

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH**

<p>UNITED STATES OF AMERICA, Plaintiff,</p> <p>vs.</p> <p>UINTAH VALLEY SHOSHONE TRIBE, <i>et al.</i>, Defendants.</p>	<p><b>MEMORANDUM IN OPPOSITION TO PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT</b></p> <p>Case No. 2:17-cv-1140-BSJ</p> <p>Judge Bruce S. Jenkins</p>
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This Court should deny Plaintiff’s Motion for Summary Judgment Granting a Permanent Injunction against Defendants to issue hunting and fishing licenses as Plaintiff is unable to show that Defendants were engaged in a scheme or artifice to defraud or obtain money by false pretenses, representations or promises, and are therefore unable to show that they have succeeded on the merits of their claim for wire fraud. Therefore, this Court should deny Plaintiff’s Motion for Summary Judgment and grant Defendants’ Motion for Summary Judgment dismissing Plaintiff’s claim for wire fraud and a permanent injunction enjoining Defendants from selling hunting and fishing licenses.

**BACKGROUND**

The Uinta Valley Shoshone Tribe of Affiliated Citizens (the “UVST”) are an Indian tribe that resides in what is now the Uinta Valley & Ouray Reservation although the history of the Uinta Indians and its bands dates back to time immemorial. The first reservation of the Uinta was “the entire Valley of the Uinta River within Utah Territory, extending on both sides of said river to the crest of the first range of mountains on each side...” Executive Order 38-1, October 3, 1861, *Hackford v. Babbit*, 14 F.3d 1457, 1459 (10th Cir. 1994). This reservation

was known as the Uintah Valley Reservation. Pursuant to Executive Order 38-1, the Uintah Valley Reservation was set aside “for the permanent settlement and exclusive occupancy” of the tribes of the Utah territory.

In 1879, the Uncompahgre and White River Utes were expelled from Colorado after the White River Utes killed an Indian Agent. In 1880, the Uncompahgre Reservation was created by executive order of President Chester A. Arthur in 1882 as a temporary reserve for the Uncompahgre and White River Utes. *Hackford* at 1461. The Uncompahgre Reservation was created as a temporary reserve for the Uncompahgre Utes after the Confederated Ute Tribe of Colorado agreed to cede its entire reservation in the Colorado Territory to the United States in 1880. *21 State. 199*. The Uncompahgre Utes agreed to become citizens of the “state or territory in which they reside”. *Id.* The Uintah Valley Reservation and the Uncompahgre Reservation are now known as the Uintah and Ouray Reservation. *Id.* at 1461.

In 2016, The Uinta Valley Shoshone Tribe issued hunting licenses to members of its tribe to hunt deer and elk on the Uintah and Ouray Reservation<sup>1</sup>. The Ute Indian Tribe Fish and Wildlife Department along with the Utah Division of Wildlife Resources began an investigation into the sale of said licenses to members of the Uinta Valley Shoshone Tribe. The United States is now seeking a permanent injunction to prohibit the Uinta Valley Shoshone Tribe from selling hunting and fishing licenses to members of its tribe, despite the fact that these rights were retained by the UVST, a tribe that has hunted and fished the Uintah and Ouray Reservation from time immemorial.

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<sup>1</sup> It must be noted that all licenses sold by The Uinta Valley Shoshone Tribe were sold exclusively to members of the Uinta Valley Shoshone Tribe, all either being a mixed-blood on the 1954 rolls of the UPTA, or descendants of mixed-bloods on the 1954 rolls of the UPTA.

Plaintiff has moved for summary judgment to obtain a permanent injunction enjoining Defendants from issuing hunting and fishing licenses on the basis that Defendants have committed wire fraud. 18 USC § 1345. ECF 45. Plaintiff argues that it has succeeded on the merits of the wire fraud case by stating that the Defendants have no right to hunt or fish on trust lands, nor any right to issue licenses on trust lands, and are thus engaged in a “scheme or artifice to defraud or obtain money by false pretenses, representations, or promises”. ECF No. 45 at 9-13.

