

Appeal Nos. 18-4151, 184160

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

United States of America,

Plaintiff-Cross Appellant,

v.

Uintah Valley Shoshone Tribe, et al.,

Defendants – Appellants.

Appeal from the United States District Court
For the District of Utah in Case No. 2:17-cv-1140
Judge Bruce S. Jenkins

**Appellants' Amended Principle Brief
(Oral Argument Requested)**

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RELATED CASES STATEMENT

No prior appeals have been taken in this action, or to this Court from any related action.

INTRODUCTION

Appellants Uinta Valley Shoshone Tribe¹, Dora Van, Ramona Harris, and Leo LeBarron (“Appellants”) appeal the district court’s ruling that an order entered by the United States District Court for the District of Utah, Central Division, ordering that the Uintah Valley Shoshone Tribe (“UVST”) is prohibited from selling or issuing hunting and fishing licenses to its members. The District Court further ruled that the United State’s motion for relief by way of wire fraud and a permanent injunction was denied.

The Uinta Valley Shoshone Tribe of Affiliated Citizens 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. Babbitt*, 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.

¹ Uintah and Uinta are both correct spellings of the Uinta Valley Shoshone Tribe, however, members of the Uinta Valley Shoshone Tribe consider Uinta spelled without the “h” to be the preferred spelling of the tribe.

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. *Hackford* at 1461. However, the Ute Indian Tribes were never granted to the lands of the Uintah Valley Reservation as that reservation was created in 1861 “for the exclusive permanent settlement and exclusive occupancy” of the tribes of the Utah Territory. *Executive Order 38-1 of October 3, 1861*. The Ute Indians are historically a tribe of Colorado and were not granted a reservation in Utah until 1882. Therefore, to claim that the Utes hold claim to all of the lands of the Uintah and Ouray Reservation would fly directly in the face of formation of both the Uintah Valley Reservation and the Uncompahgre Reservation.

The Indian Reorganization Act of 1934 later went on to state that the Uintah, White River, and Uncompahgre Bands of the Ute Tribe would be recognized as the “Ute Tribe of the Uintah and Ouray Reservation.” *Hackford* at 1461. In 1954, Congress passed the Ute Partition and Termination Act (“UPTA”) that established full-blood and mixed-blood Utes. Pub L. No. 83-671, § 1; 68 Stat. 868.

Under the UPTA, the full-blood group was comprised of those individuals with at least "one-half degree of Ute Indian blood and a total Indian blood in excess of one-half." 25 U.S.C. § 677a(b). The "mixed-blood" group was comprised of those individuals who either did not possess sufficient Indian or Ute Indian blood to qualify as "full-bloods" or who became a mixed-blood member by choice under section 677c after having been initially classified as a full-blood member. 25 U.S.C. § 77a(c), 677c. In 1956, the Secretary published, pursuant to 25 U.S.C. § 677g, final rolls that listed 1,314 full-blood members and 490 mixed-blood members. 21 CFR 2208-12 (April 5, 1956). *See generally* Cohen's Handbook of Federal Indian Law § 3.02 (2017).

All members Uinta Valley Shoshone Tribe were erroneously, and potentially fraudulently, listed as Mixed-Blood under the UPTA. The effect of being named a mixed-blood for the purposes of the UPTA meant that the Uinta Valley Shoshone Tribe would no longer be a recognized tribe for the purposes of federal programs,

and Congress may terminate a tribe's special relationship with the United States. However, to the contrary of the assertions of the Plaintiff, the termination of tribal status does not act to completely remove all rights of said tribe, it merely removes those rights that are not inconsistent with the act.

Importantly, the US District Court for the District of Utah and the 10th Circuit Court of Appeals, and the United States Supreme Court have all held that hunting and fishing rights were not abrogated under the UPTA, and that those rights were retained by the mixed-bloods. *Menominee Tribe of Indians v. United State*, 391 U.S. 404, 414 (1968), *United States v. Felter*, 752 F.2d 1505, 1508 (10th Cir., 1985), *United States v Felter*, 546 F. Supp. 1002 (D. UT, 1982).

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 Reservation². 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

² 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.

rights were retained by the Uinta Valley Shoshone Tribe, a tribe that has hunted and fished the Uintah and Ouray Reservation from time immemorial.

JURISDICTIONAL STATEMENT

The district court exerted subject matter jurisdiction under 18 U.S.C. § 1345(a)(1). This Court has jurisdiction under 28 U.S.C. § 1291: The September 5, 2018 “Memorandum Decision and Order” (the Decision) and the September 13, 2018 “Judgment in a Civil Case” are final decisions of the district court. The Uinta Valley Shoshone Tribe, Dora Van, Ramona Harris and Leo LaBarron timely filed their “Notice of Appeal” in the district court on October 15, 2018.

STATEMENT OF ISSUE

Whether the district court erred by ruling that the UVST or its officers have no right to issue hunting or fishing permits.

