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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UTE INDIAN TRIBE OF THE UINTAH &
OURAY RESERVATION, UTAH,

Plaintiff,

vs.

THE STATE OF UTAH, et al.,

Defendants.

**DEFENDANTS' RESPONSE
MEMORANDUM REGARDING SPLIT
ESTATES**

Case No. 2:75-cv-00408-RJS (Consolidated
Action Civil Case Nos. 2:75-cv-00408, 2:13-
cv-00276, 2:13-cv-01070, and 2:13-cv-01079)

Judge Robert J. Shelby

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INTRODUCTION AND CONTEXT

The current issue before the court is not an attempt to relitigate forty years of history, nor is it an attempt to diminish the Uintah and Ouray Reservation. The State of Utah and the County Defendants acknowledge the Ute Indian Tribe's ownership of the subsurface mineral estates at issue. We do not wish to challenge that ownership.

The current inquiry arises from the parties' recent mediation efforts. After the Tenth Circuit's decision in *Ute Indian Tribe v. Utah* ("*Ute V*"), 114 F.3d 1513 (10th Cir. 1997), the parties and federal agencies relied on that ruling to create jurisdictional maps and update county records. These maps were intended to help law enforcement, regulators, and residents by providing a clear depiction of the jurisdictional boundaries. However, an ambiguity regarding jurisdiction on the surface of "split-estate" lands remains. Split-estate lands are parcels where the surface was patented to non-Indians, but all or a portion of the mineral estate remains in tribal trust.

The Tribe has characterized the State and County Defendants' position as an attack on the reservation's existence. It is not. The State and County Defendants have taken a very narrow and specific position. Because the surface estate of these lands was opened to settlement and patented to non-Indians, by definition, the surface is not "Indian Country" under 18 U.S.C. § 1151. The Tribe's retention of a subsurface interest does not confer jurisdiction over the surface fee land above it.

The State and County Defendants ask this Court to resolve this narrow jurisdictional question to prevent the administrative mess that a three-dimensional jurisdictional checkerboard would cause.

ARGUMENT

I. THE CONTEXT OF *UTE V* CONFIRMS STATE AND LOCAL JURISDICTION OVER THE SURFACE OF PATENTED LANDS

The Tribe argues that because *Ute V* did not specifically address split estate lands, the 10th Circuit's earlier mandate in *Ute III* controls. This overlooks the unique nature of split estate lands and the application of the holding in *Ute V* to the surface portion of such lands, which leads to the conclusion that the surface is no longer considered Indian Country.

Ute V came about as a result of the United States Supreme Court expressly disagreeing with *Ute III*. *Hagen v. Utah*, 510 U.S. 399, 421-22 (1994). After *Hagen* was decided, the Tenth Circuit determined that, in light of such disagreement, it was necessary to modify its earlier judgment (*Ute III*) to the extent that it conflicted with the holding in *Hagen*. 114 F.3d at 1527.

The Tenth Circuit started the modification by identifying the areas where *Hagen* and *Ute III* were not in conflict. The Tenth Circuit specifically determined the areas of non-conflict to be National Forest Lands and the Uncompahgre Reservation. *Id.* at 1528-29. Notably, the Tenth Circuit made no mention of the split estate lands now at issue.

The Tenth Circuit next turned to the areas of conflict between *Hagen* and *Ute III*, stating:

The parties do not dispute that *Hagen* directly conflicts with the first category of non-trust lands, those lands passing in fee to non-Indians pursuant to the 1902-1905 allotment legislation. This was precisely the category of fee lands at issue in *Hagen*. Accordingly we modify our mandate in [*Ute III*] and hold in accordance with *Hagen* that these lands are no longer within Indian country under section 1151(a) subject to the jurisdiction of the Tribe and the federal government.

. . . Under our approach, the Tribe and the federal government retain jurisdiction over all trust lands, the National Forest Lands, the Uncompahgre Reservation, and the three categories of non-trust lands that remain within the boundaries of the Uintah Valley Reservation. The state

and local defendants have jurisdiction over the fee lands removed from the Reservation under the 1902-1905 allotment legislation.

Id. at 1530.

For the nearly three decades since *Ute V*, that decision has been the instruction manual for jurisdiction. And based on that instruction manual, the state and local defendants have operated under the understanding that they have jurisdiction over the split estate lands. This is because fee title to those lands fall squarely within the language of *Ute V*. While there may have been a reservation of subsurface minerals, fee title to the lands passed to non-Indians pursuant to allotment legislation. *Ute V* is clear that they are no longer part of the Reservation.

