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IN THE TRIBAL COURT OF THE UTE INDIAN TRIBE

OF THE UINTAH AND OURAY RESERVATION

THE UTE INDIAN TRIBE, Plaintiff,	:	**MOTION TO DISMISS**
vs.	:	Case No. CV 05-061
CLIFTON K. HACKFORD, Defendant	:	Judge Daniel S. Sam

The Defendant, by and through his attorney, respectfully moves that the charge against him be dismissed.

FACTS

1. The Uinta Valley Reservation was created by Executive Order of President Abraham Lincoln on October 3, 1861. That Order was confirmed by Act of Congress on May 5, 1864, when Congress set apart the Uinta Valley "for the permanent settlement and exclusive occupation of such of the different tribes of Indians of said [Utah] territory as may be induced to inhabit the same." 13 Stat. 63, §2. The Indians of Utah Territory who came to inhabit the reservation under this Act came to be known as the Uintah Band.

2. In 1880, the Whiteriver Band and the Uncompahgre Utes relinquished all claim to all lands within the continental United States, and were subsequently brought under military escort to Utah. No Act or treaty conferred upon the Whiterivers or the Uncompahgres any of the rights

reserved to the Uintah Band under the Act of May 5, 1864.

3. From 1887 to 1934, Congress engaged in a policy of allotting parcels of land to individual Indians. Having relinquished all claims to all lands within the United States, all lands subsequently obtained by the Whiterivers and Uncompahgres in Utah were obtained through allotment. In contrast, the Uintah Band retained jurisdiction over the entire reservation secured to it by the Act of May 5, 1864.

4. From the beginning, the Uintah Band maintained a distinctly different culture and lifestyle from the other two bands. This included intermarriage with other tribes and with non-Indians, and a higher standard of living and education. Accordingly, the Uintah Band came to be known throughout the reservation as the "Mixed-bloods," long before the 1937 constitution, long before the 1950 agreements, and long before the 1954 Ute Partition Act. 25 U.S.C. §677 *et seq.*

5. Under Acts enacted by Congress from 1902 to 1905, the reservation was opened to non-Indian settlement. In 1931, the Uintah Band received compensation for lands taken from it under those Acts. Unfortunately, these funds were distributed to all three bands rather than to the Uintah Band alone, to whom they rightfully belonged. In 1934, Congress passed the Wheeler-Howard Act. Act of June 18, 1934, 48 Stat. 984. Under this Act, tribal land would be restored to Indian tribes, but only upon their adopting a constitu-tion approved by the Secretary of the Interior. 25 U.S.C. §463. Many tribes refused to do so, considering it an affront to their culture. Nevertheless, in 1937, the three bands adopted a constitution under a confederation as the Ute Indian Tribe of the Uintah and Ouray Reservation.

6. In accordance with the Wheeler-Howard Act, the lands of the reservation were restored to the Indian tribe to whom they belonged, namely, the Uintah Band. The Uintah Band continued to exercise exclusive jurisdiction and sovereignty over the lands reserved to it under the Act of May 5, 1864, and the other two bands continued to exercise exclusive jurisdiction over their allotments, leading to no small amount of friction.

7. During this period all three bands brought actions for compensation for lands taken by the United States. The two Colorado bands, together with the three bands of the Southern Utes still resident in Colorado, sued in regard to their Colorado lands, and the Uintah Band sued as to its aboriginal lands in Utah. 133,000 acres of these *Uintah* lands at White Mesa in southern Utah were, and still are, occupied by the *Southern Utes*.

8. In process of time, the Colorado bands received a settlement offer. It was originally proposed that 60% of the funds be given to the Southern Utes and 40% to the Northern Utes, i.e., the Whiteriver and Uncompahgre Bands. However, in order to resolve the claims of the Uintah Band as well, it was subsequently proposed that the Southern Utes receive 40%, together with the Uintah lands at White Mesa, that the Northern Utes receive 60%, and that the Uintah Band receive a share of that 60% in recognition of their own funds having been misappropriated in 1931, on condition that the Whiteriver and Uncompahgre Bands now release the federal government from all liability for distributing funds to the Uintah Band in which it otherwise would have no claim.