STATEMENT OF THE CASE

In October 2017, the United States filed a complaint against the Appellants alleging that the Appellants had committed wire fraud, 18 U.S.C. § 1345, and sought to permanently enjoin the Appellants from selling and/or issuing hunting and fishing licenses, declare all hunting and fishing licenses that have been issued by the Appellants null and void *ab initio*, and permanently enjoin the use of the UVST hunting and fishing licenses that have already been issued.

After the parties both filed Motions for Summary Judgment pursuant to Fed. R. Civ. P. 56, the district court held that based on the factual stipulations presented to the trial court, it was difficult to find that the Appellants engaged a scheme to obtain money by false representations and promises through the sale of hunting and fishing licenses. However, the district court held that Appellants nonetheless do not have the authority to issue hunting and fishing licenses as the rights of the UVST to issue hunting and fishing licenses were ceded from the UVST to the Ute Indian Tribe under the Indian Reorganization Act of 1934(IRA), ch. 576, 48 Stat. 984 (codified as amended at 25 U.S.C. §§ 461-79). *See Hackford v. Babbitt*, 14 F.3d 1457, 1461 (10th Cir. 1994).

The district court went on to further state that Article VI, § 4 of the Constitution Establishing the Ute Tribe made so the individual bands ceased to exist separately outside of the Ute Tribe. The rights that were formerly vested in the UVST were ceded to the Ute Tribe. *See United States v. Von Murdock*, 132 F.3d 534, 541 (10th Cir. 1997).

Finally, the district court ruled that the Ute Partition and Termination Act (“UPTA”) of August 27, 1954, ch. 1009, 68 Stat. 868 (codified as amended at 25 U.S.C. §§ 677-677aa). The UPTA established certain procedures for the division of tribal assets between the Full-Blood members of the Ute Tribe and the Mixed-Bloods. Those divisible assets were to be divided among the two groups, while

non-divisible assets such as hunting and fishing rights “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)).

STATEMENT OF FACTS

In 1861, President Abraham Lincoln authorized the creation of the Uintah Valley Reservation in the Uintah Basin. *Hackford v. Babbit*, 14 F.3d 1457, 1459 (10th Cir. 1994). In 1882, President Chester A. Arthur authorized the creation of the Uncompahgre Reservation. *Id. at 1459*. Later, the Uintah Valley and Uncompahgre reservations became the Uintah and Ouray Reservation. *Id.* From 1882 to 1934, several bands of Utes, including the Uintah (the predecessors to the Uinta Valley Shoshone Tribe) lived and used the Uintah and Ouray Reservation. Under the Indian Reorganization Act of 1934 (“IRA”) the Uintah, White River, and Uncompahgre Bands of the Ute Tribe reorganized to form the “Ute Tribe of the Uintah and Ouray Reservation”. *Id. at 1461*.

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 members of the Ute Tribe and the Mixed-Bloods.¹ Pub. L. No. 83-671, § 1; 68 Stat. 868. The UVST were deemed Mixed-Bloods pursuant to the UPTA. Under the UPTA, after the divisible assets were allocated between the two groups, the

Secretary of the Interior would issue a proclamation terminating the Mixed-Bloods' status as "Indians" under federal law. *Hackford*, 14 F.3d at 1462.

Although the UVST were deemed Mixed-Blood and thus had their relationship with the federal government terminated, the UVST continued to maintain its cultural identity, including selling hunting and fishing licenses members of the UVST for use on the Uintah and Ouray Reservation.

SUMMARY OF ARGUMENT

The district court ruled that the UVST did not have the authority to issue hunting and fishing licenses without working with the Ute Business Committee, citing the IRA, the Constitution and By-Laws of the Ute Indian Tribe of the Uintah and Ouray Reservation, and the UPTA. The district court ruled that as UVST transferred jurisdiction and ownership over the territory of the UVST was transferred from the Uintah Band to the Ute Tribe, any right to issue hunting and fishing licenses were also transferred to the Ute Tribe.

The Appellants disagree with the district court's ruling that the Uintah Band ever ceded its hunting and fishing rights to the Ute Indian Tribe. First, the UVST argues that they retain the rights granted to them by executive order when the Uintah Valley Reservation was originally created by Executive Order of Abraham Lincoln. Executive Order of October 3, 1861 *reprinted in Ute Indian Tribe v. State of Utah*, 521 F.Supp. 1072, 1157 app. A (D.Utah 1981) *aff'd in part, rev'd in part*,

773 F.2d 1087 (10th Cir. 1985), *cert. denied*, 479 U.S. 994, 107 S.Ct. 596, 93, L.Ed.2d 596 (1986). President Lincoln reserved the lands of the Uintah Balley to be set apart for the occupancy of Indian Tribes. *Uintah and White River Band of Ute Indians v. United States*, 152 F. Supp. 953, 954 (Ct. Cl. 1957). The Act of May 5, 1864, 13 Stat. 63 “authorized and required the Superintendent of Indian Affairs to bring together and settle in the Uintah Valley as many of the Indians of Utah Territory as might be found practicable. It said that the Uintah Valley ‘is hereby set apart for the permanent settlement and exclusive occupation of such of the different tribes of Indians of said territory as may be induced to inhabit the same.’” *Id.*

