

# Ute Tribe takes U.S. gove to court over 'theft' of lan water in historic Uncomp



(Brian Maffly | Tribune file photo) A view of the Tavaputs Plateau from Grand County. Ute tribal officials have filed two fe  
for more than a century of mining and drilling on leased lands around the East Tavaputs Plateau.



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More than a century ago, the U.S. government made several promises to the Ute Indian Tribe when it evicted the Uncompahgre and White River bands from fertile homelands in Colorado in a largely failed effort to resettle tribal members to Utah's Uinta Basin, though the arid land was ill-suited for farming.

But that ground under the historic 1.8 million-acre Uncompahgre Reservation near the Colorado-Utah border proved to be rich in minerals, and tribal officials now say they never were compensated for more than a century of mining and drilling on leased lands around the East Tavaputs Plateau.

According to new lawsuits filed by the Ute tribe late last week, federal authorities should have managed the forage, gilsonite, oil and gas, water and other natural resources on those lands for the benefit of the tribe, but instead orchestrated their "theft."

Armed with several court rulings that affirm their belief the tribe's interest in the Uncompahgre was never diminished, Ute leaders now insist they are owed compensation to the tune of hundreds of millions of dollars.

Their litigation also aims to settle the long-disputed status of the lands west of the Colorado border, asking a federal judge to declare that they be “restored” to trust status, citing a 1945 order issued by the Interior Department. Currently, the land is managed by the Bureau of Land Management for multiple use by ranchers, oil and gas developers, and the general public.

“The Tribe has brought this litigation to hold the United States accountable to the solemn promises it made to the Tribe pursuant to its treaty obligations that it is now trying to break by taking the position the Tribe’s reservation no longer exists,” tribal officials wrote in a news release announcing the action.

A spokesman for the U.S. Justice Department said its lawyers are reviewing the lawsuits and declined further comment.

The suits filed by by the tribe would not affect the status of many sections of state-owned school trust lands scattered around the historic reservation, but tribal officials are seeking to be paid for those lands, ceded to Utah by the U.S. government at statehood in 1896.

At issue is who should rightfully receive mineral revenues from the energy-rich federal acreage dating back to 1945, along with the thorny question of how much control tribal officials have over how and where drilling and grazing occur.

The Ute Business Committee has a history of embracing energy development on tribal lands under its control, but drilling may not be compatible with the cultural and spiritual reverence that the Utes attached to portions of the Tavaputs Plateau and Book Cliffs.

The tribe is pursuing several legal strategies, with tribal attorneys filing two lawsuits Thursday in Washington, D.C.

One seeks compensation in the Court of Federal Claims, contending that mineral royalties, grazing fees and proceeds from sales related to the lands belonged to the tribe.

The other action, filed in U.S. District Court, seeks a court declaration transferring title of "surplus land" that is currently under purview of the BLM that the federal government failed to sell or had given to Utah as trust lands.

“The connection to the land runs much deeper than just economic interests,” said the tribe’s lawyer Jeremy Patterson. “The taking of homelands is the most devastating act taken against an Indian nation.”

President Chester A. Arthur established the Uncompahgre Reservation in 1882, abutting the Utes’ existing Uintah Valley Reservation, for tribal members kicked out of Colorado. But without irrigation, the relocated Utes were slow to settle lands around the White River, Willow Creek and East Tavaputs, which came under pressure from white ranchers and prospectors clamoring for access, drawn at first to the region’s gilsonite deposits.

The Utes’ two reservations were later merged into today’s Uintah and Ouray Reservation, whose unallotted lands were opened to white settlement in 1905. A century of conflict has ensued as the Uinta Basin became a patchwork of town, county, tribal, federal and state lands and an array of jurisdictional lines.

But the tribe has repeatedly won court victories affirming its contention that it shares jurisdiction over all lands within the exterior boundaries of the two historic reservations, which courts have ruled were not diminished by Congress.

“They have never produced any document showing where Congress took title from the tribe because no such act was ever passed,” Patterson said. “When you say the reservation was never disestablished, it means Congress never took these lands and restored them to public domain.”

Yet the BLM assumed control of lands in the Uncompahgre Reservation that were not specifically restored to the tribe in 1948 when Congress authorized the 500,000-acre Hill Creek Extension to the Utes’ reservation.

For years, tribal officials have pushed their case that these BLM lands be converted to trust status, most recently in letters to Interior Secretary Sally Jewell, before she left office in 2017.

“Restoration is in the public interest, would fulfill the purposes of the [Indian Reorganization Act of 1934], would address a century of federal mismanagement, and would support tribal energy and economic development,” Ute tribal officials wrote Jewell in a Jan. 5, 2017, letter.

Restoring the lands to tribal control, the tribe wrote, “would be a major achievement for the Department and fulfill the [Obama] Administration’s goal of restoring tribal homelands.”

Earlier this month, the U.S. government flatly rejected that claim.

Citing a legal opinion issued by the Interior Department's Office of the Solicitor, Deputy Secretary David Bernhardt rejected the Utes' contention that the Uncompahgre qualifies for restoration, a status that the Indian Reorganization Act reserved only for "remaining surplus lands" where the tribe would have been entitled to the proceeds if the land had been sold.

"The Tribe cannot make the requisite showing that proceeds from the sale of these lands were held for the Tribe's benefit," Bernhardt wrote in a March 2 letter to Ute Business Committee chairman Luke Duncan. "History and applicable statutes reveal no convincing evidence of Congressional intent that the Tribe had a compensable ownership interest in the area."

Also playing a role in the dispute was the BLM's recent decision to lease 34 parcels of public lands in the area for possible oil and gas projects. The leases are to be auctioned March 20 — over the tribe's objections.

"The BLM," Patterson claimed, "doesn't have valid title to be auctioning those lands."



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