9. In order to receive the settlement funds and to resolve some of the issues regarding use

of reservation lands, the three bands entered into a series of agreements which came to be known as the 1950 "Share and share-alike agreements." In an extremely poorly drafted piece of legislation, these resolutions were enacted into law by Congress without reproducing the text of the resolutions in either the Act itself or in its supporting documentation. 25 U.S.C. §672. Senate Report No. 602, August 1, 1951, House Report No. 420, May 3, 1951, 1951 U.S. Code Congressional and Administrative Service, p. 1697.

10. It is apparent from these facts that the three bands continued to have a separate existence after 1937. The language of the Ute Constitution can no more be construed to surrender the separate rights and sovereignty of the individual bands than the privileges and immunities clause of Article VI, Section 2, of the United States Constitution can be construed to surrender the separate rights and sovereignty of the individual States. The explicit purpose of such language is to *prevent* the participants in a confederated constitution from losing their individual identity.

11. The preamble to the Ute Constitution states:

> We, the Ute Indians of the Uintah, Uncompahgre and Whiteriver Bands hereafter to be known as the Ute Indian Tribe of the Uintah and Ouray Reservation, in order to establish a more responsible tribal organiza-tion, promote the general welfare, encourage educational progress, conserve and develop our lands and resources, and secure to ourselves and our posterity the power to exercise certain rights of home rule, ***not inconsistent with the Federal, State and local laws***, do ordain and establish this Constitution for the Ute Indian Tribe of the Uintah and Ouray Reservation.

(Emphasis added). The Ute constitution is thus subordinate to supervening federal law. Article VI, §1, of the same constitution, states:

> The Tribal Business Committee of the Uintah and Ouray Reservation shall exercise the following powers, *subject to any limitation imposed by the statutes or the Constitution of the United States.*

(Emphasis added). Section 1-2-3(2) of the Law and Order Code of the Ute Indian Tribe of the Uintah and Ouray Reservation likewise states:

> *Subject to any contrary provisions, exceptions or limitations contained in either federal law*, the Tribal Constitution, or as expressly stated elsewhere in this Law and Order Code, the Courts of the Ute Indian Tribe shall have civil and criminal jurisdiction over the following persons:

(Emphasis added). Accordingly, the 1950 "Share and Share-alike agreements," enacted into law by 25 U.S.C. §672, take precedence over any provision of the Ute constitution or the Ute Law and Order Code.

13. The so-called "Mixed-bloods" were an equal party to the 1950 agreements. Nowhere in those agreements do any of the three bands surrender their separate rights and sovereignty.

14. The 1950 agreements specifically provided that the three bands would each be responsible for enforcing hunting and fishing rights on their respective lands. They also specified that the Uintah Band would have an equal right to hunt and fish, notwithstanding they were "Mixed-bloods." This is not an agreement ending the separate existence of the bands. This is an agreement affirming it.

15. Unfortunately, under the pretext of the 1950 agreements, the two Colorado bands claimed the right to vote on issues that were previously the exclusive prerogative of the Uintah Band. Thus, on March 31, 1954, under the guise of voting as a "unified" tribe, the Uncompahgre and Whiteriver Bands voted to expel "the mixed-blood Indians," who "are better prepared

educationally and otherwise to assume the full responsibilities of citizenship." Subsequent rolls demonstrate that "the mixed-blood Indians" were synonymous with the Uintah Band.

16. The Ute Tribe has no "sovereign authority" over the reservation except as it derives it from the Uintah Band under the 1950 agreements. And yet, under guise of that authority, the Ute Tribe wasted no time expelling the very Uintah Band from whom it had derived that power. The 456 Uintahs thus ousted never voted themselves out of the Ute Tribe, and the 208 members of the Uintah Band who remained enrolled as Utes never voted to expel the other 70% of their own band.

17. On July 16, 1958, the Ute Tribal Business Committee passed Resolution 58-163, which states in pertinent part:

> BE IT RESOLVED BY THE UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE That the fish and game upon all lands to be received by the Mixed-Blood group pursuant to the agreed division, as approved by the Secretary of the Interior, shall, from the date hereof, be under the management and control of the Mixed-Blood group exclusively and said Mixed-Blood group, should they so desire, may sell hunting and fishing permits or licenses and retain all funds derived therefrom without accounting to the Ute Indian Tribe of the Uintah and Ouray Reservation.