In 1882, President Chester A. Arthur further authorized the creation of the Uncompahgre Reservation to which the Uncompahgre Utes settled. Executive Order of January 5, 1882, *reprinted in Ute Indian Tribe v. State of Utah*, 521 F. Supp. 1072, 1164 app. A (D. Utah 1981). It was from portions of the Uintah Valley Reservation and the Uncompahgre Reservation that the Uinta and Ouray Reservation was formed. *See United States v. Van Murdock*, 132 F.3d. 534, 540 (10th Cir. 1997).

From the time the Uintah Band came to the Uintah Valley Reservation in 1861 to today, the Uintah Band has maintained itself as a separate and distinct community. As such, even the fact that the Federal government no longer

recognizes the UVST as an Indian tribe does not impact the UVST's ability to continue to hunt and fish on their ancestral lands. In *Menominee Tribe of Indians v. United States*, 391 U.S. 404, 412-13 (1968), the Supreme Court held a termination act cannot be used as a backhanded way of abrogating the hunting and fishing rights of a tribe. While Congress has the power to terminate hunting and fishing rights, unless expressly modified by statute, those unmodified provisions remain in full force and effect.

In fact, in *United States v. Felter*, 752 F.2d. 1505, 1509 (10th Cir. 1985), the 10th Circuit held that the UPTA “does not contain provisions specifically treating the right to hunt and fish. We believe the proper construction of the 1943 Act compels the conclusion that the mixed-blood Ute Indians retained the right to hunt and fish on reservation land.”

ARGUMENT

I. MIXED BLOOD RIGHTS TO HUNT AND FISH WERE NOT CEDED BY THE UTE PARTITION AND TERMINATION ACT OF 1954

Although the UPTA terminated the relationship between the federal government and the mixed-blood Ute Indians, the UPTA did not act to abrogate those mixed-bloods' hunting or fishing rights. The courts are clear that termination by an act of Congress does not terminate the rights of a terminated tribe to hunt or fish on the reservation unless Congress explicitly terminates those rights.

In *Menominee Tribe of Indians v. United States*, 391 U.S. 404, 412-13

(1968), the Court states:

We decline to construe the Termination Act as a backhanded way of abrogating the hunting and fishing rights of these Indians. While the power to abrogate those rights exists (see *Lone Wolf v. Hitchcock*, 187 U.S. 553, 564-567) "the intention to abrogate or modify a treaty is not to be lightly imputed to the Congress." *Pigeon River Co. v. Cox Co.*, 291 U.S. 138, 160. See also *Squire v. Capoeman*, 351 U.S. 1.

The Termination Act in *Menominee* is the Menominee Termination Act of 1954, which provided that federal supervision of the Menominee Tribe of Wisconsin would end in 1961. *Menominee* at 407.

In *United States v. Felter*, 752 F.2d 1505 (10th Cir., 1985), in a case similar to the instant matter, Felter was issued a Federal misdemeanor citation for fishing without a tribal permit within the bounds of the Uintah and Ouray Reservation. *Id.* at 1507. Initially, a magistrate held that the UPTA caused mixed-bloods to lose their right to hunt or fish on Indian lands. *Id.* This decision was later reversed by the District Court, holding that *Menominee* was relevant, stating that "like the Supreme Court in *Menominee [Tribe]*, this Court will readily 'decline to construe the [1954] Act as a backhanded way of abrogating the hunting and fishing rights of these Indians.'" *United States v Felter*, 546 F. Supp 1002, 1023 (D. Utah 1982). The 10th Circuit states that the UPTA "does not contain provisions specifically treating the right to hunt and fish. We believe that proper construction of the 1954 Act compels

the conclusion that the mixed-blood Ute Indians retained the right to hunt and fish on reservation land.” *Felter* at 1509. It appears to be well settled that mixed-blood Utes are entitled to hunt and fish on tribal lands as those rights were retained even after the UPTA of 1954.

The district court erred in its application of *Felter* in that the UVST still retains its right to hunt and fish on the Uintah and Ouray Reservation. As a question of law, this is subject to *de novo* review. *Gardner v. Galetka*, 568 F.3d 862 (2009).

II. THE UINTA VALLEY SHOSHONE TRIBE RETAIN RIGHTS TO THE UINTAH AND OURAY RESERVATION AS GRANTED BY EXECUTIVE ORDER IN 1861 AND 1882, REGARDLESS OF FEDERAL STATUS AS AN INDIAN TRIBE

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 (10th Cir. 2002). To enjoy treaty rights, however, the group must have maintained itself as a distinct community with some defining characteristic that permits it to be identified as the group named in the treaty. *United States v. Washington*, 641 F. 2d 1368 (9th Cir. 1981).

