 2477 Rights-of-Way, attached as Exhibit A.

b. One hundred and thirty miles of claimed roads intrude into lands proposed for wilderness designation in America's Red Rock Wilderness Act, including 27 miles that intrude into Wilderness Study Areas. *See* Exhibit A.

38. The State and County's amended complaint also seeks to establish the scope of claimed rights-of-way through designated wilderness and proposed wilderness lands as "a minimum width of 66 feet." The State claims this width for every alleged right-of-way in the amended complaint, regardless of actual or historic width, use, or condition. Amended Complaint at 8, *Tooele County, et al. v. U.S.*, No. 2:12-cv-477-CW (D. Utah Sept. 5, 2012), ECF No. 6.

39. Rights-of-way broadened to this scope may preclude wilderness designation and impair the ability to manage and protect wilderness areas in their natural condition. Any such decision would irreparably destroy large parts of Utah's pristine landscape and impair plaintiffs' use, enjoyment, and interests in the preservation of Utah wilderness.

40. The Utah Legislature appropriated \$20,312,100 to the Civil Program of the Attorney General's Office for fiscal year 2014. The Attorney General funds the litigation of the R.S. 2477 Action with these appropriated monies.

41. The Utah Legislature appropriated \$2,284,100 to PLPCO and \$1,621,200 to the Governor's Office Public Lands Litigation line item for fiscal year 2014. The Attorney General funds the litigation of the R.S. 2477 Action with these appropriated monies.

42. The Utah Legislature appropriated \$1,758,600 to the Constitutional Defense Council for fiscal year 2013. These funds did not lapse at the end of the fiscal year. The Attorney General funds the litigation of the RS2477 Action with these appropriated monies.

Utah Code Ann. § 78B-2-201

43. Utah Code Ann. § 78B-2-201 provides as follows: **"The state may not bring an action against any person for or with respect to any real property, its issues or profits, based upon the state's right or title to the real property, unless: (1) the right or title to the property accrued within seven years before any action or other proceeding is commenced [...]"** (emphasis added). The County, as an arm of the State, is also precluded from bringing actions in contravention to § 78B-2-201.

44. The federal government is a "person" under Utah Code Ann. § 78B-2-201.

45. Utah Code Ann. § 78B-2-201 is a discrete limit on the power of the State and the County to claim rights in real property. It operates separately and independently of any otherwise-applicable federal statute of limitations.

46. Unlike the Quiet Title Act statute of limitations, which is triggered by the federal government's notice of a plaintiff's claim to real property, Utah Code Ann. § 78B-2-201 is a

statute of repose triggered by accrual of the State and County's claim to real property. It states that **"the state may not bring an action..."** in contravention of its terms, yet this is exactly what the Attorney General and Tooele County, through its Commissioners, have done

47. The State and County's amended complaint recognizes that their R.S. 2477 claims accrued prior to the passage of FLPMA: "[t]he R.S. 2477 rights-of-way for the...roads claimed herein were initially accepted as public highways by public use for a continuous period of at least 10 years prior to October 21, 1976, or such other date as requisite for the acceptance of a particular road and its right-of-way claimed herein." Amended Complaint at 9, *Tooele County, et al. v. U.S.*, No. 2:12-cv-477-CW (D. Utah Sept. 5, 2012), ECF No. 6.

48. The Attorney General and Tooele County may not act in violation of an express legislative restriction; Utah Code Ann. § 78B-2-201 is an express legislative restriction against filing suit more than seven years after a title claim accrued.

FIRST CAUSE OF ACTION
(Ultra Vires Action)

49. Plaintiffs incorporate by reference all prior allegations of this Complaint.

50. The State's and County's R.S. 2477 claims accrued prior to October 21, 1976, more than 23 years before the State filed its original Notice of Intent to Quiet Title, and more than 36 years before the State and County filed their original complaint.

51. Under Utah Code Ann. § 78B-2-201, which applies to both the State and to counties, the State and County are prevented by the plain language of the statute from bringing an action any time after October 21, 1983

52. In direct violation of the statutory mandate, Defendants are spending millions of dollars of State and County monies and dedicating enormous other resources to pursuing litigation that state laws forbid the State to “bring”.

53. The mandate of Utah Code Ann. § 78B-2-201 is clear and unambiguous yet the Attorney General, the chief law enforcement officer of the State, working in concert with and on behalf of Tooele County and its Commissioners, is violating its express terms.

54. The State and County’s quiet title action, notice of which was first given in 2000, and which was filed in 2012, was brought in direct contravention of an express legislative enactment; it is an ultra vires action and the court should enjoin the Attorney General and the Tooele County Commissioners from pursuing the R.S. 2477 Action in contravention of Utah law.

SECOND CAUSE OF ACTION
(Violation of Utah Constitution)

55. Plaintiffs incorporate by reference all prior allegations of this Complaint.

56. The Attorney General is a constitutional officer and empowered by the Utah Constitution, Article 7, § 16, to perform such duties as provided by law.

57. Utah Code Ann. § 78B-2-201 expressly prohibits the Attorney General from bringing the R.S. 2477 action on behalf of the State.

58. Plaintiffs are entitled to a declaration that the Attorney General violated Article 7, § 16 of the Utah Constitution and thus should be enjoined from implementing, funding, or otherwise pursuing federal quiet title litigation involving alleged R.S. 2477 rights of way in Tooele County.

REQUEST FOR RELIEF

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

1. A declaration of illegal, ultra vires action on the part of the Attorney General, Tooele County, and the Tooele County Commissioners, as set forth above.
2. A declaration that the Attorney General violated Utah Code Ann. § 78-B-2-201 in bringing *Tooele County, et al. v. U.S.* more than seven years after allowed by the statute of repose, as set forth above.
3. A declaration that the Attorney General violated Article 7, § 16 of the Utah Constitution in bringing the quiet title action in federal court.
4. An injunction prohibiting the Attorney General, Tooele County, and the Tooele County Commissioners from implementing, funding, or otherwise pursuing the R.S. 2477 Action on behalf of the State or any county using state appropriated funds.
5. Attorney's fees and costs of court.
6. Such additional relief as the Court may deem equitable or appropriate under all of the facts and circumstances of this civil action.

DATED this 29th day of July, 2014.

/s/ Stephen H.M Bloch
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- Legend**
- Claimed R.S. 2477 Route
 - Wilderness Study Area
 - LMC Proposed Milestones
 - LandOwnership**
 - National Forest
 - Bureau of Land Management
 - State Trust Lands
 - Tribal Lands
 - Private
 - Department of Defense (DOD)
 - National Recreation Area, National Parks
 - Monuments & Historic Sites
 - USFS BLM Wilderness Area
 - National Wildlife Refuge, State Wildlife
 - Natural Management Area
 - State Parks and Recreation

EXHIBIT

A



Tooele County Claimed R.S. 2477 Rights-of-Way

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U.S. 2477 Road Area Jurisdiction Areas of Utah