Christopher G. McAnany (#7933)
Dufford Waldeck, LLP
744 Horizon Court, Suite 300
Grand Junction, CO 81506
(970) 241-5500
(970) 248-5862 (desk)
mcanany@dwmk.com; dwmk@dwmk.com
Attorney for Defendant

IN THE SEVENTH JUDICIAL DISTRICT COURT IN AND FOR SAN JUAN COUNTY THE STATE OF UTAH

KIM ERIC ACTON and IDA ELIZABETH ACTON, Plaintiffs, v. TOWN OF BLUFF, a municipal corporation of the State of Utah, Defendant.	**DEFENDANT TOWN OF BLUFF'S MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE BY THE UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION** Civil No. 230700025 Judge Don M. Torgerson

Defendant Town of Bluff (the Town), through unsigned counsel, submits this memorandum in opposition to the Verified Motion to Intervene by the Utah School and Institutional Trust Lands Administration (SITLA) as follows.

I. PREFERRED DISPOSITION AND SUPPORTING GROUNDS

The Town of Bluff requests that SITLA's Verified Motion to Intervene be denied because SITLA lacks standing to invoke the jurisdiction of this Court in this municipal disconnection case. Intervention would thus be futile and would effectively permit SITLA to litigate a claim that it would otherwise not possess.

II. RELEVANT FACTS

This matter is a municipal disconnection case pursuant to U.C.A. § 10-2-502.7 brought

by Kim E. Acton and Ida E. Acton (Plaintiffs or the Actons), two private landowners who own a section of land (640 acres) situated within the boundaries of the Town of Bluff. The Plaintiffs are the successors in title to a relative, Judy F. Lyman (Lyman), who previously sought to disconnect the same parcel of land from the Town. The Lyman petition was rejected by the Town on January 10, 2023, in part because it would have created an unlawful unincorporated "island" surrounded by incorporated territory.

Not satisfied with the result of the previous petition, the Plaintiffs and their counsel sought to engineer a better outcome by joining forces with SITLA, which administers several thousand acres of public lands within the Town. Over the course of months, the two parties worked together to devise a disconnection map encompassing 9,514 acres of land. After a public hearing, that petition was also rejected by the Town for different reasons and the Plaintiffs sued. SITLA now seeks to intervene.

III. ARGUMENT

1. INTERVENTION MUST BE DENIED BECAUSE SITLA'S CLAIMS ARE NOT WITHIN THE JURISDICTION OF THE COURT.

U.R.C.P. 24 (a) authorizes intervention "on timely motion" to any person who "..1) is given an unconditional right to intervene by a statute, or 2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect the interest, unless existing parties adequately represent the interest." Alternatively, permissive intervention is authorized where a person "...A) is given a conditional right to intervene by a statute; or B) has a claim or defense that shares with the main action a common question of law or fact." Id. at (b)(1).

At the outset, the Town does not dispute that SITLA's motion is timely. The dispute centers on the fact that the underlying statute by which SITLA seeks to proceed does not confer jurisdiction upon a governmental party.[1]

a. Only Private Landowners May Invoke the Disconnection Statute.

Any right to intervention by SITLA is governed by the interpretation of the disconnection statute. In reviewing a statute, a court must look to the plain language of the law, and it is presumed that the expression of one term should be interpreted as the exclusion of another. *Bagley v. Bagley,* 387 P.3d 1000 ¶ 10 (Utah 2016).

The disconnection statute authorizes a "petitioner" to seek disconnection of lands from municipal jurisdiction. For purposes of the statute, a petitioner "i) means one or more persons who own title to real property within the area proposed for disconnection; and ii) sign a request for disconnection proposing to disconnect the area proposed for disconnection from the municipality; or b) the mayor of a municipality within which the area proposed for disconnection who signs a request for disconnection…" U.C.A. § 10-2-501(1).[2] Among the requirements for a petition is that it "*shall*" contain "...the names, addresses, and signatures of the owners of more than 50% of any private real property in the area proposed for disconnection;…and "give the reasons for the proposed disconnection." U.C.A. § 10-2-501(2)(b). Thus, for a petition to be valid, it must be signed by the owners of more than 50% of the private real property encompassed by the petition. Id.