18. In 1985, the 10th U.S. Circuit Court of Appeals held that persons terminated under the 1954 Act could not be prosecuted for hunting without a permit on tribal lands. United States v. Felter, 752 F.2d 1505 (10th Cir. 1985).

19. In 1985, the Ute Tribe obtained a ruling from the 10th Circuit Court awarding the tribe jurisdiction over all lands within the exterior boundaries of the Uintah and Ouray Indian Reservation. Ute Indian Tribe v. Utah, 773 F.2d 1087 (10th Cir. 1985), *cert. denied*, 479 U.S.

994, 107 S.Ct. 596, 93 L.Ed.2d 596 (1986)(Ute Indian Tribe III). This ruling, with some modifications, was re-affirmed in 1997. Ute Indian Tribe of Uintah & Ouray Reservation v. Utah, 114 F.3d 1513 (10th Cir. 1997), *cert. denied*, 522 U.S. 1107, 118 S.Ct. 1034, 140 L.Ed.2d 101 (1998)(Ute Indian Tribe V).

20. Having secured its jurisdiction over the reservation, the Ute Tribe promptly renounced all such jurisdiction and in 1999 entered into a Cooperative Agreement with the State of Utah, defining the reservation in accordance with an obsolete ruling of the 10th Circuit from 1983, Ute Indian Tribe v. Utah, 716 F.2d 1298 (10th Cir. 1983)(Ute Indian Tribe *II* !!), *overruled*, 114 F.3d 1513.

21. 25 U.S.C. §1326 provides:

> State jurisdiction acquired pursuant to this title with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country *only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose*. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults. (Emphasis added)

22. No tribal election ratifying the 1999 renunciation of sovereign jurisdiction has ever been held under 25 U.S.C. §1326. United States v. Felter, 752 F.2d at 1508 n. 7, State v. Reber, 128 P.3d 1211, 1213 (Utah App. 2005).

23. Upon accepting the 1999 renunciation of sovereign jurisdiction by the Ute Tribe, the federal district court stated on March 28, 2000, that the renunciation created a mere presumption of State jurisdiction, and could be refuted by any person upon the presentation of evidence to the

contrary. The court explicitly stated that persons "not parties to the original action in this case nor any proposed agreements settling the same . . . cannot be bound thereby and can suffer no prejudice therefrom."

24. Neither Mr. Hackford nor any other "Mixed-blood" was a party to the original action nor any proposed agreement settling the same.

25. On August 31, 1990, the Federal District Court for the District of Utah issued a Preliminary Injunction prohibiting the Ute Tribe from prosecuting "Mixed-Bloods" for hunting offenses on tribal lands. The Injunction states in pertinent part:

> NOW IT IS HEREBY ORDERED, effective July 20, 1990, that defendant Ute Indian Tribe of the Uintah and Ouray Reservation, its officers, and those acting for and on behalf of the Tribe in any capacity, be, and hereby are, restrained and preliminarily enjoined from:
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> . . .
>
> 3. Interfering with the exercise of hunting and fishing rights of mixed-bloods on tribal lands by issuing citations to mixed-bloods or their children or by physically escorting them from tribal lands.

On page 6 of the injunction, it says:

> NOW IT IS FURTHER ORDERED, effective July 20, 1990, that any violation of this preliminary injunction be brought to the attention of this court, en banc, by the filing of a petition with the court in writing and under oath.

26. This injunction has never been dissolved or modified by any federal court, and remains in effect.

27. On September 14, 2000, the Ute Tribal Business Committee presumed to enact Sections 14A-1-1 through 14A-4-3, of the Ute Law and Order Code, also known as Ordinance 00-001, the ordinance under which the Tribe is attempting to prosecute Mr. Hackford.

28. This ordinance is not a law of general application, but was specifically intended to only prosecute "Mixed-bloods," members of the Uintah Band, and others challenging illegal exercises of jurisdiction by the Ute Tribe. That's why it's known as the "Mary Meyer Law."

