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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. UINTA VALLEY SHOSHONE TRIBE; DORA VAN; RAMONA HARRIS; LEO LEBARON & OTHERS WHO ARE IN ACTIVE CONCERT WITH THE FOREGOING; Defendants.	Case No. 2:17CV1140BSJ **MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** Honorable Bruce S. Jenkins

This Court should deny Defendants' Motion for Summary Judgment because instead of showing that Defendants have authority to sell hunting and fishing permits, it serves a further evidence that they have committed wire fraud and, therefore, should be permanently enjoined under 18 U.S.C. § 1345. As shown below, the law has been clear for decades that Defendants have no authority to sell hunting and fishing licenses for use on private, state, federal, or Ute Tribal Trust lands. Consequently, Defendants' Motion for Summary Judgment should be denied, and the United States' Motion for Summary Judgment should be granted to permanently enjoin Defendants from selling and issuing hunting and fishing licenses.

BACKGROUND

The group calling itself the "Uintah Valley Shoshone Tribe" ("UVST") and its officers Dora Van, Ramona Harris, and Leo LeBaron (collectively "Defendants"), moved for summary judgment seeking to avoid being permanently enjoined from selling hunting and fishing permits. ECF No. 46. Defendants' argument is very narrow because it focuses on only one portion of the United States' claims. Specifically, Defendants contend that they have authority to sell hunting and fishing permits because, as part of the group known as the mixed-blood Utes,[1] they retain their hunting and fishing rights on what they claim as their tribal trust lands. ECF No. 46 at 6-9. Therefore, Defendants argue, they are not engaging in a scheme to defraud and, consequently, the United States cannot prevail on the merits of its wire fraud claim for purposes of obtaining a permanent injunction under 18 U.S.C. § 1345.[2]

However, Defendants are wrong because the law has clearly shown for decades that they lack any authority whatsoever to issue hunting and fishing licenses. Instead, Defendants' claim of legal authority to sell hunting and fishing permits actually evinces their fraudulent intent. Consequently, Defendants' Motion for Summary Judgment should be denied, and the United States' Motion for Summary Judgment should be granted.

[1] The United States recognizes that the term "mixed-bloods" may be offensive in the modern vernacular, but, because Congress and the courts use this term, this memorandum will also.

[2] Because Defendants neither dispute that they are using interstate wire facilities to carry out their scheme to sell these hunting permits nor do they provide any arguments regarding irreparable harm, the balance of the harms, or the public interest, the United States will not address these arguments further.

STATEMENT OF UNDISPUTED MATERIAL FACTS

The United States does not dispute the facts listed in Defendants' Motion for Summary Judgment. ECF No. 46 at 5-6.[3]

ARGUMENT

I. DEFENDANTS' LACK OF ANY LEGAL AUTHORITY TO SELL HUNTING AND FISHING PERMITS IS SO OBVIOUS THAT THEIR CLAIM TO SUCH AUTHORITY IS, AT BEST, RECKLESS AND, AT WORST, PATENTLY FALSE.

This Court should deny Defendants' Motion for Summary Judgment because well-established law clearly shows that they lack any authority to sell hunting or fishing permits for use on federal or Ute Tribe lands. In 1954, Congress enacted the Ute Partition and Termination Act ("UPTA"), in which it established a procedure to divide tribal assets between the full-blood and mixed-blood members of the Ute Tribe. Pub. L. No. 83-671, § 1; 68 Stat. 868. Under the UPTA, after the divisible assets were allocated between the two groups, the Secretary of the Interior was to issue a proclamation terminating the mixed-bloods' status as "Indians" under federal law. *Hackford v. Babbit*, 14 F.3d 1457, 1462 (10th Cir. 1994). The Secretary issued such a proclamation in 1961, "which declared, '[a]ll statutes of the United States which affect

[3] Defendants' Motion for Summary Judgment makes a factual claim that is not in the statement of undisputed facts. Specifically, Defendants contend that the UVST has "maintained its own constitution and conducted business as its own tribal entity" and that the UVST "traces its lineage back through the [Ute Partition and Termination Act], the Indian Reorganization Act, the 1882 treaty creating the Uncompahgre Reservation, the 1861 treaty creating the Uinta Valley Reservation, all the way from time immemorial." ECF No. 46 at 8. However, Defendants provide absolutely no evidence for this factual assertion. Consequently, these unsupported factual allegations must be disregarded for purposes of summary judgment. Fed. R. Civ. P. 56(e); DUCivR 56-1(b)(3) ("The moving party must cite with particularity the evidence in the Appendix of Evidence that supports each factual assertion."). However, even if these factual allegations are true they are immaterial because they do not give Defendants authority to issue hunting and fishing permits for the reasons stated below.

Indians shall no longer be applicable [to the mixed-bloods].'" *Id.* at 1463 (quoting Termination of Federal Supervision Over the Affairs of the Individual Mixed-Blood Members, 26 Fed. Reg. 8042 (Aug. 24, 1961)). Thereafter, the UPTA terminated the mixed-bloods as a tribal entity and forbade them from ever reapplying for recognition as a tribe. 25 C.F.R. § 83.11(g) (2015).

