

Edson G. Gardner, Attorney Pro-Se
Post Office Box 472
Fort Duchesne, Utah 84026
Phone; 1 (435) 722-4762

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FELTER, et al.,

Plaintiff(s),

v.

NORTON, et al.,

Defendant(s),

Case No. 1;02CV2156

INTERVENOR AMICI CURIAE
BREIF SEEKING DECLARATORY
RELIEF

Judge, Richard W. Roberts

ORAL ARGUMENT NOT NEEDED

Amicus Curiae, Edson G. Gardner, Attorney Pro-Se, alleges
as follows;

INTEREST OF AMICUS

Action to longstanding federal policy to protect Uintah
lands. Intervenor Amicus Gardner, AUN, Uintah Mix-blood Indian
seeks declaration, Uintah Mix-blood Indians' possessory interest
in Uintah Valley lands purported conveyance of possessory
interest, violation of Indian Trade and Intercourse Act. The
relief for violating Uintah Mix-blood possessory intersts by
U.S. Department of Interior Bureau of Indian Affairs, on Uintah
Valley Agency, individuals and repretatives of defendant class
of persons and entities currently occupy or have or claim an
interest in any of subject Uintah Valley lands successors as
more fully defined below.

STATEMENT OF FACTS

This Court has jurisdiction Under, 28 U.S.C. 1331. Amicus Curiae Rule 36.3, conferred by Rule 24 (a) and (b), and Fifth Amendment and Fourtheeth Amendment of U.S. Constitution, as 42 U.S.C. 1981, 1982 et seq., and 42 U.S.C. 2000e et seq., relief may be awarded pursuant to 28 U.S.C. 2201, and 2202. The Court has venue of action because lands are located in Uintah Valley Reservation which falls within venue of District Court of Columbia.

SUMMARY OF ARGUMENT

Lands claimed in litigation cover Uintah Valley were reserved to Uintah Mix-blood Indians by United States in Treaty of Guadalupe Hidalgo of 1848, which referred for description to Uintah Valley land of Uintah Valley Executive Order, dated October 3, 1861 (1 Kapp. 900), and Uintah Treaty, dated October 7, 1863 (13 Stat. 673), and Uintah Treaty March 2, 1868 (15 Stat. 619), between all Uintah Indians.

Treaty of Guadalupe Hidalgo, Treaty, dated December 30, 1849 (9 Stat. 984), established trust relationship between United States and Uintah Indians never been abandoned. Intervenor Amicus Curiae Gardner, AUN, Uintah Mix-blood Indian, hereinafter referred to as AUN, Uintah Mix-blood Indian, as used herein, means one, some, or all Uintah Mix-blood Indians of Utah, under Uintah Valley Reservation.

Amicus Edson G. Gardner, AUN, Uintah Mix-blood Indian

protects aboriginal and treaty recognized rights of AUN, Uintah Mix-blood Indians to enforce restrictions on alienation of Trade and Intercourse Act, 25 U.S.C. 177, by Department of Interior purported to acquire possession of Uintah Valley lands from Uintah Mix-blood Indians pursuant to transactions described hereinafter. Department of Interior currently claims title to and occupies portions of Uintah Valley lands. Department of Interior as territorial division as local government within State of Utah. Department of Interior currently claim title to and occupy portions of Uintah Valley lands. Defendant U.S. Department of Interior of the State of Utah are in violation of entitled rights, individually and as representatives pursuant to Rule 23(a) and (b)(1) Federal Rules of Civil Procedure. Representatives of defendant class, composed of persons or entities occupy, or have, or claim interest in any of Uintah Valley lands and their successors and assigns as of this filing of Intervenor Amicus Curiae.

