



INTERIOR BOARD OF INDIAN APPEALS

Calvin C. Hackford v. Phoenix Area Director, Bureau of Indian Affairs

33 IBIA 144 (01/27/1999)

Reconsideration denied:

33 IBIA 274

Related Board case:

30 IBIA 270



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

CALVIN C. HACKFORD,  
Appellant

v.

ACTING PHOENIX AREA DIRECTOR,  
BUREAU OF INDIAN AFFAIRS,  
Appellee

: Order Affirming Decision  
:  
:  
:  
: Docket No. IBIA 97-124-A  
:  
:  
: January 27, 1999

Appellant Calvin C. Hackford seeks review of an April 22, 1997, decision of the Acting Phoenix Area Director, Bureau of Indian Affairs (Area Director; BIA). For the reasons discussed below, the Board of Indian Appeals (Board) affirms the Area Director's decision.

Briefly, Appellant owns land in fee on the Uintah and Ouray Reservation. Some of Appellant's land is irrigable and lies within the service area of the Uintah Indian Irrigation Project (Project). Previously, because of Appellant's refusal to pay Project operation and maintenance charges, the Department did not deliver water to his lands. Appellant filed suit over this action in Federal court. The court held for the Department. Hackford v. Babbitt, 14 F.3d 1457 (10th Cir. 1994).

Apparently Appellant disagreed with BIA over the extent and impact of the court's holding in Hackford. Although Appellant's arguments are not clear, he appears to contend that he has water rights derived from his alleged membership in the Uintah Band which were not adjudicated in Hackford and which are superior to those of the Ute Indian Tribe. As the Board interprets Appellant's position in this appeal, he seeks a statement from BIA that he is a member of the Uintah Band, apparently in order to claim the rights he argues he has as a member of the Band.

Some historical information is necessary for an understanding of this case. For a more extensive background discussion, see 14 F.3d at 1459-64, and cases cited therein. As discussed by the court in Hackford, the Uintah Valley Reservation was created in 1861, and the Uncompahgre Reservation in 1882. The Uintah and Ouray Reservation was formed from portions of these reservations. When the Indian Reorganization Act (IRA), 25 U.S.C. §§ 461-479, was enacted in 1934, the reservation was occupied by the Uintah, White River, and Uncompahgre Bands. "Pursuant to the IRA, the Uintah, White River, and Uncompahgre

bands formed the Ute Indian Tribe of the Uintah and Ouray Reservation in 1937,” 14 F.3d at 1461, and adopted a Constitution. The court continued:

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 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.

Id. at 1461.

In 1954 Congress passed the Ute Partition and Termination Act (Partition Act), 25 U.S.C. §§ 677-677aa. As discussed by the court,

[t]he Partition Act targeted the mixed-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation for termination. \* \* \* The Partition Act provided for “the partition and distribution of the assets of the Ute Indian Tribe. . .between the mixed-blood and full-blood members. . .[and] the termination of Federal supervision over the trust and restricted property of the mixed-blood members.” 25 U.S.C. § 677.

14 F.3d at 1462. The court continued: “Following publication of the [mixed-blood and full-blood] rolls, the Ute Indian Tribe ‘consist[ed] exclusively of full-blood members,’ and thereafter, the mixed-blood members retained ‘no interest therein except as otherwise provided in [the Partition Act].’ 25 U.S.C. § 677d.” 14 F.3d at 1462.

As stated by the court, one of Appellant’s arguments in Hackford was that he had “a reserved water right as a member of the Uintah Band such that he may be allowed to bypass the Project and use private irrigation ditches without payment to the Project.” 14 F.3d at 1464. The court ultimately found it unnecessary to “decide whether the Uintah Band had a separate water right distinct from that of the Ute Tribe following the formation of the Ute Tribe and the adoption of the [1950] tribal resolutions” (Id. at 1468, n.7), holding that Appellant’s right to Project water “whether derived from the Uintah Band or Ute Tribe, has the same priority date as that delivered through the Project to allotted lands.” Id. at 1469. That priority date was October 3, 1861, the date of the Executive Order that created the Uintah Valley Reservation.

In United States v. Murdock, 132 F.3d 534 (10th Cir. 1997), cert. denied, 119 S.Ct. 41 (1998), the court squarely addressed the issue of whether a person could claim rights based on Uintah Band membership separate and apart from rights derived from the Ute Indian Tribe. The court found that Murdock, who was born in 1968 to parents listed on the final roll of mixed-blood Utes, “ha[d] never been a member of the [Ute Indian] Tribe, and he [was] not eligible for

membership under either the requirements of the Tribe in effect at his birth or as amended.” 132 F.3d at 536. Despite not being a member of the Tribe, Murdock argued that he had a right to hunt and fish on the Uintah and Ouray Reservation because he was a member of the Uintah Band. The court briefly repeated the early history of the establishment of the reservation and of the formation of the Ute Indian Tribe in 1937. It continued:

The Preamble to the Constitution of the Ute Indian Tribe states that “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. . .do ordain and establish this Constitution for the Ute Indian Tribe of the Uintah and Ouray Reservation.” \* \* \* Article I provides that “[t]he Jurisdiction of the Ute Indian Tribe of the Uintah and Ouray Reservation shall extend to the territory within the original confines of the Uintah and Ouray Reservation. . .”

\* \* \* Significantly, Article VI, § 4 states:

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.*

\* \* \* (emphasis added).

The Constitution thus makes clear that the Bands ceased to exist separately outside the Ute Tribe, 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. In light of these provisions, Mr. Murdock’s argument that the Uintah Band’s hunting and fishing rights retain a separate existence and belong only to the Uintah Band are groundless. Even if Mr. Murdock is correct that the Uintah Band continues to maintain its own identity, under the Ute Constitution the Band does so only within the context of the Ute Tribe. Accordingly, Mr. Murdock has no right of user in hunting and fishing rights originally granted to the Uintah Tribe. [Citations omitted.]

132 F.3d at 540-41.

Although Appellant presents several arguments attempting to differentiate his situation from Murdock’s, the Board finds those arguments unpersuasive. In Murdock the court held that the rights originally vested in the Uintah Band had been transferred to the Ute Indian Tribe. Regardless of whether Appellant is a member of the Uintah Band, his rights are defined by his relationship with the Ute Indian Tribe.