Since 1956, the Uinta Valley Shoshone Tribe has maintained its own constitution and conducted business as its own tribal entity. The Uinta Valley Shoshone Tribe traces its lineage back through the UPTA, the Indian

Reorganization Act, the 1882 Executive Order creating the Uncompahgre Reservation, the 1861 Executive Order creating the Uinta Valley Reservation, all the way from time immemorial.

Therefore, the Uinta Valley Shoshone Tribe has maintained its separate and distinct community and has identified itself as a distinct group whose identities can be traced back to the 1861 treaty creating the Uinta Valley Reservation. Although the federal government no longer recognizes the Uinta Valley Shoshone Tribe, and therefore no longer maintains a special relationship with the Tribe, the Uinta Valley Shoshone Tribe maintains its rights under the treaties of 1861 and 1882.

Timpanogos Tribe at 1203-04. Under the treaty, the tribe has the right to continue to use the land. One of those rights is the right to hunt and fish on the land. As the Tribe retains those rights under the treaty. The Supreme Court in *Menominee* held that the language of the 1854 Treaty of the Wolf River granted the Menominee tribe the right to hunt and fish on the land, even though the Treaty of the Wolf River did not explicitly include the right to hunt or fish on the land. The Treaty of the Wolf River merely states that the land is “to be held as Indian lands are held” and this language explicitly includes the right to hunt and fish. *Menominee* at 406.

CONCLUSION

This Court should vacate the judgment and remand with instructions for the district court to enter summary judgment in favor of the Uinta Valley Shoshone Tribe, Dora Van, Leo LeBarron and Ramona Harris.

ORAL ARGUMENT STATEMENT

Oral argument is requested to ensure that any shortcomings in counsel's written presentation are revealed and corrected in colloquy with the Court.

Respectfully submitted on this 29th day of January, 2019.

/s/ Michael J. Rock
MICHAEL J. ROCK
MICHAEL J ROCK, PLLC
Attorney for Defendants
500 Griswold, Suite 2340
Detroit, MI 48226
micheal.rock@mrocklaw.com
(248)587-7513

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2019, Michael J Rock has served all parties with APPELLANTS AMENDED PRINCIPLE BRIEF via this Courts CM/ECF System. This Certificate of Service has been electronically filed with the Clerk of Court using the ECF system which will send notice and copies of the document to all registered counsel in this case.

Dated: February 11, 2019

By: /s/ Michael J. Rock
MICHAEL J. ROCK
MICHAEL J ROCK, PLLC
Attorney for Defendants
500 Griswold, Suite 2340
Detroit, MI 48226
micheal.rock@mrocklaw.com
(248)587-7513

CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing:

1. All required privacy redactions have been made per Rule 25.5;
2. If required to file additional hard copies, that the ECF submission is an exact copy of those documents;
3. The digital submissions have been scanned for viruses with Windows Defender version 1.285.1399.0 on February 11, 2019, and this submission is free of viruses.

Dated: February 11, 2019

By: /s/ Michael J. Rock
MICHAEL J. ROCK
MICHAEL J ROCK, PLLC
Attorney for Defendants
500 Griswold, Suite 2340
Detroit, MI 48226
micheal.rock@mrocklaw.com
(248)587-7513

ATTACHMENT

ORDERS ON APPEAL

FILED
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U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

UINTAH VALLEY SHOSHONE TRIBE;
DORA VAN; RAMONA HARRIS; LEO
LEBARON & OTHERS WHO ARE IN
ACTIVE CONCERT WITH THE
FOREGOING,

Defendants.

**MEMORANDUM DECISION AND
ORDER**

Civil No. 2:17-cv-1140-BSJ

The Honorable Bruce S. Jenkins

Plaintiff's Motion for Summary Judgment¹ and Defendants' competing Motion for Summary Judgment² came before the Court on June 1, 2018,³ Jared C. Bennet appearing on behalf of Plaintiff United States of America, ("United States") and Michael J. Rock appearing on behalf of an organization called the Uintah Valley Shoshone Tribe, ("UVST") as well as individual Defendants Dora Van, Ramona Harris, and Leo LeBaron. The parties filed cross-motions for summary judgment on April 30, 2018, there being no genuine contest as to material facts. Plaintiff United States of America seeks, among other things, to permanently enjoin Defendants from selling and issuing hunting and fishing permits for use on state, federal, or tribal lands of the Ute Indian Tribe of the Uintah and Ouray Reservation ("Ute Tribe"). The sale of such licenses allegedly violates 18 U.S.C. § 1343, a criminal statute, which provides the following:

¹ Plaintiff's Motion for Summary Judgment, Dkt. No. 45.

² Defendants' First Motion for Summary Judgment, Dkt. No. 46.

³ Motion Hearing, Dkt. No. 52.