---

[1] A third basis for intervention, U.R.C.P. 24 (b)(2) authorizes intervention by governmental entities under certain circumstances, but that provision is not addressed here because SITLA did not invoke it in its motion.

[2] Subsection (b), the mayoral request for disconnection is inapplicable here.

The statute mandates review by the local government and a public hearing on the question of whether to grant the disconnection. U.C.A. § 10-2-502.5. If a party is dissatisfied with the result of the municipal public process, a petition "...may be filed in district court by: i) the petitioner; or ii) the county in which the area proposed for disconnection is located." Id. at (5)(a).[3] Only two classes of persons may sue for disconnection in court: a statutory petitioner who brought the petition before the municipality, or an affected county. Id.

Although the disconnection statute does not define who is an owner of "private real property," related provisions of the municipal incorporation law states that the term "'private' with respect to real property means taxable property." U.C.A. § 10-2a-102(1)(c).[4] In turn, the Utah Constitution, Article XIII, Section 3 provides that the "property owned by the State" is exempt from real property tax and thus not taxable property. Thus, a fair reading of the disconnection statute is that lands owned by the State of Utah, which are not subject to real property taxation, are excluded from the definition of "private real property." Therefore, SITLA does not meet the definition of a "petitioner" authorized to bring a petition for municipal disconnection under U.C.A. § 10-2-502.5(5)(a).[5]

b) SITLA is Not a Petitioner Under the Statute.

As the foregoing illustrates, "Petitioners" must be persons who own property in the area,

---

[3] Subsection (ii) is inapplicable here because San Juan County did not participate in the disconnection proceeding.

[4] The municipal annexation statute contains a similar definition of "private" real property as excluding lands of the state. See U.C.A. 10-2-401(1)(i).

[5] In its proposed Complaint, SITLA states that it is "an independent agency of the State of Utah." Complaint ¶ 1.

they must sign the petition, and they must represent more than 50% of the "private real property" that is within the area sought for disconnection. SITLA fails to meet that definition.

The subject petition was initiated by the Actons, who own 640 acres of private real property and who signed the petition. See Petition, **Exhibit A**, attached. SITLA did not sign the petition applicable to this case, and it is not an owner of "private real property" as that term is understood.

c) The Lack of "Petitioner" Status Deprives this Court of Subject Matter Jurisdiction to Hear SITLA's Claims.

The question of whether a litigant has standing is a jurisdictional requirement and a legal conclusion reviewed for correctness. *Southern Utah Wilderness Alliance v. San Juan County Commission,* 484 P.3d 1160 ¶ 8 (Utah 2021). Here, the failure of SITLA to meet the statutory definition of a "petitioner" under the disconnection statute is jurisdictional. In "Utah… standing is a threshold jurisdictional requirement. […] And it is axiomatic that where the right of action is one created by statute, the law creating the right can also prescribe the conditions of its enforcement." *McKitrick v. Gibson,* 496 P.3d 147, ¶ 17 (Utah 2021); *internal citations omitted.* In McKitrick, the Court made clear that "a statutory claimant must have statutory standing, and the presence of traditional or alternative standing will not cure the standing deficiency;" Id. at ¶ 2. If a litigant cannot satisfy the statutory definition of a party entitled to seek review, the failure is jurisdictional, and the court is without subject matter jurisdiction to hear the claim. See Id at ¶ 48.

In the present case, it is clear that disconnection is a right the legislature crafted for the benefit of private property owners, not governmental agencies. Indeed, the only governmental agency expressly authorized to file a disconnection lawsuit is the adjacent county. U.C.A. 10-2-

502.5(5)(a)(ii). Parties such as SITLA are not within the ambit of the statute. As a result, this court is without subject matter jurisdiction to hear any purported SITLA claims under the disconnection statute and, relatedly, SITLA fails to show a statutory right to intervene, as required by U.R.C.P. 24.