29. On April 25, 2005, the Ute Tribe filed a brief with the Utah Court of Appeals in the case of State v. Reber, renouncing sovereign jurisdiction over the reservation.

30. On November 10, 2005, notwithstanding the Ute Tribe had renounced all sovereign jurisdiction over the reservation, the Utah Court of Appeals found that, under both Ute Indian Tribe III and V, the reservation falls under exclusive tribal and federal jurisdiction.

31. The Defendant, Clifton K. Hackford, is listed as a terminated Ute under the Ute Partition Act of 1954. His roll number is 129.

32. On November 5, 2005, at approximately 7:30 a.m. Mr. Hackford shot a spiked elk on Merline McKee's property. He had both a Utah state tag and a tribal permit.

33. After Mr. Hackford shot the elk, it crossed over the road onto tribal land, where it expired. He field dressed it where it fell.

34. When Mr. Hackford had finished loading the elk, Johanna Jenk of BIA Fish & Game arrived and asked him for his permit, which he gave her.

35. Mr. Hackford showed Ms. Jenk and Minnie Grant his state permit and his tribal permit, but Ms. Grant issued him a citation anyway.

36. Mr. Hackford offered to show Ms. Jenk and Ms. Grant where he shot the elk in the McKee's field, but they wouldn't look.

37. Ms. Jenk and Ms. Grant confiscated the elk, Mr. Hackford's driver's license, and his Knight .50 cal. muzzle-loader rifle.

38. On November 8, 2005, Mr. Hackford got his driver's license back from the Tribal Fish & Game Office, but they have not returned his muzzle-loader rifle or the elk.

39. Without a gun, Mr. Hackford was prevented from utilizing his remaining permit, and has been prevented from hunting since that time.

40. On July 3, 2006, the Ute Tribe filed a brief before the Utah Supreme Court again renouncing jurisdiction over all lands defined as tribal under Ute Indian Tribe III and V.

ARGUMENT

I. The Ute Tribe has no jurisdiction over Mr. Hackford in consequence of the 1954 Ute Partition Act.

Both the Ute Constitution and 1950 agreements recognize the existence of three separate bands. Nowhere does either the Ute Constitution nor the 1950 agreements give any band the right to determine the internal affairs or membership of another band. Nowhere does either the Ute Constitition nor the 1950 agreements give any of the bands the power to expel any of the other bands from the tribe. Prior to 1954, no roll of the entire tribe was ever created. Subsequent to the 1937 constitution and subsequent to the 1950 agreements, each band kept its own roll, without reference to blood quantum.

The Uintah Band never voted to expel itself from the Confederated Ute Tribe, and there is nothing "voluntary" about a majority voting to expel a minority. Nevertheless, by expelling 70% of the Uintah Band from the Confederated Ute Tribe, the Ute Tribe expelled the Uintah Band as

a body from the confederation. Federal law is clear that termination is limited to federal benefits, but can have no effect on tribal identity or existence, nor on vested treaty rights. Menominee Tribe v. United States, 391 U.S. 404, 412-413, 88 S.Ct. 1705, 1711, 20 L.Ed.2d 697 (1968); Timpanogos Tribe v. Conway, 286 F.3d 1195, 1203-1204 (10th Cir. 2002); 25 U.S.C. §677 (Ute Partition Act limited to termination of federal supervision).

In 1957, subsequent to the Ute Partition Act, Public Law 717, §5, required a vote of the Uintah Band in regard to its separate assets. Both terminated and non-terminated members participated, demonstrating that (1) Subsequent to the 1950 agreements, the Uintah Band possessed separate assets, and (2) Congress considered those expelled from the Ute Tribe under the 1954 Act to nevertheless be members of the Uintah Band. Lands allotted under the 1887 Indian allotment act remain under exclusive federal jurisdiction as Indian lands, including those belonging to the so-called "Mixed-bloods." They do not, however, come under the jurisdiction of the Ute Tribe, further demonstrating that the Uintah Band was expelled from the Ute Tribe as a body, not as individuals.

The federal courts have repeatedly held that the 1950 agreements are still valid and binding. The "Mixed-bloods" as a body were a party to the 1950 agreements. If the agreements are still intact, they can only be applicable if the "Mixed-bloods" still constitute a tribe. Otherwise, one party to the agreement has ceased to exist, along with its assets.