As to those tribal assets that were not divisible, Congress provided that they '"were to remain in government trust and be jointly managed by [the Ute] Tribal Business Committee and the mixed-bloods' representative."' *Hackford*, 14 F.3d at 1462 (quoting *Ute Distrib. Corp. v. United States*, 938 F.2d 1157, 1159 (10th Cir. 1991)). Hunting and fishing rights are among those assets that were not divisible, *United States v. Felter*, 752 F.2d 1505, 1509 (10th Cir. 1985), and, therefore, were held in trust by the United States and are managed exclusively by the Ute Tribal Business Committee and the mixed-bloods' representative.[4] *United States v. VonMurdock*, 132 F.3d 534, 536 (10th Cir. 1997). Given that Congress terminated the mixed-bloods' rights as Indians, turned over exclusive tribal governance to the members of the Ute Tribe, and provided the mixed-bloods with a single representative on the Ute Tribal Business Committee to manage indivisible assets, Congress clearly did not intend the UPTA to allow the mixed-bloods to establish a rival government to the Ute Tribe over hunting and fishing rights. Indeed, the UPTA was enacted to clearly establish the Ute Tribe as governing tribal body, not to engender sovereign chaos.

[4] Although mixed-bloods who were listed on the rolls of mixed-bloods generated under the UPTA retained hunting and fishing rights on the Uintah and Ouray Reservation, *Felter*, 752 F.2d at 1509, the offspring of those listed mixed-bloods did not inherit those rights. *VonMurdock*, 132 F.3d at 536.

However, sovereign chaos is exactly what Defendants claim to be able to engender under the UPTA. Defendants clearly concede that they "were deemed mixed-bloods pursuant to the UPTA." ECF No. 46 at 6. Consequently, as mixed-bloods, their rights to govern tribal trust lands were terminated under the UPTA. Instead, the only governing influence that Congress authorized over the indivisible assets, such as hunting and fishing, was a single representative on the Ute Tribal Business Committee. Thus, it strains credulity to contend that Defendants can govern land that Congress clearly placed under control of the Ute Tribe. Similarly, because the mixed-bloods were precluded from even reapplying to be recognized as a tribe, 25 C.F.R. § 83.11(g), they cannot claim that the United States has an obligation to recognize their hunting permits on federal land. Accordingly, Defendants clearly have no legal authority to issue hunting and fishing permits on either Ute Tribe or on federal land. The fact that they are selling hunting and fishing permits anyway evinces their fraud.

Nevertheless, despite this overwhelming authority, Defendants claim that because the mixed-bloods' hunting and fishing treaty rights were not terminated under the UPTA, *Felter*, 546 F.Supp. 1002, 1018 (D. Utah 1982), they have the right to sell hunting and fishing licenses "to other members of the UVST."[5] ECF No. 46 at 6. However, even this argument ignores well-established law because, as this Court held nearly 36 years ago, the mixed-bloods' right to hunt and fish on Ute Tribe land "was a personal right. It was neither alienable, assignable, transferable nor descendible." *Id*. at 1023 (emphasis in original). Thus, "[t]he children of

[5] Although Defendants claim to be selling hunting and fishing permits only to other mixed-bloods, their hunting proclamation asserts that Defendants can sell and issue hunting and fishing permits to those who are not members of the mixed-bloods. ECF No. 45 at 6.

persons listed on the mixed-blood roll would not enjoy the entitlement held by their parents." *Id.* at 1025 n.52 (emphasis in original). Instead, this Court held that "[a]s each of the mixed-blood Utes passes away, his or her personal right of user [to hunt and fish] is extinguished, it being neither inheritable or transferable." *Id.* ("Attrition will eventually extinguish the mixed-blood entitlement [to hunt and fish] through the normal course of events . . . Ultimately the interests of the mixed-bloods in those rights will be ended."). Consequently, Defendants have been on notice for at least 36 years that they cannot transfer or sell the mixed-bloods' hunting and fishing rights to anyone, including their descendants; yet Defendants continue to try. ECF No. 46 at 6.

Additionally, Defendants' scheme of selling hunting and fishing licenses to anyone listed on the mixed-blood rolls is also clearly illegal because the Ute Tribe, not Defendants, governs hunting and fishing on Ute Tribe lands. Although this Court recognized that the mixed-bloods listed on the rolls retain a treaty right to hunt and fish on Ute Tribe lands, *id.* at 1026, this Court also recognized that such rights are "subject to overall [Ute] tribal control." *Id.* 1026, 1027 ("To convict a mixed-blood Ute upon the final mixed-blood roll of hunting and fishing in violation of 18 U.S.C. § 1165, the Government must establish that the defendant was acting in violation of an applicable [Ute] tribal regulation as to the time, method and manner of fishing or hunting by [Ute] tribal members." (emphasis added)). Therefore, Defendants have long known that they lack authority to issue hunting and fishing permits to those mixed-bloods whose names are on the mixed-blood roll.[6]

[6] Although the hunting and fishing rights of mixed-bloods whose names are listed on the mixed-blood rolls are subject to Ute tribe control, this Court recognized that the Ute Tribe "may not invidiously discriminate against" such mixed-bloods because they "hold[] equivalent rights." *Felter*, 546 F.Supp. at 1025 n.54.

Although Defendants have known for decades that the law has clearly precluded them from selling and issuing hunting and fishing permits to anyone, they have done it anyway. In doing so, they have made representations that they are a federally-recognized tribe with the authority to issue hunting and fishing permits for use on their purported trust lands, which include private, state, federal, and Ute Tribe land. ECF No. 45 at 6-7. In carrying out this fraudulent scheme, they have used interstate wire communications. Because this constitutes wire fraud, Defendants must be permanently enjoined from issuing hunting and fishing permits under 18 U.S.C. § 1345. Therefore, Defendants' Motion for Summary Judgment should be denied, and the United States' motion should be granted.

CONCLUSION

For the reasons stated above, this Court should deny Defendants' Motion for Summary Judgment and, instead, should grant the United States' Motion for Summary Judgment by permanently enjoining Defendants and those in active concert with them from selling and issuing permits to take fish and wildlife.

Dated this 14th day of May 2018.

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