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

At the June 1, 2018 hearing the Court heard oral arguments on the motions and reserved judgment. Having considered the parties' briefs, the undisputed evidence, the oral arguments of counsel, the relevant law, and the full record in this matter, the Court has determined that Plaintiff's motion for relief by way of an injunction should be DENIED, but otherwise should be GRANTED, and Defendants' cross-motion should be DENIED.

Factual Background

The material facts in this case are undisputed. The UVST, the Defendant, is not a tribe currently recognized by the United States. It is currently an organization composed of "Mixed-Bloods"⁴ (and their descendants) who were formerly members of the Ute Tribe, but whose membership therein and relationship to the federal government was terminated under the Ute Partition and Termination Act of 1954 ("UPTA"). Three UVST "tribal leaders" are named as Defendants in Plaintiff's complaint; Dora Van, the chairwoman of the UVST, Ramona Harris, director of the UVST, and Leo LeBaron, director for wildlife of the UVST's wildlife department.

Defendants have been issuing hunting and fishing licenses purportedly authorizing the recipients to take certain wildlife from "lands within the original confines of the Uintah and

⁴ "Mixed-Blood" is the term employed by a key federal statute implicated in Plaintiff's claim. *See* 25 U.S.C. § 677.

Ouray Reservation as set forth by Executive Orders of October 3, 1861, and January 5, 1882.”⁵

This area now, in contrast to at the time of original formation, includes a variety of land ownership, specifically state, federal, tribal, private and Ute Tribal Trust Lands. It is the position of the United States’ that the authority to issue licenses on Tribal Trust Lands lies solely with the Ute Indian Fish and Wildlife Department, overseen by a joint committee of the Ute Tribal Business Committee and a designated representative of the Mixed-Bloods; and with respect to state and federal lands, and lands held in trust by the federal government, that the authority lies solely with the tribe, the federal government and the State of Utah. The United States claims the UVST has no authority to issue licenses for hunting and fishing on any of these lands. The United States asserts that by representing to permit purchasers that the UVST does have such authority, the UVST or its agents are engaging in fraud in violation of 18 U.S.C. § 1343. Defendants made use of interstate wire facilities in furtherance of their scheme to issue licenses, which Plaintiff argues justifies the issuance of a permanent injunction to prohibit them from issuing licenses in the future. 18 U.S.C. § 1345 authorizes a permanent injunction where the United States can establish that a person is violating or about to violate 18 U.S.C. § 1343. The Defendants agreed in open court to issue no licenses while this matter is pending.

Issuance of a permanent injunction under 18 U.S.C. § 1345 requires the United States to prove: “(1) actual success on the merits; (2) irreparable harm unless the injunction is issued; (3) the threatened injury outweighs the harm that the injunction may cause the opposing party; and (4) the injunction, if issued, will not adversely affect the public interest.” *Prairie Band Potawatomi Nation v. Wagon*, 476 F.3d 818, 822 (10th Cir. 2007) (quotations and citations

⁵ Plaintiff’s Motion for Summary Judgment, Dkt. No. 45, Statement of Undisputed Facts, 24-27.

omitted). The United States asserts each element justifying a permanent injunction is demonstrated by uncontested facts.

In response, Defendants admit selling licenses but claim authority to do so pursuant to “treaty rights” unaffected by the UPTA. They assert that because they do have the authority, the issuance of the licenses is not fraudulent and therefore they are not in violation of 18 U.S.C. § 1343. Ultimately, the merit of Plaintiff’s claim hinges on what sovereign rights, if any, are held by the UVST in lands within the original confines of the Uintah and Ouray Reservation as set forth by the Executive Orders referenced above as modified by subsequent legislation and tribal action. A determination on this point requires the Court to examine the vacillating history of the federal government’s treatment of historic tribal lands and tribal organizations as modified by congressional and tribal action.

Historical Background

The present status of rights in Ute Tribal and Ute Trust Lands of the Uintah and Ouray Reservation result from a long history of federal government action. The original Uintah Valley Reservation was created in 1861 by President Abraham Lincoln. Executive Order of October 3, 1861 *reprinted in Ute Indian Tribe v. State of Utah*, 521 F.Supp. 1072, 1157 app. A (D.Utah 1981), *aff’d in part, rev’d in part*, 773 F.2d 1087 (10th Cir.1985), *cert. denied*, 479 U.S. 994, 107 S.Ct. 596, 93 L.Ed.2d 596 (1986). Through this Executive Order, President Lincoln approved a recommendation of the Secretary of the Interior that “the Uintah Valley, in the Territory of Utah, be set apart and reserved for the use and occupancy of Indian Tribes.” *Uintah and White River Band of Ute Indians v. United States*, 152 F. Supp. 953, 954 (Ct. Cl. 1957), *quoting* 1 Kappler p. 900.

A few years after Lincoln issued the Executive Order of 1861, the Act of May 5, 1864, 13 Stat. 63, “authorized and required the Superintendent of Indian Affairs to bring together and settle in the Uintah Valley as many of the Indians of Utah Territory as might be found practicable. It said that the Uintah Valley ‘is hereby set apart for the permanent settlement and exclusive occupation of such of the different tribes of Indians of said territory as may be induced to inhabit the same.’” *Uintah and White River Band of Ute Indians*, 152 F. Supp. at 954.