Presently, the Ute Tribe claims a priority date for its share of Green River water of March 2, 1868, the date of the Colorado Utes' treaty with the United States, not October 3, 1861, the

date of the Executive Order creating the reservation for the Uintah Band. This further demonstrates that the Uncompahgre Utes and the Whiterivers make no claim on Uintah rights subsequent to 1954.

Hunting and fishing is a treaty right, not a federal benefit. United States v. Dion, 476 U.S. 734, 738, 106 S.Ct. 2216, 90 L.Ed.2d 767 (1986); Conway, 286 F.3d at 1202. Mr. Hackford is a member of the Uintah Band expelled from from the Ute Tribe in 1954. He is thus entitled to exercise all treaty rights retained by the Uintah Band, and the Ute Tribe can exercise no jurisdiction over him.

II. The Ute Tribe has no jurisdiction over Mr. Hackford in consequence of Resolution 58-163.

On July 16, 1958, the Ute Tribal Business Committee passed Resolution 58-163, which states in pertinent part:

> BE IT RESOLVED BY THE UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE That the fish and game upon all lands to be received by the Mixed-Blood group pursuant to the agreed division, as approved by the Secretary of the Interior, shall, from the date hereof, be under the management and control of the Mixed-Blood group exclusively and said Mixed-Blood group, should they so desire, may sell hunting and fishing permits or licenses and retain all funds derived therefrom without accounting to the Ute Indian Tribe of the Uintah and Ouray Reservation.

The "Mixed-Blood group" has never surrendered this exclusive right to manage and control 27% of fish and game upon Indian lands, including the right to sell permits to non-Indians, without accounting to the Ute Tribe. Under 25 U.S.C. §677i, this agreement remains valid. The Ute Tribe is thus divested of all jurisdiction over Mr. Hackford.

III. The Ute Tribe has no jurisdiction over Mr. Hackford under United States v. Felter.

In 1985, the 10th Circuit held that persons included on the "Mixed-blood" roll had a right to hunt and fish on tribal lands, and could *not* be prosecuted in a tribal court. United States v. Felter, 752 F.2d 1505, 1512, n. 11 (10th Cir. 1985). Mr. Hackford's status is identical to Oranna Felter's. He is listed on the "Mixed-blood" roll the same as Ms. Felter. This Court is thus prohibited under Felter from exercising jurisdiction over Mr. Hackford.

IV. The Ute Tribe has no jurisdiction over Mr. Hackford under the United States District Court's Injunction of August 31, 1990.

On August 31, 1990, the Federal District Court for the District of Utah issued a Preliminary Injunction prohibiting the Ute Tribe from prosecuting "Mixed-Bloods" for hunting offenses on tribal lands. Pages 5 and 6 of the Injunction state in pertinent part:

> NOW IT IS HEREBY ORDERED, effective July 20, 1990, that defendant Ute Indian Tribe of the Uintah and Ouray Reservation, its officers, and those acting for and on behalf of the Tribe in any capacity, be, and hereby are, restrained and preliminarily enjoined from:
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> 3. Interfering with the exercise of hunting and fishing rights of mixed-bloods on tribal lands by issuing citations to mixed-bloods or their children or by physically escorting them from tribal lands.
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> . . .
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> NOW IT IS FURTHER ORDERED, effective July 20, 1990, that any violation of this preliminary injunction be brought to the attention of this court, en banc, by the filing of a petition with the court in writing and under oath.

This Injunction has never been dissolved or amended. Mr. Hackford cannot be tried in Ute Tribal Court for a hunting or fishing violation on tribal lands. The action must therefore be dismissed.

V. The Ute Tribe renounced all jurisdiction over Mr. Hackford in 1999.

Notwithstanding the 10th Circuit's 1997 holding in Ute Indian Tribe V gave the Ute Tribe the exclusive right to issue hunting permits to both Indians and non-Indians within the exterior boundaries of the Uintah and Ouray Reservation, in 1999 the Ute Tribe renounced that right in favor of permits issued by the State of Utah. Upon accepting this renunciation of sovereign jurisdiction on March 28, 2000, the federal district court incorporated the statement of Robert Thompson, counsel for the Ute Tribe, and explicitly stated that persons "not parties to the original action in this case nor any proposed agreements settling the same . . . cannot be bound thereby and can suffer no prejudice therefrom." Mr. Hackford was not a party to the original action in that case, nor to the relinquishment of jurisdiction by the Ute Tribe settling the same. Mr. Hackford is not bound by the agreement, but to the extent the Ute Tribe believes it is, it divests the Tribe of jurisdiction over Mr. Hackford, and this action must therefore be dismissed.