The Tribe suggests that in taking this position, the State and County Defendants are seeking to relitigate decided issues in order to have additional land removed from Indian Country based on arguments that they previously lost. This is simply not the case. The State and County Defendants are following the directives of the Tenth Circuit. There is no need to relitigate the Indian country status of lands the Supreme Court expressly decided. The Tribe's argument that ownership of unseen subsurface minerals, rather than fee ownership of the surface of the lands, is the controlling fact that has been litigated, and the Tribe's reemphasizing that now is contrary to the decisions in both *Hagen* and *Ute V*. And as a practical matter, it makes no sense that jurisdiction over activities occurring on the surface of the lands should be determined not by ownership of the surface, but ownership of another's interest in unseen mineral laying hundreds or even thousands of feet below the surface.

II. THE STATE AND COUNTY DEFENDANTS ACKNOWLEDGE TRIBAL SUBSURFACE RIGHTS, BUT SUBSURFACE MINERAL OWNERSHIP DOES NOT CONFER JURISDICTION OVER THE SURFACE FEE ESTATE

As addressed above, the Tribe argues that its ownership of the subsurface minerals transforms a non-Indian surface estate into Indian Country. It does not, and the cases cited by the Tribe do not support this position.

A. *HRI* is not Analogous to Split-Estate Fee Lands

The Tribe relies heavily on *HRI, Inc. v. EPA*, 198 F.3d 1224 (10th Cir. 2000), to argue that federal supervision of minerals creates Indian Country status on the surface. That reliance is misplaced. *HRI* involved a different jurisdictional posture and, when properly understood, supports the State and County Defendants' position.

In *HRI*, the Tenth Circuit addressed enforcement of the Safe Drinking Water Act on two parcels. Section 17 was held by the United States in trust for the Navajo Nation, while the mining company held mineral rights and limited surface rights. The court upheld the EPA's determination that Section 17 constituted Indian Country because the surface estate was held in trust and under federal supervision. *Id.* at 1254. In contrast, Section 8 was not held in trust, and the court declined to treat it as Indian Country, remanding for further findings under 18 U.S.C. § 1151(b). *Id.*

HRI turned on surface land status, not mineral ownership. The "active control" in that case derived from federal supervision of trust land, not regulation of subsurface minerals alone. Where the surface was not held in trust, mineral interests did not determine jurisdiction.

The situation here is opposite. The surface estates are fee-patented lands, not held in trust, and no party contends they qualify as dependent Indian communities. The theory

that federal supervision of minerals alone converts private surface lands into Indian Country is not supported by *HRI*. This theory also conflicts with *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998), which requires federal superintendence over the land itself.

Finally, *HRI* undercuts the Tribe's position in another respect. EPA regulations that address split estates apply federal jurisdiction only where either the surface or mineral estate independently qualifies as Indian land. *Underground Injection Control Programs for Certain Indian Lands*, 53 Fed. Reg. 43,082, 43,098 (Oct. 25, 1988). If mineral ownership alone converted surface lands into Indian Country, these regulations would be unnecessary. The regulation confirms that split-estate fee lands do not become Indian Country merely because a tribe owns the subsurface minerals.

B. Jurisdiction Must Be Workable

The Tribe argues against a “three-dimensional” analysis, yet they are the party proposing it. *See* Pl.'s Br. at 15 (accusing the State of seeking a “three-dimensional element”); *id.* at 25 (arguing that tribal subsurface ownership captures the “whole of the parcel”). The State and County Defendants have proposed a traditional two-dimensional jurisdictional map, with the Indian country status of a particular parcel having been determined by application of the analysis set out in *Ute V*. If the surface is non-Indian fee land (patented under the 1902-1905 Acts), that surface land is not Indian country and is therefore subject to state and local jurisdiction. *Ute V* at 114 F.3d 1513, 1528. The Tribe proposes a three-dimensional model where the status of the surface is ignored and the status of the land is determined by the ownership of the subsurface. *See* Pl.'s Br. at 25

(arguing that because the “subsurface is under federal superintendence . . . the whole of the parcel . . . is therefore Indian Country”).

As the court noted in *Murphy v. Sirmons*, tying criminal and civil jurisdiction to “unobservable mineral interests” is “totally unworkable.” 497 F. Supp. 2d at 1257, 1291 (E.D. Okla. 2007). Law enforcement officers and tax assessors operate on the surface. They cannot be expected to perform title searches on deep earth mineral rights to determine if they have jurisdiction to enforce state law on a surface highway or in a private residence. *See Id.* (noting the absurdity of such a system); *see also Osage Nation v. Oklahoma ex. rel. Okla. Tax Comm’n*, 597 F. Supp. 2d 1250, 1257 (N.D. Okla. 2009) (rejecting a similar “novel theory” based on subsurface interests).

II. THIS SPLIT ESTATES QUESTION IS NOT BARRED BY PRECLUSION BECAUSE *HAGEN* SUPERSEDED PRIOR MANDATES

The Tribe argues that the State and County Defendants “waived” this argument by not appealing *Ute Indian Tribe v. Utah* (“*Ute I*”), 521 F. Supp. 1072 (D. Utah 1981), in the 1980s. This argument is procedurally improper and disingenuous.

By stipulating to bring this specific question back to this Court for resolution, the Tribe has waived its reliance on *res judicata*. The Tribe joined the State and County Defendants in a “Joint Request for Ruling,” explicitly asking this Court to determine the jurisdictional status of these split-estate lands. It is contradictory for the Tribe to invite this Court to resolve a legal dispute on its merits, only to turn around and argue that the Court is barred from doing so by a forty-year-old unappealed district court opinion. If the issue were truly settled and unreviewable, the Tribe should not have stipulated to this proceeding.

The State and County Defendants do not wish to engage in a “tit-for-tat” review of forty years of litigation history.¹ The legal reality is simple:

1. *Hagen* changed the law. The Supreme Court’s decision in *Hagen* (1994) superseded prior Tenth Circuit mandates regarding the diminishment of the Uintah Valley Reservation. *Hagen* held that opened lands patented to non-Indians are not Indian Country. 510 U.S. at 421.
2. *Ute I* was dicta. The specific status of split-estate surface rights was not the essential holding of *Ute I*, nor was it the subject of the “Big Win” appeal the Tribe references.
3. The State and County Defendants could not have appealed a sub-issue that was not essential to the final judgment at the time.

¹ In addition, *Ute I* made clear that with respect to split-estate lands, the surface estate was not restored to tribal ownership. In that opinion, the Court focused considerable discussion and reliance upon a formal opinion by the Solicitor for the Department of the Interior construing the scope of the 1945 Secretarial Order. The Solicitor concluded that the order had restored to tribal ownership the mineral estate underlying fee-patented lands, but notably distinguished the surface. The *Ute I* Court placed considerable weight on the Solicitor's statement that:

The order should be construed in such a manner as will result in the accomplishment of its broad purpose. That was to restore to tribal ownership all lands, or interest in lands, to which the superior rights of third parties had not attached. Therefore, as previously indicated, it is my opinion that the minerals underlying the patented lands within the Uintah and Ouray Indian Reservation were restored to tribal ownership by the order of August 25, 1945.

Ute Indian Tribe v. State of Utah, 521 F. Supp. 1072, 1144 (D. Utah 1981) (quoting 59 I.D. 393, 396 (1947)). The Opinion did not say that the *surface* rights were also restored to tribal ownership. Nor could it, since the "superior rights of third parties" (i.e., the non-Indian homesteaders and surface owners) had attached to the surface estate.

The State and County Defendants are not relitigating settled law. They are asking the Court to apply the Supreme Court's controlling precedent in *Hagen* to the specific parcels identified on maps created in mediation regarding split-estates.

CONCLUSION

The State and County Defendants do not seek to diminish the Uintah and Ouray Reservation. They acknowledge and respect the Tribe's ownership of the subsurface mineral estates. Rather, they request a ruling that is consistent with *Hagen* and *Ute V*; a ruling that the surface estates patented to non-Indians are not Indian Country and are subject to state and local jurisdiction. This surface-based approach is the only interpretation that respects the *Ute V* mandate while providing a workable jurisdictional framework for all parties.

DATED this 19th day of December, 2025.

/s/Scott D. Cheney

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CERTIFICATE OF SERVICE

I hereby certify that on this December 19, 2025, a copy of the foregoing **DEFENDANTS' RESPONSE MEMORANDUM REGARDING SPLIT ESTATES** was filed electronically. Notice of this filing will be sent to the parties of record through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

/s/Sherri L. Cornell