Number of members of defendant class, or more persons is thus so numerous, joinder of all members is impracticable. There are questions of law and fact common to members of defendant class, and defenses of named representatives are typical of defenses of the class. The representative defendants will fairly and adequately represent interest of defendant class. Prosecution of separate actions against individual member class would create

risk of adjudications with respect to individual member class which would practical matter be dispositive of interest of proposed Defendant class members substantially impair of impede ability to protect interests.

ARGUMENT

Amicus Gardner, AUN, Uintah Mix-blood Indian from time immemorial down to Uintah Valley treaties created trust responsibilities to and with Uintah Indians, created the acquired federal rights by Federal treaties, statutes, executive orders, and agreements with Uintah Indians within Uintah Valley Reservation, and is entitled to certain rights to Uintah aboriginal lands of their Uintah ancestors, by reason of provision of various Treaties, Act's of Congress, Executive Orders, including by virtue of Treaty of Guadalupe Hidalgo between United States of America and Republic of Mexico in 1848, as United States acquired title to vast expanse of land situated in State of Utah. Uintah Valley lands are by various Treaties, Acts of Congress, within including Uintah Executive Order of October 3, 1861, and Act of Congress of May 5, 1864 (12 Stat. 63), set aside Uintah Valley Reservation and title thereto held in trust by United States for Uintah Mix-blood Indians of said Uintah Valley Indian Reservation is intact in 1849 and still in 1790 referred to Indian Trade Intercourse Act, (1 Stat. 137), was enacted. The act expressly forbide and declared invalid any

sale of Indian lands, or any title or claim thereto, by any Indian Nation or tribe without consent of United States. These Acts are continuously in force since this was re-enacted, in Acts of March 1, 1793. (1 Stat. 329, 330), Act of May 19, 1790. (1 Stat. 469, 472), Act of March 3, 1799. (1 Stat. 743, 746), Act of March 30, 1802. (2 Stat. 139, 143), Act of June 30, 1834. (Stat. 729; Rev. Stat. 2116).

**A. Uintah Valley Exempt From Federal Taxation
Income Earned From Use Of Uintah Trust Land**

Interpreted broadly or narrowly, exempts Uintah Mix-blood Indians from paying taxes on income earned from use of allotted trust land. By Internal Revenue Service (IRS) has given, Squire v. Capoeman, 351 U.S. 1, 5-6 (1956) (timber) narrow interpretation, under Squire rule, Indian farms or ranch on trust allotments, Stevens v. Commissioner, 452 F. 2d 741 (9th Cir. 1971), sell timber, oil, or minerals from them, Squire v. Capoeman, 351 U.S. 1, 5-6 (1956) (timber); Kirschling v. U.S., 746 F.2d 512 (9th Cir. 1984) (timber); U.S. v. Daney, 370 F. 2d 791 (10th Cir. 1966) (Oil); Hayes Big Eagle v. U.S., 300 F. 2d 765 (Ct. Cl. 1962) (minerals), or lease their lands to others for those purposes, U.S. v. Hallaw, 304 F. 2d 620 (10th Cir. 1962), do not pay federal taxes on income they earn. Kirkwood v. Areas, 243 F. 2d 863 (9th Cir. 1957). They are exempt from taxation on the income earned from allotment received as gift or by

exchanging land, 25 U.S.C. Sec. 463(e).