In 1865 a document known as the “Spanish Fork Treaty” was negotiated with numerous Indian groups in Utah “providing for their surrender of all their rights in land in that territory which was suitable for agricultural and mineral purposes, but reserving to the Indians for their exclusive use and occupation ‘the entire valley of the Uintah River within Utah Territory’.” *Id.* Although the “Spanish Fork Treaty” was never ratified by the United States Senate, “various individual Indians and groups of Utah Indians, from time to time after 1865, moved into the Uintah Valley... [T]he Indians so migrating into the reservation, as well as those already there before the reservation was established, and their descendants, became and have since been known as the Uintah Indians or Uintah Ute Indians...and became grantees” under the 1864 Act. *Id.* at 954-55. The members of the UVST are among those persons descending from these original groups in the Uintah Valley.⁶

Defendants cite the “Spanish Fork Treaty of 1865” in their Response to Plaintiff’s Summary of Argument⁷ as the source of their hunting and fishing rights. In their original motion Defendants rely on a different source, citing instead “the 1861 and 1882 treaties.”⁸ Regardless,

⁶ Plaintiff’s Motion for Summary Judgment, Dkt. No. 45, Appx. 59-65.

⁷ Reply to Response to Motion, Dkt. No. 54.

⁸ Defendants’ Motion for Summary Judgment, Dkt. No. 46, p. 8. The Executive Orders of October 3, 1861 and of January 5, 1882 were Executive Orders rather than treaties. Regardless, the rights of Indians inhabiting the territory

with respect to the “Spanish Fork Treaty” it is enough to note that it was never ratified and thus had no legal effect. *Id.* at 954.

In 1882, President Chester A. Arthur authorized the creation of the Uncompahgre Reservation, upon which the Uncompahgre Utes were settled. Executive Order of January 5, 1882, *reprinted in Ute Indian Tribe v. State of Utah*, 521 F.Supp. 1072, 1164 app. A (D. Utah 1981). This reservation was not within the area of the Uintah Reservation. *Hackford v. Babbitt*, 14 F.3d 1457, 1461 (10th Cir. 1994). From portions of both the Uncompahgre Reservation and the Uintah Valley Reservation, the Uintah and Ouray Reservation was formed. *See United States v. Van Murdock*, 132 F.3d 534, 540 (10th Cir. 1997).

As recounted by the Tenth Circuit in *Hackford*, under the Indian Reorganization Act of 1934 the Uintah, White River,⁹ and Uncompahgre Bands of the Ute Tribe reorganized to form the “Ute Tribe of the Uintah and Ouray Reservation”:

In 1934, Congress...enacted the Indian Reorganization Act (IRA), ch. 576, 48 Stat. 984 (codified as amended at 25 U.S.C. §§ 461–79). The IRA...recognized the right of tribes to draw up constitutions and corporate charters for self-governance...Pursuant to the IRA, the Uintah, White River, and Uncompahgre bands formed the Ute Indian Tribe of the Uintah and Ouray Reservation in 1937....

Thereafter, in June 1950, representatives of the members of the Uncompahgre, White River, and Uintah Bands signed a series of five tribal resolutions which completed the transition, which began with the Constitution, from loosely-knit bands to unified Ute Tribe...Under the resolutions, the entire Tribe would share

pursuant to the Executive Orders and the related congressional acts follow as readily as they would from a treaty and are treated as such.

⁹ The White River Band had moved to the Uintah Reservation pursuant to an agreement embodied in the Act of June 15, 1880, 21 Stat. 199.

equally in all tribally-held land, in any proceeds from such land, and in any claims for lands ceded to the United States which predated the formal creation of the Ute Indian Tribe without regard to band derivation.

Hackford v. Babbitt, 14 F.3d 1457, 1461 (10th Cir. 1994).

In Article VI, § 4 of the Constitution establishing the Ute Tribe, the allocation of powers previously held by the various independent bands and not otherwise provided for in the Constitution is addressed:

Any rights and powers heretofore vested in the Tribe or bands of the Uintah and Ouray Reservation but not expressly referred to in this Constitution shall not be abridged by this article, but may be exercised by the people of the Uintah and Ouray Reservation through the adoption of appropriate By-laws and constitutional amendments.

Constitution and By-Laws of the Ute Indian Tribe of the Uintah and Ouray Reservation, Article VI, § 4.

The Constitution “thus makes clear that the Bands [occupying the Uintah and Ouray Reservations] ceased to exist separately outside the Ute Tribe [and] that jurisdiction over what was formerly the territory of the Uintah Band was to be exercised by the Ute Tribe, and that the rights formerly vested in the Uintah Band were to be defined by the Ute Constitution and exercised by the Ute Tribe.” *United States v. Von Murdock*, 132 F.3d 534, 541 (10th Cir. 1997).