Plaintiff is wrong as it is clear that Defendants retain a right through treaty to hunt and fish on treaty lands, regardless of the recognition of the federal government. Therefore, Plaintiff’s Motion for Summary Judgment should be denied, and Defendants’ Motion for Summary Judgment should be granted.

**STATEMENT OF UNDISPUTED MATERIAL FACTS**

Defendants dispute the following facts listed in Plaintiff’s Motion for Summary Judgment:

30. Defendants despite the statement of United States Fish and Wildlife Service Special Agent Edward Meyers that the UVST permittees could “go anywhere they want, within the boundaries of the Uintah and Ouray Reservation,” including the U.S. Forest Service Lands. Ms. Van acknowledges that UVST permittees could not hunt on U.S. Forest Service land with a hunting permit issued by UVST and does not acknowledge stating so.

**ARGUMENT**

- I. PLAINTIFF HAS FAILED TO SHOW THAT DEFENDANTS HAVE FAILED TO PROVE THAT IT HAS SUCCEEDED ON THE MERITS OF ITS WIRE FRAUD CLAIM**

In order to prove wire fraud, the United States must show: “(1) a scheme or artifice to defraud or obtain money by false pretenses, representations or promises; and (2) use of interstate wire communications to facilitate that scheme.” *United States v. Cochran*, 109 F.3d 660, 664 (10<sup>th</sup> Cir. 1997), ECF 45 at 9. While it is acknowledged that the Defendants used interstate communications to communicate with members of the UVST regarding hunting and fishing permits, the United States has not proven any scheme or artifice to obtain money by false pretenses, representations or promises. In its Motion for Summary Judgment, Plaintiff makes the statement on numerous occasions that the UVST is not a lawfully recognized tribe, or that the UVST is not a federally recognized Indian tribe, as though this has some impact on the individual members of the UVST to hunt the lands of the Uintah and Ouray Reservation. This assertion is not supported by case law.

While it is true that the UVST is no longer a federally recognized Indian Tribe, the Ute Partition and Termination Act of 1954 (the “UPTA”) severed the special relationship between the federal government and the UVST, it did not terminate their existence. Pub. L. No. 83-671, § 1; 68 Stat. 868. The Plaintiff makes the statement that the UVST is not a federally recognized Indian Tribe. EFC 45 at 5, 11 without mention that the termination of federal status merely terminates the special relationship between the federal government and the terminated Indian and that that the failure of the federal government to recognize a particular group of Indians as a tribe cannot deprive that group of vested treaty rights. *Timpanogos Tribe v. Conway*, 286 F.3d 1195, 1203-04 (10<sup>th</sup> Cir., 2002).

Under the treaty rights granted to Defendants in 1861 and 1882 Treaties, the UVST maintains hunting and fishing rights on its ancestral lands. As the Supreme Court held in *Menominee Tribe of Indians v. United States*, 391 U.S. 404, 412-13 (1968), that language such as

land “to be held as Indian lands are held” grants a right to hunt and fish on those treaty lands. *Menominee* at 406.

Although the 10<sup>th</sup> Circuit in *Untied States v. Von Murdock*, 132 F.3d 534 (10<sup>th</sup> Cir., 1997) states that hunting rights of Mixed-Blood Indians is retained only by those Mixed-Blood Indians that were listed on the rolls of the UPTA of 1954 and cannot be inherited by their children, the right to hunt and fish on treaty lands claimed by the UVST is not obtained by recognition of the federal government, or lack thereof based on the UPTA, but through treaty. Based on the 10<sup>th</sup> Circuit’s ruling in *Timpanogos* in 2002, the lack of federal recognition of the UVST does not preclude them from exercising their rights under the 1861 and 1882 treaties creating the Uintah Valley Reservation and the Uncompahgre Reservation. As such, members of the UVST retain a right to hunt and fish on their treaty lands and are therefore not engaged in a scheme to obtain money by false pretenses, representations or promises.

#### CONCLUSION

For the reasons stated above, this Court should deny Plaintiff’s Motion for Summary Judgment, and instead grant Defendants’ Motion for Summary Judgment by dismissing Plaintiff’s claim for Wire Fraud.

Dated: May 14, 2018

/s/ Michael J. Rock  
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