**B. Doctrine Of Uintah Trust Responsibility
Requires Of Federal Officials**

Uintah Mix-blood Indians obligation, higher duty of care, in Ute Indian Tribe v. State of Utah, 114 F. 3d 1513 (10th Cir. 1997) (en banc) cert, denied, 118 S. Ct. 1034 (1998), concludes Indian Country within meaning to lands apportioned to mix-blood Indians under Ute Partion Act, Id, 1529-30, has clearly established existence of fiduciary relationship when statutes and regulations give Federal Government pervasive role in management of Uintah Mix-blood Indians properties. Cheyenne-Arapaho Tribes of Oklahoma v. U.S., 966 F. 2d 583, 589 (10th Cir. 1992), cer. denied, 507 U.S. 1003 (1993); Brown v. U.S., 86 F. 3d 1554, 1559-63 (Fed. Cir. 1996); Assiniboine and Sioux Tribes of Fort Peck Indian Reservation v. Board of Oil and Gas Conservation of State of Montana, 792 F. 2d 782 (9th Cir. 1986); Jicarilla Apache Tribe v. Supron Energy Corp., 782 F. 2d 855 (10th Cir. 1984) (en banc), adopting in relevent part Jicarilla Apache, 728 F. 2d 1555, 1567 (10th Cir. 1984) (dissenting opinion), modified, 793 F. 2d 1171, cert. denied, 479 U.S. 970 (1986). In holding federal statute delegating authority to state officials over Indian property creates trust duties can be enforced against those State officials.

**C. Uintah Mix-blood Indians' Protection Against
Non-Indian Discrimination**

Civil rights protect citizens, Indians and Non-Indians alike. As result of these laws, Indians who are discriminated against on account of race, color, creed, religion, sex, or national origin with respect to employment, 42 U.S.C, 2000e se seq., Dawavenda v. Salt River Project Agricultural Improvement and Power Dist., 154 F. 3d 1117 (9th Cir. 1998) commercial transactions, 42 U.S.C. Secs. 1981, 1982 Scott v. Eversole Mortuary, 522 F. 2d 1110 (9th Cir. 1975), or access to public accommodations 42 U.S.C. Secs. 2000a et seq., in most instances can file in federal court action to halt discrimination. And the federal court found group of non-Indians in Wisconsin made racist statement against Indians, urged non-indians to use the means availble, and including violence, to prevent Indians from exercising federal treaty rights to fish within Wisconsin lakes. The finding conduct violated federal civil rights laws guarantees citizens equal right to hold and use personal property, 42 U.S.C. 1982 and the court ordered halt to such activities and assessed more than \$240,000 in costs and attorneys fees against non-Indian groups. Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Stop Treaty Abuse-Wisconsin, Inc., 41 F. 3d 1190 (9th Cir. 1995), cert. denied, 514 U.S. 1096 (1995).

D. Department Of Interior Wrongfully Took Possession Of Uintah Vally Trust Lands

Purported to sold portions of Uintah Valley lands to third

parties, (UDC) in additions, Department of Interior purported to sell portions of Uintah Valley lands through Letter Patents and Transfers. Upon information and belief, (UDC) made substantial profits on purported sales of Uintah Valley lands. Intervenor Amicus Gardner, AUN, Uintah Mix-blood Indian have sought redress of wrongs herein described from executive and legislative branches of Government of United states Department of Interior in the State of Utah and whose refused to take any action to redress wrongs. Intervenor Amicus Gardner, AUN, Uintah Mix-blood Indian never choose to sell Uintah Valley lands to United States provided in Treaty or act of Uintah Valley, neither acquisitions by Department of the Interior nor Letter Patent Transfers comply with Treaty or Nonintercourse Act and that United States Congress never consented to alienation of Uintah Valley lands.

E. Federal Common Law Claims Against United States Department Of Interior

Amicus Gardner, AUN, Uintah Mix-blood Indian's right of possession to Uintah Valley lands. The right can be terminated only by plain and unambiguous act of Congress. There has been no such act by U.S. Congress. Intervenor Amicus Gardner, AUN, Uintah Mix-blood right to Uintah Valley lands has been confirmed by Treaty, and Acts, or how Department of Interior Bureau of Indian Affairs took possession of Uintah Valley lands from Uintah Mix-blood Indians, in violation of federal laws continues

to possession of Uintah Valley lands that is purported to sell or otherwise grant Uintah Valley lands to third parties (UDC). Members of Non-Indian class and direct and/or indirect assignors thereof, purporting to sell or otherwise grant Uintah Valley lands to third parties (UDC), intended to, and did, authorize and cause third parties (UDC), and direct and indirect assignees of those third parties (UDC), permanently possess Uintah lands. (Third Party Trespassors-UDC).

