

Affiliated Ute Citizens of the Ute Indian Tribe
Of the Uintah & Ouray Reservation in Utah
May 14, 2008

THE UINTAH & OURAY RESERVATION TERMINATION ACT
PUBLIC LAW 671 (68 Stat. 868) August 27, 1954
(a.k.a. The Ute Partition Act)

THE THRUST OF "TERMINATION" during the "*Termination Era*" of the 50's and 60's was set forth in House Concurrent Resolution 108, 83rd Congress, adopted on August 1, 1953, its purpose was to eliminate the reservations and to turn Indian Affairs over to the States. Indians would become subject to State control without any Federal support or restrictions. Indian land would no longer be held in trust by the United States Government and would purportedly be fully taxable and alienable, just like non-Indian land in the States. Federal health, education, and general assistance would end.

House Concurrent Resolution was a statement of policy only, individual Acts were needed to implement the policy in regard to specific Tribes. After the individual termination Act was passed the Act directed the Secretary of the Interior to develop a detailed termination plan for the Tribe. Termination was not by choice. Under the individual Acts it became law. In the decade that followed, Congress terminated its trust relationship with 109 tribes. Each tribe was ordered to cease exercising governmental powers and to disperse all land and property to tribal members. Their reservations were then eliminated, and the state acquired full jurisdiction over this land and the people who resided there. Public Law 671 (68 Stat. 868) was the only Act passed into law during this era that was not a "termination Act" but rather a "partition Act".

THE INTER-TRIBAL AGREEMENT: In order to comply with this *new* Federal Policy, the Ute Indian Tribe, on March 31, 1954, in General Council, adopted a resolution (an inter-tribal agreement) that would bifurcate the Uintah Treaty Band of Utah Indians of the Ute Indian Tribe of the Uintah & Ouray Reservation(s) into two groups ("Mixed-blood" and "Full-blood") and divide all Tribal assets between the two groups. The soon to be segregated, so-called "Mixed-blood" members were given autonomy and the power of self-government.

The Council declared it to be its policy that each group would hold political jurisdiction and administrative responsibility over the persons and properties of each group's respective membership, except, in areas where both groups held joint jurisdiction and authority in regard to the undivided assets, to be exercised and managed pursuant to the 1934 "Charter" of the Ute Indian Tribe.

The Federal Corporation, known as the *Ute Indian Tribe*, established pursuant to the Indian Reorganization Act (IRA) in 1934, was split into a mixed-blood and full-blood "*partnership*" corporation with the enactment of Public Law 671. The mixed-bloods and full-bloods thereafter would prepare and operate independently toward a pending termination of the entire Ute Indian Tribe anticipated in 1964.

The Resolution also addresses the general re-structure and management of the Ute Tribal Government to provide for a "Joint Management Committee" comprised of nine members (two full-blood Uintahs, three mixed-blood Uintahs, two White Rivers, and two Uncompahgre representatives) that would function as an administrative body during the 10-year development period pending total termination legislation in 1964. The terms of said Resolution was set forth in Public Law 671 (68 Stat. 868), five months later on August 27, 1954.

THE ACT: Congress passed a bill into law that partitioned the members of the Uintah Treaty Band and all tribal assets of the Uintah & Ouray Reservation(s) into two parts and provided for a partial termination of

Federal supervision over specific lands held in common by the Affiliated Uintah Band...nothing more. Public Law 671 (68 Stat. 868) was never a "*termination Act*" as termination was then defined.

The procedures carried out by the BIA and others in the administration of Public Law 671 was so conducted as to convert an act of Congress into a *bill of attainder*. The administrators turned an inter-tribal agreement into a "*termination act by proxy*" and have tried to judicially, economically, and socially force the Affiliated Uintah Band members and their jointly held tribal trust assets under state jurisdiction where the estate would become alienable property.

The Act is a reflection of the inter-tribal agreement that did not intend to terminate either group's tribal status as the Federally recognized "Ute Indian Tribe" prior to total termination legislation in 1964. The use of blood quantum as a defining line was an unconstitutional act. The Constitution of the Ute Indian Tribe and the Constitution of the Affiliated Ute Citizens may hold priority over the said Act. The two organic laws do not contain blood quantum provisions for membership in the Ute Indian Tribe. The CFR list of Federally recognized Tribes is a clear reflection of this fact by not distinguishing the membership as separate tribes.

The operation of this agreement was to be confined to the jointly held sovereign and jurisdiction of the Ute Indian Tribe pursuant to and in accordance with the terms of said P.L. 671. Until the Ute Indian Tribe (both mixed-bloods and full-bloods) agree to repeal Public Law 671 and place such appeal agreement before the U.S. Congress, this aforesaid "Agreement" with all its provisions remains in force and effect. Any repeal procedure must be agreed upon and approved by the Ute Tribal Business Committee representing the Full-blood members and the Affiliated Ute Citizens representing the Mixed-blood members as well as referendum approval by both group's membership ... and no others.

