

*Ute Indian Tribe of Uintah and Ouray Reservation v. U.S. Dept. of Interior*, \_\_\_ F. Supp. 3d \_\_\_, 2021 WL 4189936 (D.D.C. Sept. 15, 2021)

- **Holdings:** Claims alleging brought by tribe under a 1965 deferral agreement and a 1967 exchange agreement against the federal and state defendants were barred by the six-year limitation period in 28 U.S.C. § 2401(a); the District of Columbia's long-arm statute did not confer personal jurisdiction over a state water conservancy because the tribe's claims arose out uniquely governmental activities; claims alleging breach of trust against the federal defendants based on three statutes failed as a matter of law because the government did not expressly accept the specific trust duties relied upon by the tribe; a claim alleging unconstitutional discrimination on behalf of tribal members could not be maintained against the federal defendants in a *parens patriae* capacity or, alternatively, because it alleged only disparate impact; a discrimination claim could not be maintained against the state defendants because it either was barred by the applicable limitation period or failed on the merits as a matter of law. The remaining claims were transferred to the United States District Court for the District of Utah.
- **Summary:** The Ute Indian Tribe sued the Department of the Interior, two of its agencies and the Utah Water Conservancy in 2018. All claims arise from Defendants' alleged mismanagement of water-development projects affecting Utah's Green River Basin. The State of Utah subsequently intervened as a Defendant. As amended, the complaint contained sixteen claims for relief. Defendants moved to dismiss twelve of the claims on various grounds; federal Defendants moved to transfer the remaining four claims to Utah federal district court under 28 U.S.C. § 1404(a). The district court granted both motions.

The court's decision is detailed but does not break any new substantive ground. By issue:

- Statute of limitations. Defendants moved to dismiss four claims as untimely brought under the six-year limitation period in 28 U.S.C. § 2401(a). Those claims arose under two agreements, one entered into during 1965 and the other in 1967. The only significant justification offered by the Tribe related to when its claim under the former accrued, but the court held that "as of the 1980s, and certainly by 1992, the Tribe knew that Defendants would not meet the specific obligations described in the 1965 ... Agreement[.] ... It could have long ago sought judicial declarations about the source and scope of its enforceable water rights, as well as relief for the Defendants' failures to secure those rights."

- Personal jurisdiction. The water conservancy moved to dismiss on personal-jurisdiction grounds. The claim against it stemmed from involvement in execution of the 1965 agreement and efforts to construct federally financed projects. But, the court observed, "[u]nder the District of Columbia's long-arm statute, courts cannot assert "'personal jurisdiction over non-residents whose only contact ... involves uniquely governmental activities.'" It held that the exception "covers execution of contracts between a defendant and an Executive Agency, and the contacts necessary to coordinate joint projects with a federal instrumentality" like the conservancy's involvement here.

- Breach of trust. The Tribe contended that three statutes—the 1899 Indian Appropriations Act that, in part, authorized construction and maintenance of dams, ditches and canals within the Uintah Reservation; a 1906 statute that authorized development of the Uintah Indian Irrigation Project; and the 1992 Central Utah Project

Completion Act that gave “the Secretary authorization to rehabilitate, maintain, construct, and lease irrigation facilities associated with the Central Utah Project”—created specific trust duties that federal Defendants violated. The court analyzed the text of each law and disagreed. With regard to the 1899 Act, “[t]he trust duties identified by the Tribe—duties to irrigate, store water, and guarantee compensation—do not appear expressly in the Act.” With regard to the 1906 law, it “does not grant the United States an exclusive right to use and occupy the water-storage and irrigation infrastructure created as part of the Project, nor does it bar the Tribe from irrigating its own land, manage every aspect of irrigation on Tribal lands, or seek to maximize profits for the Tribe. … Thus, the Tribe has not demonstrated that Congress created an irrigation scheme so pervasive or comprehensive that it suggests that Congress ‘expressly accept[ed]’ a specific trust duty to manage and store the Tribe’s water.” Finally, the 1992 Act “merely gives the Secretary authorization to rehabilitate, maintain, construct, and lease irrigation facilities associated with the Central Utah Project” and also contained a provision “anticipat[ing] that authorization for … [the] projects may not proceed.”

- Discrimination claims. The Tribe alleged equal protection and substantive due process claims on behalf of its members against all Defendants. Federal Defendants responded that the Tribe lacked *parens patriae* standing to maintain the claims against them, and the court agreed. It relied on D.C. Circuit precedent for the proposition that “the Court of Appeals approached *parens patriae* claims challenging agency actions and federal statutes, as well as claims alleging constitutional violations, all as *Mellon*-barred challenges directed against the federal government.” *See Massachusetts v. Mellon*, 262 U.S. 447 (1923). But, even on the merits the claims failed because the Tribe alleged only disparate impact, not discriminatory purpose. As for state Defendants, the Tribe’s claim under Title VI of the 1964 Civil Rights Act was time-barred, since it “has not stated facts that plausibly allege that either the State of Utah or any other State actor intentionally discriminated against it based on race or any another protected class within the last four years”—the Utah statute of limitation on personal injury actions. Claims under 42 U.S.C. § 1983 could not be brought against the State or its officers in their official capacity because they were not “persons” subject to the statute, while the amended complaint’s allegations were insufficient to support personal liability “because the Tribe does not allege that ‘they themselves acted [in violation of the constitution].’”

- Transfer to Utah district court. The court devoted significant discussion to the transfer issue with respect to the remaining four claims, but the outcome was never in doubt. It applied the various public and private-interest factors used to determine such issues under § 1404(a). In part, it held that that “[t]he third and ‘arguably most important’ public interest factor weighs decisively in favor of transfer. … The residents of Utah have a ‘compelling interest … in having this localized controversy decided at home.’ … That principle holds true here, where the dispute involves ‘federal decisions that impact the local environment,’ and ‘judicial review of an administrative action.’” The private-interest factors weighed equally strong in favor of transfer since, *inter alia*, the alleged injury occurred in Utah, the impact of any decision would be felt there, the relevant contract was negotiated there, and Utah was the “clearly more convenient” venue to litigate the case.

- **Relevant Deskbook Section:** 1:7 n.1