VI. The Ute Tribe has no jurisdiction over Mr. Hackford under Ordinance 00-001.

"Non-Indians are not subject to the jurisdiction of Indian courts and *cannot be tried in Indian courts on trespass charges.*". Montana v. United States, 450 U.S. 544, 563, 101 S.Ct. 1245, 1257, 67 L.Ed.2d 493 (1981)(emphasis added). More specifically, Indian tribes cannot exercise criminal jurisdiction over non-Indians. Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 212, 98 S.Ct. 1011, 1022, 55 L.Ed.2d 209 (1978). They can only exercise civil jurisdiction in extremely narrow circumstances. Nevada v. Hicks, 533 U.S. —, 121 S.Ct. 2304, 2310, 150 L.Ed.2d 398 (2001). The Ute tribal court does not have jurisdiction to adjudicate the rights of the

Uintah Band, as this is the exclusive province of the federal courts. Sekaquaptewa v. MacDonald, 619 F.2d 801 (9th Cir. 1980), *cert. denied*, 449 U.S. 1010, 101 S.Ct. 565, 66 L.Ed.2d 468. These are "express jurisdictional prohibitions."

A. The so-called "Civil Trespass Ordinance" is in fact criminal.

The Ute Tribe is trying to evade Oliphant's restrictions by calling a criminal statute "civil." However, it is the intent of the legislature which determines whether a statute is civil or criminal. Norfolk Redevelopment & Housing Authority v. Chesapeake & Potomac Telephone Co., 464 U.S. 30, 104 S.Ct. 304, 78 L.Ed.2d 29 (1983). The intent of the Ute "civil trespass" ordinance is to punish, intimidate, and harass the so-called "Mixed-bloods." Once such conclusive evidence of legislative intent is established, the court need inquire no further. Kennedy v. Mendoza-Martinez, 372 U.S. 144, 169, 83 S.Ct. 554, 568, 9 L.Ed.2d 644 (1963).

There is no legitimate basis for Ordinance 00-001, because 18 U.S.C. §1165 "fills a gap in the present law for the protection of their property." Oliphant, 435 U.S. at 206, 98 S.Ct. at 1019. Until September 11, 2000, the Ute Tribe found 18 U.S.C. §1165 to be perfectly adequate, and had never failed to cite alleged trespassers into federal court. U.S. v. Murdock, 919 F.Supp. 1534 (D.Utah 1996), *aff'd* 132 F.3d 534 (10th Cir. 1997), *cert. denied* Murdock v. U.S., 525 U.S. 810 (1998). The ordinance meets all the criteria of a criminal ordinance, inasmuch as it (1) involves an affirmative restraint; (2) has historically constituted punishment; (3) requires *scienter*; (4) promotes the traditional aims of punishment; (5) applies to behavior that is already a crime; (6) lacks an alternative rational purpose; and (7) is excessive in relation to the alternative

purpose claimed. Mendoza-Martinez, 372 U.S. at 168, 83 S.Ct. at 567. As a criminal statute, it cannot be invoked against a non-member of the tribe, and the action must therefore be dismissed.

B. The Ute Tribe has no civil jurisdiction over Mr. Hackford.

"Exercise of tribal power beyond what is necessary to protect self-government or to control internal relations is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation." Montana, 450 U.S. at 564, 101 S.Ct. 1258. The Ute Tribe does not possess any such congressional delegation. The civil authority of tribes is limited to the "authority to punish tribal offenders, to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members." Nevada v. Hicks, 533 U.S. — , 121 S.Ct. 2304, 2310, 150 L.Ed.2d 398 (2001). These powers pertain strictly to *members* of the tribe. None resemble an authority to prosecute nonmembers.