It was agreed in General Council that the mixed-blood group would be given autonomy and certain Tribal powers and authority of self-government when they organized and adopted a Constitution and Bylaws. The affiliated Uintahs organized as a Tribe of "Affiliated Ute Citizens". The mixed-blood (hereinafter *the Affiliated members*) group would share the costs of joint management of all "undivided" tribal assets pursuant to and in accordance with the Charter of the Ute Indian Tribe in the form of; [A]ll unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall be managed by the Tribal Business Committee and Affiliated Ute Citizens pursuant to and in accordance with Public Law 671.

PUBLIC LAW 671, 83rd Congress (68 Stat. 868) became law on August 27, 1954. THE PURPOSE:

a) To divide the members of the Uintah Treaty Band of the Ute Indian Tribe into two parts. Approximately 465 members were labeled "Mixed-blood" and the other 400 members were labeled "Full-blood". The White River and Uncompahgre Utes (from Colorado Territory) who have resided on the Uintah & Ouray Reservations since 1880 were included as "full-bloods" even though they have no ownership rights.

b) To divide the Tribal assets into two parts. Part one was deemed to be "dividable" property in the form of funds in the U.S. Treasury and local banks, Accounts Receivable, and 980,000 acres of land, except sub-surface rights which includes all forms of gas, oil, and mineral rights of every kind would be held in trust. The real estate distributed to the eligible affiliated individuals, through the Affiliated Ute Citizens, would have a restricted "patent in fee" issued by the Secretary of the Interior at the request of the Affiliated Ute Citizens.

Part two contained all the tribal property and assets deemed to be "undividable" that was to remain in trust for both groups in shared ownership and joint management in the form of; [All unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution]. This group of assets would only be divided in the form of Tribal Capital Proceeds.

The Full-blood group (approximately 1413 members) was to receive 72.84 % and the Affiliated Uintah

group (490 members) to receive 27.16 % based on the relative number of members listed in each group in 1956. At that time the Uintah Band consisted of 890 individuals. The members of the Ute Indian Tribe were listed on two membership rolls as either a "Mixed-blood" or a " Full-blood". Said Tribal rolls were published in the Federal Register on April 5, 1956.

c) The Act of August 27, 1954 purports to organize the Affiliated Uintah group as a body politic and a 4th "Tribe" of the Ute Indian Tribe. The group was indeed organized as the "*Affiliated Ute Citizens*" on April 5, 1956 complete with a Federally approved Constitution and Bylaws to govern its people and administer their assets as their federally authorized *Tribal* representatives and receiving agent on and off the Reservation. The management of the affairs and funds of the Affiliated Ute Citizens are vested in the five Board of Directors as the authorized representatives thereof and all members thereto.

The Full-blood group would carry on under the initial Constitution of the Ute Indian Tribe while the Affiliated Uintah group would proceed under its new Tribal Constitution that provided for autonomous management over 27.16186 % of all assets of the Ute Indian Tribe that were deemed dividable and distributable transferred to the Affiliated Ute Citizens to be held in common for the use and benefit of its members under the jointly held jurisdiction of the Ute Indian Tribe.

The intent was for both groups to independently progress toward "*total Termination*" of the entire membership of the Ute Indian Tribe and both Tribal Government(s) in 1964. A termination act in 1964 would have removed all Federal protections from the tribal members, their lands and assets leaving the entire Ute Tribal estate and individuals thereof under the jurisdiction of Utah State law.

Senator Inouye states in a letter to Margaret Reed dated February 7, 1991; "Section 24 of the 1954 Act did contemplate the "eventual termination" of the Ute Indian Tribe and directed the Secretary of the Interior to file an annual report with Congress advising of the progress in developing a plan for such purposes." Despite the termination of Federal services due to the Affiliated members in 1961, the full-blood and mixed-blood members of the Ute Indian Tribe failed to indicate in 1964 - at the end of a decade-long "preparation period" - that they were ready for termination pursuant to P.L. 671. The Ute Indian Tribe was not subjected to a Congressional Termination Bill in 1964. (emphasis added)

"When the period of "termination" was in disrepute", Senator Inouye continues, "the 1954 Act was amended to delete the provision requiring the annual report." Termination for the Ute Indian Tribe was formally ended by Congress with an amendment to the Act of 1954 on January 2, 1975 (P.L. 93-608 (88 Stat.1967) § 1(15). (emphasis added)

The Ute Indian Tribe, comprised of the Uintah Full-bloods, Affiliated Uintahs, White Rivers and Uncompahgre members, never lost its status as a Federally Recognized Tribe; the Tribal Government(s) were not abolished; Tribal lands and assets were never removed from trust status and remain under the joint jurisdiction of the Ute Indian Tribe and subject to joint management between the mixed-blood and full-blood members. The jointly held trust assets of the Ute Indian Tribe are only divided as restricted "capital proceeds"... Money.