In June 1950, representatives of the members of the Uncompahgre, White River, and Uintah Bands signed, pursuant to the Tribal Constitution, a resolution determining that the entire unified Tribe would share equally in all tribally-held land:

“IT IS FURTHER RESOLVED that the members of the Uncompahgre, White River and Uintah Bands of Ute Indians in the same meeting hereby compromise and settle all existing controversies between themselves as to the ownership of land within the Uintah and Ouray Reservation and income issuing therefrom, both heretofore and hereafter, by determining and agreeing that such land and income shall be the tribal property of all the Indians of the Ute Indian Tribe of the Uintah and Ouray Reservation without regard to band derivation.”

Tribal Resolution No. 3 (Adopted June 1, 1950).

The foregoing makes clear that both jurisdiction and ownership over what was formerly the territory of the Uintah Band was transferred to the Ute Tribe by the Uintah Band. The transfers of authority and ownership made by the Uintah Band are important because the UVST self-identifies as the Uintah Band, and its claim of authority to issue licenses is based on rights historically acquired by the Uintah Band. A letter in the record from Defendant Dora Van to the Ute Tribe Business Committee makes it abundantly clear that the UVST, the Tribe of Affiliated Ute Citizens of Utah, and the Uintah Band are synonymous.¹⁰ For example, she states that “[t]he Uintah Shoshone Tribe, (aka, Tribe of Affiliated Ute Citizens; aka, Uintah Band) whose members are one in the same (sic)...”¹¹ Likewise with the closing of her letter: “If you have any questions, please contact the Office of the Uintah Valley Shoshone Tribe...(aka, Uintah Band) at the above stated contact numbers. Sincerely, Dora Van, Chairwoman[.]”¹² The UVST claim authority to issue hunting and fishing licenses through their identity as the Uintah Band. The Uintah Band has no such authority.

¹⁰ Plaintiff’s Motion for Summary Judgment, Dkt. No. 45, Appx. 59-65.

¹¹ *Id.*, Appx. 61.

¹² *Id.*, Appx. 65.

Ute Tribe rights in the Ute Tribe Lands underwent further modification as a result of the Ute Partition and Termination Act (“UPTA”) of August 27, 1954, ch. 1009, 68 Stat. 868 (codified as amended at 25 U.S.C. §§ 677–677aa). One of a series of Indian termination statutes Congress passed to reduce federal involvement in Indian affairs between 1954 and 1956, *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 133 n. 1 (1972), the UPTA established a procedure to divide tribal assets between the Full-Blood members of the Ute Tribe and the Mixed-Bloods. Pub. L. No. 83-671, § 1; 68 Stat. 868. The UPTA “defined full-bloods as those tribal members possessing one-half degree of Ute Indian blood and a total of Indian blood in excess of one-half a degree, [25 U.S.C. § 677a(b)], and defined mixed-bloods as those members who did not possess sufficient Ute or Indian blood to fall within the definition of full-bloods and those full-bloods who chose to be designated as mixed-bloods, *id.* § 677a(c).” *Von Murdock*, 132 F.3d at 535. The divisible assets were allocated between the two groups, while the non-divisible tribal assets “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 were determined to be non-divisible assets, *United States v. Felter*, 752 F.2d 1505, 1509 (10th Cir. 1985), and thus held in trust by the United States and exclusively managed by the Ute Tribal Business Committee and the Mixed-Bloods’ representative. *Von Murdock*, 132 F.3d 534, 536 (10th Cir. 1997).

The UVST were deemed Mixed-Bloods pursuant to the UPTA.¹³ As Mixed-Bloods, they were involved in the organization of the Affiliated Ute Citizens, a group whose board was empowered “to act as their authorized representative” in the management of non-divisible assets.

¹³ *Id.*, Statement of Undisputed Facts, ¶¶ 11-12; *Id.*, Appx. 62-64.

Hackford, 14 F.3d at 1462. The Mixed-Blood Representative and the Ute Tribal Business Committee have together enacted by-laws that govern hunting and fishing rights on the Uintah and Ouray Reservation,¹⁴ and are provided in Ute Tribal Code §§ 8-8-1 to 8-1-24.¹⁵

Considering the effect of the Ute Tribal Constitution noted above, Defendants' argument that the UVST's tribal¹⁶ hunting and fishing rights survive the UPTA is without merit. Although the UVST continues to maintain its own cultural identity, any tribal hunting and fishing rights the UVST member's ancestors acquired through the Executive Orders of 1861 and 1881 (along with related acts of Congress) were ceded to the unified Ute Tribe formed pursuant to the tribal constitution established under the IRA; and their interest as former Ute Tribe members was later entrusted to the Mixed-Blood representative pursuant to the UPTA. Accordingly, the UVST and its Mixed-Blood members have no residual share in tribal hunting and fishing rights except as exercised by their representative in conjunction with the Tribal Business Committee of the Ute Tribe. The heritage of the UVST remains important to its members and continues to be recognized culturally by many, but the Court is bound by the acts of Congress discussed above. A change in circumstances and powers rests with Congress with its plenary power over Indian tribes.