C. The Ute Tribe has no jurisdiction over the Uintah Band.

Mr. Hackford retains all rights as a member of the Uintah Band, which was expelled from the Ute Tribe in 1954. It is well-established that the sovereign rights of one tribe can only be given to another by treaty or an *explicit* act of Congress. 25 U.S.C. §177, United States v. Winans, 198 U.S. 371, 381, 25 S.Ct. 662, 49 L.Ed. 1089 (1905). The Ute Tribe cannot regulate the Uintah Band, as was already acknowledged by the federal district court when it issued its Injunction in 1990.

D. The Ute Tribe is acting in bad faith.

A special law created for an improper purpose constitutes bad faith:

> Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution.

Yick Wo v. Hopkins, 118 U.S. 356, 373-374, 6 S.Ct. 1064, 1073, 30 L.Ed. 220 (1886).

Unequal enforcement indicates that a facially neutral statute is motivated for an improper purpose, and calls for strict scrutiny. Miller v. Johnson, 515 U.S. 900, 913, 115 S.Ct. 2475, 2487, 132 L.Ed.2d 762 (1995). While legislation is presumed to be impartial unless evidence shows otherwise, (Soon Hing v. Crowley, 113 U.S. 703, 710-711, 5 S.Ct. 730, 734-735, 28 L.Ed. 1145 (1885)), prosecuting Mr. Hackford when he possessed a valid permit clearly provides such evidence.

The Mary Meyer Law is an invalid ordinance enacted for an illegitimate purpose. The Ute Tribe had no jurisdiction to enact it and this Court has no jurisdiction to enforce it.

VII. Mr. Hackford was carrying facially valid permits.

At the time he was cited, Mr. Hackford had permits issued by both the State and the Ute Tribe. He shot the elk on private land, presumably under State jurisdiction, and therefore covered by his valid State permit. The elk expired on tribal trust lands, for which he also had a valid permit, number 114. However, the tribal fish and game officers insisted he could only use permit number 124, a permit for bull elk within the so-called "exterior boundaries," i.e., lands deemed to be under State jurisdiction under the old 1983 10th Circuit ruling in Ute Indian Tribe *II*, and over which the Ute Tribe renounced jurisdiction under its 1999 agreement with the State of Utah.

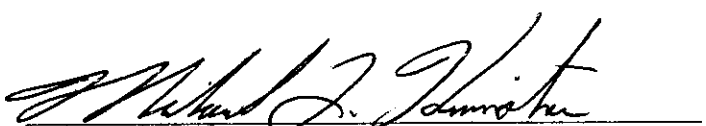
The tribal fish and game officers then declared that permit 124 was invalid, resulting in the current action. However, at no time during the 2005 season did the Ute Tribe ever issue any other kind of permit for Open Bull Elk Hunt within the so-called "exterior boundaries," (i.e., tribal lands presumably renounced under the 1999 agreement). Mr. Hackford possessed the only kind of Exterior Boundary Open Bull Elk Hunt permit he could possibly have obtained from the tribe. Furthermore, he was not on so-called "exterior land" when he was cited. He was on land which even the Ute Tribe acknowledges as trust land, for which he possessed an indisputably valid permit.

Even if the Ute Tribe had jurisdiction over Mr. Hackford, and even if he were required to have a permit, he had a valid permit, and has violated no laws whatsoever. The action must therefore be dismissed.

CONCLUSION

The action against Mr. Hackford must be dismissed. The Ute Tribe has no jurisdiction to prosecute him, and he has violated no Federal, Tribal, or even State laws.

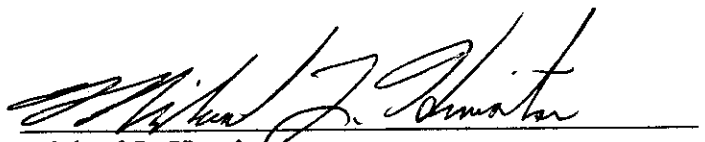
DATED this 24th day of August, 2006.



Michael L. Humiston
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion to Dismiss was delivered to the Ute Tribal Prosecutor at P.O. Box 190, Ft. Duchesne, Utah 84026, this 24th day of August, 2006.



Michael L. Humiston