2. SITLA FAILS TO DEMONSTRATE COGNIZABLE CLAIMS THAT WOULD MERIT INTERVENTION.

As noted above, intervention may be appropriate where a party claims an interest relating to the subject of the action, such that disposition may "impair or impede" the movant's ability to protect its interest, or where a litigant has a claim or defense sharing a "common question of law or fact" with the main action. But, authorities interpreting the analog intervention requirements under the Federal Rules of Civil Procedure note that it is also necessary that an intervenor have an interest in the subject matter of litigation that is "direct, substantial, and legally protectable." *Georgia v. US Army Corps of Engineers,* 302 F3d 1242, 1249 (11th Cir. 2002). A mere economic interest in the subject matter of a suit is insufficient to permit intervention. See *Medical Liability Mutual Ins. Co. v. Alan Curits, LLC,* 485 F.3d 1006, 1008 (8th Cir. 2007). Similarly, intervention may properly be denied where a claim advanced by the putative intervenor would be futile because it does not state a proper claim for relief. *Lucero v. City of Albuquerque,* 140 F.R.D. 455, 457 (D. N.M 1992). Utah courts have applied a similar test, recognizing that an intervenor must state a valid claim showing that the party is entitled to relief, rather than a mere interest. *In re United Effort Plan Trust*, 296 P.3d 742 ¶ 38 (Utah 213)(rejecting intervention by religious leaders objecting to sale of trust assets).

In this case, the claims advanced by SITLA are all predicated upon its purported standing under the disconnection statute. See Complaint in Intervention, ¶ 58 (stating sole claim for relief

under U.C.A. 10-2-502.7). These allegations are largely a re-hash of the allegations by the Actons as to the infrastructure of the Town and the merits of disconnection. While it is admitted that SITLA owns land in the putative Disconnection Area, and that it entered into leases with third parties encompassing some of those lands, that economic interest alone is insufficient to support intervention absent some cognizable claim for relief to be stated against the Town. Notably absent from the Complaint is any allegation that the Town has engaged in unlawful conduct with respect to SITLA or its lessees. In fact, no land use application or similar request for consideration has ever been submitted to the Town pertaining to SITLA's stated interest, a proposed solar farm. The Complaint in Intervention by SITLA is thus legally insufficient to support intervention, representing an improper attempt to litigate via intervention a claim that it could not pursue on its own. See *Hutchinson v. Pfeil,* 211 F.3d 515, 519 (10th Cir. 2000)(litigant cannot use intervention to escape limitations on court jurisdiction on appeal).

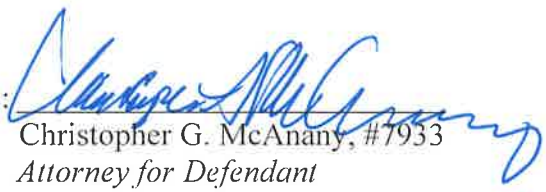
CONCLUSION

SITLA's interest in this litigation is duplicative of the claims advanced by the Actons and offers no clear cause of action against the Town. In light of the limitations of the disconnection statute, SITLA has failed to state a claim justifying intervention.

WHEREFORE, the Town requests that the Verified Motion to Intervene be Denied.

DATED: November 8, 2023.

DUFFORD, WALDECK, LLP

BY: 
Christopher G. McAnany, #7933
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2023, I served a true and correct copy of the foregoing, **DEFENDANT TOWN OF BLUFF'S MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE BY THE UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION**, upon the person(s) listed below via Utah State Bar E-filing Portal as follows:

Bruce R. Baird, #176
BRUCE R. BAIRD, PLLC
2150 South 1300 East, Suite 500
Salt Lake Town, Utah 84106
Attorney for Kim E. Acton and Ida E. Acton

Landon A. Allred, #12428
YORK HOWELL
10610 South Jordan Gateway, Suite 200
South Jordan, Utah 84095
Attorneys for the State of Utah School and Institutional Trust Administration (SILTA)

/s/Alissa Bertagni
Alissa Bertagni, Paralegal