¹⁴ *Id.*, Statement of Undisputed Facts, ¶ 15.

¹⁵ These provisions create an expansive regulatory scheme intended to "provide for an orderly system on the Reservation for the management and control of wildlife and outdoor recreation resources of the Tribe on the Reservation." Ute Tribal Code § 8-8-1(1). Included are provisions declaring it unlawful for both tribal members and non-members to hunt or fish without a permit, *Id.* at § 8-1-24(10), establishing a Ute Indian Fish and Wildlife Department, *Id.* at § 8-1-4, and granting that department the power to license hunting and fishing and enforce the provisions of the Code. *Id.* at § 8-1-4(1).

¹⁶ The authority to exercise jurisdiction over hunting and fishing in Ute Tribe Lands is distinct from the individual right of user. The right of user of individual Mixed-Bloods was addressed in *United States v. Felter*, 752 F.2d 1505 (10th Cir. 1985), and found to remain with the Mixed-Bloods who were alive during the enactment of the UPTA but not passing to their descendants.

Legal Analysis for a Permanent Injunction Under 18 U.S.C. § 1345

Having determined that the UVST or its officers do not have the authority to issue hunting and fishing permits, it remains to be decided whether the permanent injunction sought by the United States to prohibit Defendants from continuing to do so is warranted. As presented above, the requirements for a permanent injunction under 18 U.S.C. § 1345 are: “(1) actual success on the merits; (2) irreparable harm unless the injunction is issued; (3) the threatened injury outweighs the harm that the injunction may cause the opposing party; and (4) the injunction, if issued, will not adversely affect the public interest.” *Prairie Band Potawatomi Nation v. Wagon*, 476 F.3d 818, 822 (10th Cir. 2007) (quotations and citations omitted).

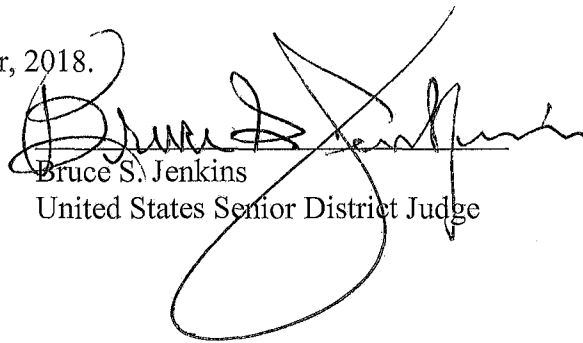
To satisfy the first element the United States must prove its wire fraud claim under 18 U.S.C. § 1343, which requires demonstrating: “(1) a scheme or artifice to defraud or obtain money by false pretenses, representations, or promises; and (2) use of interstate wire communications to facilitate that scheme.” *United States v. Cochran*, 109 F.3d 660, 664 (10th Cir. 1997). The United States argues that Defendants are engaged in a scheme to obtain money by false representations and promises. Based on the agreed factual stipulations it is difficult for the Court to find such a scheme to obtain money by false representations and promises through the sale of licenses. The question presented to the Court by the United States is more in the nature of a declaration as to the absence of sovereign power in Defendants to issue hunting and fishing licenses. Thus, it appears to the Court the United States as trustee is entitled to a ruling so declaring, but denied relief by way of injunction because of the absence of evidence dealing with a criminal statute. It is clear from the history since Lincoln’s time as a result of congressional and tribal action that Defendants have no power to issue licenses to hunt and fish on trust or Tribal lands. None. They should not do so, not because they have concocted a scheme to defraud purchasers of such licenses,

but because they simply lack power to issue such licenses. That resides elsewhere as determined above. It does not reside in Defendants.

CONCLUSION

SO ORDERED. Let judgment be entered accordingly.

DATED this th5 day of September, 2018.


Bruce S. Jenkins
United States Senior District Judge

FILED

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U.S. DISTRICT COURT

AO 450 (Rev.5/85) Judgment in a Civil Case

United States District Court

District of Utah

UNITED STATES OF AMERICA,

Plaintiff

JUDGMENT IN A CIVIL CASE

v.

UINTAH VALLEY SHOSHONE TRIBE;
DORA VAN; RAMONA HARRIS; LEO
LEBARON & OTHERS WHO ARE IN
ACTIVE CONCERT WITH THE
FOREGOING,

Case Number: 2:17-CV-01140-BSJ

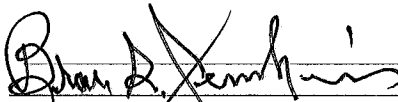
Defendants

IT IS ORDERED AND ADJUDGED that Judgment is entered in favor of the Plaintiff and against Defendants, as set forth in the Court's September 5, 2018 memorandum decision.

September 13, 2018

Date

BY THE COURT:



Bruce S. Jenkins
United States District Judge