The Affiliated Ute Citizens was organized and adopted its Constitution and Bylaws on April 5, 1956. Four months (114 days) after the Affiliated Ute Citizens was organized and took power, an amendment to Public Law 671 (Public Law 920 (70 Stat. 963) August 2, 1956) was introduced by Utah congressmen and subsequently passed into law by the United States Congress that provided; "any corporation organized by the mixed-blood members for the purpose of aiding in the joint management with the tribe and in the distribution of unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall not be subject to corporate income taxes. Any".

There is no mention of stockshares, and no authority to issue stockshares in this bill, and no indication that the Mixed-blood and Full-blood Tribal Representatives were aware of or approved the amendment.

The mere enactment of this legislation violated the intent and purpose of the inter-tribal agreement between the mixed-blood and full-blood members of the Ute Indian Tribe set into law by Public Law 671. It effectively breached the covenants and conditions agreed upon to arbitrarily insert a foreign entity into the agreement without full disclosure, without amending certain provisions of the original Act, and without approval between the Tribes themselves to make such a pre-mature amendment. But it set the stage for a chain of events that is masterful in its deceit.

The operation of this amendment did not then, and does not now possess legal power and is incapable of operation in two particulars: 1) Affiliated Ute Citizens' powers and authority were limited to the provisions of its constitution and bylaws in regard to the "dividable and distributable" assets. 2) The tribal assets described in the aforementioned amendment are tribal assets held in trust by the United States Government and are incapable of being placed in a state incorporated entity of any nature prior to a total termination Act.

By law of Public Law 671 after April 5, 1956, any amendment to said Public Law 671 had to be jointly approved by the Affiliated Ute Citizens and the Ute Tribal Business Committee ... it was their inter-tribal agreement ...and any amendments thereto should not have been introduced to Congress and treated as if it was an ordinary piece of legislation without a referendum from the members of the Ute Indian Tribe. And further the Congress of the United States should have rejected it for the same reasons.

In granting exemption from the Federal income tax to the corporation established under this bill, the Legislative Report says; "it is intended only to preserve the tax-exempt status of the distributions from the trust funds held by the United States Government on the principle that the corporation would merely act as a conduit for the transmission of funds (received by the AUC) from the United States Government to the individual members of the mixed-blood group, their heirs or legatees. This is proper because the distributions represents an original tribal capital asset."

The Legislative History of the said amendment indicates the understanding of Congress was that a distribution corporation, if it was created, would only function as a conduit between the Tribe of Affiliated Ute Citizens and its members not between the Corporation and the United States. It was not contemplated by Congress that the corporation would also joint manage any tribal assets. The amendment was posed as a suggestion that in its finality, actually only granted the Affiliated Uintah's proposed corporation a corporate tax-exemption ... if it was created. It was suggested that the conduit corporation would be a purported interim step pending the ultimate division of the "undivided" assets that was anticipated to occur with the termination of the entire Ute Indian Tribe in 1964 ... and not at any time sooner.

The carefully constructed language and seemingly benign references to the "undivided" trust assets in the aforementioned legislative history of the amendment was a prelude to the future language in the Articles of Incorporation of the Ute Distribution Corporation. In the absence of total termination of the entire Ute Indian Tribe, the Articles do not carry any lawful force or affect under Federal statute and the United States trust responsibility regardless of the language the articles contain.

John Boyden, (BIA approved Attorney for both groups at the same time) first introduced the idea of the corporations to the AUC Board of Directors in May of 1957, twelve months after Public Law 671 was enacted. (minute entry May 13, 1957),

On December 8, 1958 John Boyden and Superintendent Fleming explains about the corporations. Boyden indicates the two range corporations are set up and the charters issued and had filed to get the charter for the distributive corporation. He will prepare the bylaws for the corporations and order the seals and certificates. Then those who want to sell or trade their shares in the corporations can do so by signing the certificates. They will be made out in names of dead people in certain cases and let their estates clear same. There will be 490 certificates to be made out three times. They will be pre-numbered. The correct final roll for the mixed-bloods will be used. The distributive corporation will be the only unliquidated asset. Boyden said instead of saying trading (in transfer of assets) we will say selling. It was mentioned that an

inventory should be made of members assets or security who have loans.

Fleming mentioned again that he would like to sell the loans to the First Security Bank of Utah, NA. He would also like to get a CPA in to make these appraisals, etc. on distributive share. Boyden to take care of how to satisfy covenant (can't sell prior to termination). Boyden says the law of self-enrichment will allow sale from one member to another. (minute entry December 8, 1958) (emphasis added) There is no mention of federal restrictions or the Secretary of the Interior's approval on all this activity.

Resolution 58-05 dated November 1, 1958 was purportedly approved by the general membership of the Affiliated Ute Citizens to accept the Articles of the Ute Distributive Corporation as it is thus written. Said Resolution is signed by one person, Albert Harris, who was not an elected officer of Affiliated Ute Citizens but subsequently became the President of the Ute Distribution Corporation twelve days later when the UDC filed for incorporation November 13, 1958. Its Articles of Incorporation were submitted on December 8, 1958.

The Ute Distribution Corporation was incorporated by John Boyden, a Utah Attorney, and five members of the Affiliated group under Utah law as a non-profit membership corporation (along with the two livestock corporations), purportedly under the power and authority of the Board of Directors of the Tribe of Affiliated Ute Citizens. A document was filed with the State indicating the non-profit membership corporation would be issuing 4,900 shares of restricted stock to the affiliated members. These stock shares were subsequently brokered and sold by the Ute Distribution Corporation (UDC) and First Security Bank of Utah to non-Indians of Utah primarily in the years of 1959-60.

The trust and restricted Tribal Capital Proceeds on deposit in the U.S. Treasury partitioned to the Affiliated Uintah members was unprecedentedly diverted to the Ute Distribution Corporation, a state incorporation. In doing so the corporation captured what it most wanted ... the affiliated members' tribal capital proceeds ...with the help of individuals within the Bureau of Indian Affairs. Since that time the Tribe of Affiliated Ute Citizens has received absolutely no capitalization, all proceeds go to the UDC.

On January 7, 1959 a motion was made by Preston Allen that the Board of Directors of the AUC delegate the authority to all three corporations -- Antelope Sheep, Rock Creek Cattle and the Ute Distributive, to "organize" in accordance with the Constitution of the Affiliated Ute Citizens of the State of Utah, Article V, Section 1, Paragraph (b). Motion was seconded by Elizabeth Bumgarner and carried 5 for and 0 against. Resolution 59-8 issued on January 7, 1959 reads as follows:

" To irrevocably delegate to corporations, or the officers thereof, *organized* pursuant to and in accordance with Public Law 671-83rd Congress, 2nd Session (68 Stat. 868), to receive, manage, distribute or otherwise handle assets of the mixed-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation, such powers and authority as may be necessary or desirable in the accomplishment of the objects and purposes for which said corporations may be so organized."

Preston Allen, (President of AUC) wanted to know when the Board of Directors is to designate the power to the corporations to take over. Mr. Boyden and Mr. Croft stated that the act was completed when Certificate of Incorporation was issued, therefore, this matter should be left as is since the Board of Directors have already made a resolution to this effect (minute entry on January 12, 1959).

The Board of Directors of AUC therefore, never officially issued a Resolution to empower the Ute Distribution Corporation that would have also specifically stated its intended function as they understood it and which had to be approved by the Secretary of the Interior, not by the State via incorporation.

Mac Murdock states, I have no objection to any meeting, but my main objection is to you (the Board) calling a meeting about the corporations when Resolution 59-8, dated January 7, 1959 delegates all your authority to the three corporations... (minute entry January 25, 1960).

It is quite apparent the Board of Directors and the members of Affiliated Ute Citizens never had it explained to them or they never fully understood that the corporations were not autonomous entities. As the Tribe of Affiliated Ute Citizens and so-called "creator", the Affiliated Ute Citizens would retain majority control and governing power over the functions and activities of the cattle, sheep and distribution membership corporations as tribal enterprises or at the very least retain controlling stockshares.

Preston says we are going to let the Resolution 59-8 stand until we get an explanation from the solicitor on the function of the corporations. (minute entry January 25, 1960).

A meeting was called to get straitened out what the authority of the Board of Directors of the Affiliated Ute Citizens is and what the Distribution Corporation authority is. The Board of Directors questions the authority of the Distribution Corporation in the second paragraph of Article VI of the Articles of Incorporation of the Ute Distribution Corporation. (Resolution No 60-75) (minute entry June 20, 1960).

A letter was written to Secretary of the Interior, Fred Andrew Seaton, as follows: We the Board of Directors of the Affiliated Ute Citizens do not think it is feasible to pay George Morris along with John Boyden as they are doing the same work. We are writing this letter in protest to the Ute Distribution Corporation hiring George C. Morris as the attorney for the Ute Distribution Corporation. They do not have funds to pay a lawyer at this time unless it is the intent of the Secretary to turn the funds that are now in the Treasury over to them along with the moneys that are forth coming from settlement of Dockets Nos. 44 and 45, before we are terminated. Under the constitution and bylaws of the Affiliated Ute Citizens, the funds and affairs of said group are vested in a board of five directors until otherwise disposed of by the Secretary. Is it the intent of the Secretary of the Interior to turn the funds over to the Ute Distribution Corporation before termination or do you intend to make the next cash distribution or any disbursements of our funds under your authority the same as in the past? (minute entry June 27, 1960).

The following day Glen Murdock meets with the Board. He is questioning the Board's position on the sheep corporation not having any authority to function or operate. He says; "the Sheep Corporation gets its authority through Resoluton 59-8 passed by the Board of Director of Affiliated Ute Citizens.

The Board answers him that the Secretary of the Interior says this Board had no authority to delegate to the various corporation Boards. Certain things of Public Law 671 had not been completed and therefore the Secretary was questioning the advisability of turning everything over to the corporations. It was done prematurely.

Glen says that if one of the corporations is not effective, none of them are. In fact there will be no further action taken in anyway because we do not have no authority and therefore there is no need for us to take any action in any way... (minute entry June 28, 1960).

The Secretary of the Interior's revelation was apparently ignored because the Board of Directors, instead of repealing the Resolutions, carried on as usual and nullified everything they did or allowed to be done by the premature corporations from that time foreward. One can only speculate as to why. Section 10 of Public Law 671 provides that "Any contract made in violation of this section shall be null and void". Section 10 speaks to the handling of the assets to be divided and those that would not be divided.

The issue here is not so much what the corporation purports as its function pursuant to its articles of incorporation, but rather, does the Corporation, as a state incorporation, meet the standards and federal requirements necessary to exert any administrative powers, or take any judicial actions, or lawfully exercise any purported authority on behalf of the Tribe of Affiliated Ute Citizens of the Ute Indian Tribe, within a federally recognized tribe ?

The current Board of Directors of the Affiliated Ute Citizens believes the creation, purpose, and function of the Ute Distribution Corporation was not only premature before 1964 but was statutorily and constitutionally without any legal empowerment to perform the aforesaid purpose for which it was

purportedly created before the pending total termination of the entire Ute Indian Tribe that was to follow in 1964. Further, the Board of Directors of Affiliated Ute Citizens was without the Congressional authority pursuant to Public Law 671 to make any transfer of its Constitutional tribal authority to any other entity, regardless of any alleged termination of federal supervision. Nor did the AUC have the authority to empower an entity like the Ute Distribution Corporation to perform the administrative duties of the Secretary of the Interior over any assets of the Ute Indian Tribe.

Consequently the Tribe of Affiliated Ute Citizens fell victim to a "termination by proxy program". The Corporation subsequently positioned itself so it would function "inside" of the Ute Tribe's sovereign and jurisdiction and "outside" the jurisdiction of the Secretary of the Interior and the trust responsibility of the United States Government over the tribe's trust assets and in the handling of the trust and restricted tribal / federal funds belonging to the Affiliated members of the Ute Indian Tribe, a federally recognized tribe.

In a memorandum dated November 30, 1956, from the Acting Assistant Solicitor, Franklin C. Salisbury, Indian Legal Activities to the Commissioner of Indian Affairs, he is asked for an interpretation of the word "Tribe" as used within P.L. 671 wherein Mr. Salisbury says; "It seems reasonable sure, therefore, that the word "tribe" as used in Section 15 and 22, and elsewhere throughout the Act, refers to *both* "full-blood" and "mixed-blood" members, unless specifically limited to one or the other of these classes of tribal members".

Any disputes or disagreements between the two groups in regard to joint management of the undivided Ute Indian Tribe assets are to be resolved by the Secretary of the Interior...and no other. Section 27 provides; The Secretary is authorized to issue rules and regulations necessary to effectuate the purposes of this Act, and may, in his discretion, provide for tribal or group referenda on matters pertaining to management or disposition of tribal or group assets.

Section 28 provides; Whenever any action pursuant to the provisions of this Act requires the agreement of the mixed-blood and full-blood groups and such agreement cannot be reached, the Secretary is authorized to proceed in any manner deemed by him to be in the best interests of both groups.

JOINT MANAGEMENT- Affiliated Ute Citizens and the Tribal Business Committee are to share in, jointly manage, and contribute to the costs of in the following Ute Tribe programs and services but are not limited to just these items:

Law and Order, Jurisdiction, Tribal Court System, Social Services and Welfare, Education, Hunting / Fishing, Forest Service / Timber, Gas, Oil, and Mineral Development (The affiliated members hold 27.5 % interest in every well on the Uintah & Ouray Reservations), Water / Water Resources, Agriculture / Grazing Lands, Land / Land Operations, Joint Administrative Buildings / Maintenance, Irrigation and Domestic Water Services / Maintenance.

Unlike the Affiliated Ute Citizens, the Ute Distribution Corporation does not share sovereign immunity within the Ute Indian Tribe, and does not have a legally protectible and tangible personal interest at stake. It will not be injured or threatened with injury by any governmental action of the Ute Indian Tribe or the Tribe of Affiliated Ute Citizens. It does not own or hold any part of the tribal assets, including the trust proceeds it distributes; It is not a tribe, a member of the tribe, nor a tribal entity. It was pre-maturely organized to function as a conduit between the administrative body of Affiliated Ute Citizens and its members "inside" the Ute Indian Tribe "*before*" jurisdiction of the Ute Indian Tribe could be terminated by an act of Congress in 1964. This fact and the following facts, which were yet to come, are probably the core of Secretary Seaton's concerns expressed to the AUC Board of Directors in June of 1960 and why he said the AUC did not have authority and that the corporations were premature.

Section 15 of Public Law 671 (25 U.S.C. 677n) provides that; "there shall be a covenant to run with the land for said ten-year period (to extend to 1971) and shall be expressly provided in any patent or deed issued prior to the expiration of said period." The Uintah & Ouray reservation lands had to be divided and

(980,000 acres) transferred "in common" to the Tribe of Affiliated Ute Citizens where each individual member was to receive an allotment of land from the AUC and be issued a restricted Patent in Fee within seven years, by 1961. And,

Section 16 (a) (25 U.S.C. 677o) provides; "When any mixed-blood member of the tribe (Tribe of Affiliated Ute Citizens) has received his distributive share (allotment from AUC) of the tribal assets distributed to the mixed-blood group under the provisions of Section 10 hereof, ... the Secretary is authorized and directed to immediately transfer to him unrestricted control of all other (dividable) property (land and proceeds) held in trust for such mixed-blood member by the United States, ... and Federal "supervision" of such member and his property shall thereby be terminated, except as to his remaining (undivided) interests in tribal (Ute Indian Tribe) property in the form of any unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other tribal (Ute Indian Tribe) assets not susceptible to equitable and practicable distribution, all of which shall remain subject to the terms of this Act, notwithstanding anything herein contained to the contrary." (emphasis added)

APPENDIX F.: Regulations under the termination Act (25 CFR, Part 243-(h); "Termination of Federal supervision" means termination of Federal supervision over the particular real estate involved by the issuance of a patent in fee or other similar title document, and does not mean termination of the wardship relationship between the Indian and the United States on the occasion of the issuance of a so-called "Termination Proclamation" (25 U.S.C. 677v). (emphasis added)

In 1961, pursuant to Section 23 of the Act of August 27, 1954 and at the end of the seven-year period, the Secretary of the Interior issued the Proclamation published in the Federal Register as follows: "It is hereby proclaimed that the Federal restrictions on the property of each individual mixed-blood member of the Ute Indian Tribe of the Uintah & Ouray Reservation in Utah having been removed, the Federal trust relationship of such individual is terminated and that effective midnight, August 27, 1961, such individual shall not be entitled to any of the services performed for Indians because of his status as an Indian. All statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to such member over which supervision has been terminated, and the laws of several States shall apply to such member in the same manner as they apply to other citizens within their jurisdiction." STEWART L. UDALL, Secretary of the Interior August 24, 1961 [F.R. Doc. 61-8225; Filed, August 25, 1961]

The Act of August 27, 1954 was irreparably violated by the 1961 Termination Proclamation. The 1954 standard (P.L. 762 (83 Stat. 1299) on which "total" termination rested provides:... "the rights or beneficial interests in tribal property of each person whose name appears on the roll shall constitute personal property which may be inherited or bequeathed, but shall not otherwise be subject to alienation or encumbrance before the transfer of title to such tribal property" ... "Any contract made in violation of this section shall be null and void". Section 10 of Public Law 671 Provides that: "Any contract made in violation of this section shall be null and void". Section 10 addresses both the "dividable" and "undividable" categories of assets of the Ute Indian Tribe. All these prohibitive statutes were in place prior to the 1961 Termination Proclamation.

Therefore, it was critical that the divided tribal assets (particular real estate and specific proceeds) be identified for clarity in the 1961 Termination Proclamation which would have negated that part of the Proclamation that says; ..." the Federal trust relationship of such individual shall be terminated..." which is indeed "Federal Recognition" and "Federal services". Specific language to this effect is not contained within the original text of the Act nor in any amendments thereto.

The Act is silent in regard to Federal Services which are tribal assets "not susceptible to equitable and practicable distribution" pursuant to the terms of said Act, notwithstanding any other language to the contrary. While Federal recognition and Federal supervision are distinguished from one another, there is comity, or recognition of the Federal trust responsibility owing to the Affiliated group in regard to joint

ownership of tribal assets and joint management rights over, and entitlements to the undivided tribal (Ute Indian Tribe) trust assets for which the Act mandates supervision by the Secretary.

While Federal recognition may be whole, or in part, a discretion held by the Secretary of the Interior, pursuant to the Tribal Agreement set forth in Public Law 671, the Act is clear, the Tribe of Affiliated Ute Citizens is a fourth Tribe of the Federally recognized "Ute Indian Tribe" regardless that the individual members, themselves, may not be wholly Federally recognized for specific purposes and would remain so pending total termination in 1964. Failure of a termination Act to be enacted in 1964, the 1961 Proclamation was nullified but not withdrawn by the Secretary of the Interior, which is wholly within his administrative power to so do. Termination for the entire Ute Indian Tribe was officially abolished by Congress in 1975.

The Secretary questioned the AUC on the advisability of creating said corporations in 1960 and in 1961 the Termination Proclamation purports to "administratively" terminate the Affiliated Uintahs' Federal recognition and arbitrarily destroyed their rights and entitlements to all Federal services which are jointly held undivided assets *"not susceptible to equitable and practicable distribution"*, under the terms of Public Law 671. Subsequently, the Affiliated Uintahs were dropped out of the local and regional federal system and all federal trust responsibility and protections over their trust and restricted tribal property have been disregarded and all the proceeds from the aforesaid trust property has been unlawfully turned over to the Ute Distribution Corporation, a state incorporation, by the workings of the BIA, where the proceeds are distributed to its stockholders who are primarily non-Indians and others not entitled.

When termination legislation was not enacted in 1964, this distribution scheme ceased to be a legitimate or federally acceptable function carried out by the State incorporation. The purported UDC distribution function is distinguished from the administrative functions and duties of Affiliated Ute Citizens' under its 1956, federally approved, Tribal Constitution and Bylaws. No other than "Affiliated Ute Citizens" holds tribal jurisdictional authority with the Tribal Business Committee within the sovereign immunity of the Ute Indian Tribe on behalf of the affiliated members.

The UDC and its purpose should have been dissolved by the AUC Board of Directors in 1960. Why the resolutions giving the corporations the right to organize was not repealed is unclear but they were not. Subsequently, the Ute Distribution Corporation became "judicially" validated by 1964 through mis-interpretations of the Act issued by Federal District Court Judges in Utah and accreditation by Federal Agents of the BIA, who, upon information and belief, aided and abetted the UDC to carry out the commission of the crimes of larceny and embezzlement of tribal accounts in the U.S. Treasury.

The illusion of "termination" of the affiliated members was subsequently exploited by the managers of the Ute Distribution Corporation and others in state and Federal employ who acted in conflict of interest and in concert with one another to assist in the deception that the Ute Distribution Corporation was the Affiliated Uintah's representatives on and off the reservation.

This deception was also carefully ground into the minds of the full-blood members of the Ute Tribe. As a result, the UDC was inserted into joint management and the sovereignty of the Ute Indian Tribe by the BIA who was purportedly bound by the judicial opinions. They effectively preempted an act of Congress that dealt only with the internal tribal affairs of the Ute Indian Tribe and planted the Corporation right in the middle of the Ute Tribal government ... and Indian money.

All the proceeds generated from the Uintah & Ouray Reservations are supposed to be deposited in the U.S. Treasury Accounts for the mixed-blood and full-blood members to the credit of the Ute Indian Tribe pursuant to and in accordance with the terms of Public Law 671 (68 Stat. 868). It seems this is the only way the Government could be assured the funds were accounted for and that they were going only to the two designated Tribes of the Ute Indian Tribe and the members thereof.

This procedure was altered by Utah Congressmen in 1956 when an amendment to the Act was introduced to grant a tax-exempt status to any corporation created by the Affiliated Ute Citizens as a conduit for the distribution of proceeds transferred from the Affiliated Ute Citizens to the individual members thereof. Regardless that such a State incorporation could not legally operate in any capacity until after the total termination of the Ute Indian Tribe in 1964.

Nevertheless, the Ute Distribution Corporation was created under Utah law in 1958 and began its take-over. The lawful administrative body and government for the Affiliated members of the Ute Tribe was completely supplanted and stripped of any tribal authority by the acts and actions of Ute Distribution Corporation and purportedly terminated by "proxy" through judicial opinions and the Corporation's exaggerated claims and ultra vires activities pursuant to the Articles and Bylaws of the Corporation.

To carry out their nefarious activities undetected, the Managers of the Ute Distribution Corporation and individuals in the BIA, established a system wherein the Affiliated members' proceeds from gas and oil production are being transferred directly to the Ute Distribution Corporation through the BIA.

Individual gas and oil companies are writing checks made payable to the BIA "for Ute Distribution Corporation at the Uintah & Ouray Agency". The checks are sent to a box number in Prescott, AZ. The Uintah & Ouray Agency at Fort Duchesne then issues a check on this account and hand delivers the funds to the Ute Distribution Corporation Office in Roosevelt, Utah where it is deposited into the UDC account at Zions Bank then distributed by the Corporation to its stockholders. The full-blood's money is sent by the gas and oil companies to the Minerals Management Office where it is collected and deposited in the United States Treasury to the credit of the Ute Indian Tribe which is the approved process for both mixed-blood and full-blood groups.

The aforesaid unprecedented diviation from the collection process for the Affiliated Uintah's funds has served to hide the fact that the UDC recipient stockholders are non-Indians of Utah and others not entitled to the mixed-bloods trust and restricted capital assets. It has also served to reinforce the wide-spread judicial illusion that the mixed-blood members of the Ute Indian Tribe were terminated from all federal supervision and federal recognition pursuant to Public Law 671 (68 Stat. 868).

Upon information and belief, the managers of the Ute Distribution Corporation and the BIA violated Federal laws regarding the distribution of the trust funds belonging to a federally recognized tribe when they side-stepped the United States accounting process by directing these funds away from deposit in the U.S. Treasury.

This raises a question of taxation since the funds held in the U.S. Treasury for Indians and Indian Tribes are ordinarily taxed at the Treasury level before they are transferred to the Tribe or tribal beneficiaries. If the funds are by-passing the U.S. Treasury who is paying the taxes on this money ? Is the State of Utah collecting taxes on these funds ?

U.S. TASK FORCE 10 FINDINGS (1976): The Federal Task Force who investigated and reported on this process to Congress forty years ago admitted they were aware of the high stakes involved: A tribe ravaged and divided by a termination, a "recognized" Ute Indian Tribe subjugated to an impending termination, and to further aggravate matters, a reservation rich in vital natural resources, such as natural gas, oil, and minerals of every kind, and water which would be turned over to the State of Utah when the Ute Indian Tribe was totally terminated.

The United States Government indeed holds a fiduciary duty to the Affiliated Uintah Band of Utah Indians that has been ignored and neglected since 1956. The Task Force Ten in 1976 recommended further and immediate investigation into the situation involving BIA mismanagement of trust assets, and non-ethical and illegal BIA administrative actions throughout each phase of the so-called mixed-blood termination process. To this day, nothing has been done to correct the Federal mistakes of that "Era" in regard to the Affiliated Uintah Band of Utah Indians of the Ute Indian Tribe.

The Task Force concludes that termination was another experiment, however ill-conceived and destructive, with no controls and no provisions for reversal. However, they go on to state; "*While the termination Acts were the explicit declaration of Congress, the on going presence of "non-recognition" remains solely an administrative determination of the Department of the Interior within the Executive Branch.*"

IN SUMMARY: John Boyden, the nepotistic Board of Directors, and others used the Ute Distribution Corporation as a vehicle to create and perpetuate the illusion of termination of the Affiliated Uintah Band in de facto, resulting from the acts of the parties involved, instead of from the actual statute or intendment of the law. Local state and federal officials became active participants in this illusion and engaged in consistent claims to be the representatives for the members of the Affiliated Uintah Band of the Ute Indian Tribe, a federally recognized tribe.

The UDC managers have been willing and active participants in projecting the fraudulent appearance that they are the lawful mixed-blood representatives pursuant to a "Termination Act". The Corporate front is used as the vehicle for "termination by proxy" of the Affiliated members of the Ute Indian Tribe. The masterminds of this fraud have been infinitely successful because they also knew the mixed-bloods did not know the truth in regard to the origins and purpose of P.L. 671 and over time the truth would be lost as the elders passed away so would the knowledge and the UDC and non-Indian stockholders, in theory, would gain an unfettered 27.16186 % of the Ute Indian Tribe's capital assets...trust money that belongs only to the members of the Affiliated Ute Citizens, their heirs or legatees under the terms of Public Law 671.

The idea of "total termination" does not come from Public Law 671, it was created by the Ute Distribution Corporation just as the Ute Distribution Corporation was not empowered by any act of Affiliated Ute Citizens but rather it created itself by its own articles and bylaws, and through the Utah State and Federal District Courts, agents of the BIA, and by others engaged in the business of fraud.

Judicial bias and corruption has existed within the Utah Federal District Courts and State Courts and is clearly demonstrated when reviewing the past litigation surrounding Public Law 671. Two of the most current attack cases overtly demonstrates the boundlessness of this corruption in one county Judge's action. In Utah v. Reber, Judge Payne, 8th District Court of Utah, Uintah County, prohibited the defendants attorney from putting on a defense involving Reber's claim of Native American heritage. The jury found Reber guilty of a third-degree felony poaching charge, on Indian land, after seven minutes of deliberations. This case is now in the Federal District Court; In Van v. Van, