

Tenth Circuit Court of Appeals Upholds Ute Indian Tribe's Exclusive Right to Control its Lands

FORT DUCHESNE, UT (Feb. 11, 2020) — On Jan. 9, the U.S. Court of Appeals for the Tenth Circuit reaffirmed its position that the Ute Indian Tribe of the Uintah and Ouray Reservation has the exclusive power to control hunting and fishing rights on its tribal lands. In *United States v. Uintah Valley Shoshone Tribe*, the court affirmed the decision of the U.S. District Court for the District of Utah, holding that the “Uintah Valley Shoshone Tribe” is not a federally recognized Indian tribe, does not have governmental powers, and does not have the authority to sell hunting and fishing licenses on the Uintah and Ouray Reservation.

In this case, the United States sought to prevent the group calling themselves the Uintah Valley Shoshone, and several of its members, from selling hunting and fishing licenses that would allow its members to take wildlife from the Uintah and Ouray Reservation. The court noted that the Ute Indians were originally composed of many bands, each with its own identity, that once occupied nearly half of present-day Utah. After the Indian Reorganization Act of 1934, the Uintah, White River and Uncompahgre bands reorganized to form the current Ute Indian Tribe of the Uintah and Ouray Reservation.

Then, in 1954, Congress passed legislation that significantly reorganized the tribe. In the Ute Partition and Termination Act of Aug. 27, 1954, it created a distinction between full-blood and mixed-blood Utes. Pursuant to the Act, the tribe thereafter would “consist exclusively of full-blood members. Mixed-blood members shall have no interest therein except as otherwise provided in this Act.”

“The Act terminated the membership of mixed-blood Ute Indians with limited rights following the termination,” explained Luke Duncan, chairman of the Ute Indian Tribe. “After the Termination Act ended their tribal membership, some of the mixed-blood Utes created an organization they called the ‘Uintah Valley Shoshone Tribe.’ The Tenth Circuit found that the organization is not, and never was, federally recognized as a tribe. Rather, it comprises individuals whose membership was terminated under the Act, and their descendants.

“To add additional context, this group of mixed-blood individuals effectively self-terminated,” Duncan continued. “Decades ago, they decided they no longer wanted to be Indian and sought to self-terminate their status so they could get a payout and move forward without any ‘tribal stigma.’ Later, when public perception of Native American peoples became more positive, they tried to come back, erroneously claiming they are federally recognized and have their own culture, unlawfully interfering with Ute Indian Tribe hunting, fishing and water rights, and attempting to interfere with tribal mineral-development activities.”

In 2016-17, the Uintah Valley Shoshone group sold hunting and fishing licenses to its members for use on the Uintah and Ouray Reservation. The applications asserted that the group is “a Federal Corporation d/b/a the ‘Ute Indian Tribe’ of the Uintah & Ouray Reservations, Utah”; the

licenses stated that it also is a “Federally Recognized Tribe”; and the organization placed its own “No Trespassing” signs on Ute reservation lands.

The United States filed a complaint and moved for a temporary restraining order against the Uintah Valley Shoshone group under a federal statute that allows courts to enjoin wire fraud. In response, the group argued that the Ute Partition and Termination Act did not abrogate hunting and fishing rights for mixed-blood members, that it has maintained a cultural identity so it therefore continues to possess certain treaty rights.

“The Tenth Circuit rejected both those arguments,” Duncan said. “It held that the hunting and fishing rights are personal to the original mixed-blood Utes who were terminated at the time of the Termination Act, only the original 490 mixed-blood members identified at that time had those rights on the Uintah and Ouray Reservation, and those rights could not be passed down to their descendants.

“The United States didn’t dispute the rights of those 490 individuals,” he continued. “It only disputed the Uintah Valley Shoshone group’s assertion of tribal authority to issue licenses. The court agreed that assertion of authority was in direct contradiction to the Termination Act.”

Additionally, the court held that only original mixed-blood Utes acting in their individual capacities can exercise hunting and fishing rights. They cannot convert those individual rights into separate tribal rights of the “Uintah Valley Shoshone Tribe.” It noted that any tribal right — like hunting and fishing — belongs to the Ute Tribe alone, and the Uintah Valley Shoshone group lacks authority to issue hunting and fishing licenses on the Uintah and Ouray Reservation to its members.

“The Ute Indian Tribe applauds the Tenth Circuit’s recognition that the Uintah Valley Shoshone group has no authority within the Uintah and Ouray Reservation, and its ruling that upholds the tribe’s exclusive authority to issue hunting and fishing licenses within the reservation,” Duncan said.

The Ute Indian Tribe resides on the Uintah and Ouray Reservation in northeastern Utah. Three bands of Utes comprise the Ute Indian Tribe: the Whiteriver Band, the Uncompahgre Band and the Uintah Band. The tribe has a membership of more than 3,000 individuals, with more than half living on the Uintah and Ouray Reservation. The Ute Indian Tribe operates its own tribal government and oversees approximately 1.3 million acres of trust land that contains significant oil and gas deposits. The Ute Business Committee is the governing council of the tribe, which remains remains engaged in legal battles with the state of Utah and local counties to protect its jurisdiction over lands that were specifically set aside and reserved by the federal government for the benefit of the tribe.

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