The Third Party Trespassors (UDC), violated, and continue to violate intervenor Amicus Gardner, AUN, Uintah Mix-blood Indian's federal common law rights of possession of Uintah Valley lands. Actions herein described, United States committed and continues to commit trespass to Uintah lands upon Uintah Mix-blood Indians. Beginning of Uintah Valley Reservation and continuing through present day, United States assumed statutory duty to defend Uintah Valley landholders against certain land claims. Under statute, currently codified United States Law, United States duty to defend any Uintah Valley landholder who is sued for possession by Uintah Mix-blood Indians on basis Uintah Valley land question acquired or transferred by United States in violation of Nonintercourse Act, authorizing, ratifying, causing Third Party Trespassors (UDC). The United States jointly participated and liable for each and every such Third Party Trespass (UDC), for its own illegal purchases and transfers of

Uintah Valley lands activities, continuously repeatedly authorized and/or ratified each purported transfer of Uintah Valley lands.

F. Nonintercourse Act Claims Against United States Department of Interior

Amicus Gardner, AUN, Uintah Mix-blood Indian's right to continuing possession of Uintah lands, by Indian Nonintercourse Act, 25 U.S.C. 177, absent transfer of Uintah lands in compliance with Acts, that Defendant United States Department of Interior deliberately, willfully, and in bad faith executed Orders and Agreements and Letter Patents Transfers in violation of Nonintercourse Act. As result of Agreements and Transfers, Uintah Mix-blood Indians unlawfully were dispossessed of Uintah Valley lands, unlawful dispossession of Uintah Valley lands continues to present day.

G. Federal Common Law Claims Against Defendant Non-Department Of Interior Members Class

Amicus Gardner, AUN, Uintah Mix-blood Indian's right of possession to Uintah Valley lands. The right can be terminated only by plain and unambiguos act of United states Congress. There has been no such act by Congress to transfer portions of Uintah Valley lands from Uintah Mix-blood Indians and continuing to present day or time. Non-Department of Interior members class, direct or indirect assignors, have unlawfully possessed Uintah Valley lands acted to exclude Uintah Mix-blood Indians'

rightful possession of Uintah Valley lands. Information and belief, various non-Department of Interior member class, persons purporting to act with permission, have unlawfully severed Uintah Valley lands, natural resources, minerals, timber, valuable resources, acted to exclude Uintah Mix-blood Indians right, resulting chattels by transferring or destroying chattels. Non-Department of Interior members class, by actions described, violated Uintah Mix-blood Indians common law right of possession to Uintah Valley lands and natural resources.

**H. Nonintercourse Act Claims Against Defendant
Non-Department of Interior Member Class**


Amicus Gardner, AUN, Uintah Mix-blood Indian may continue his right to possession of Uintah Valley lands, absent transfer 25 U.S.C. 177 in compliance this Act. Non-Department of Interior member class, who claim title to and right to possess Uintah lands derived from illegal transactions described above, have kept and continue to keep Intervenor Amicus Gardner, AUN, Uintah Mix-blood Indian out of possession of Uintah Valley lands in violation of Nonintercourse Act.

CONCLUSION

Amicus Gardner, AUN, Uintah Mix-blood Indian prays and demands the Court Order or declares action be maintained as class action, pursuant to Rule 23(a), (b)(1) of the Federal Rules of Civil Procedure, against defendant class members, declares Uintah Valley lands acquired by United States

Department of Interior in violation of the law, and Uintah Valley Treaty's, and Letter Patents Transfers (UDC), void ab initio, declares Amicus Gardner, AUN, Uintah Mix-blood Indian continues rights of Uintah Valley possession to lands claimed or held by defendant members class.

Dated this 1st day of January, 2004.



Edson G. Gardner,
Attorney Pro-Se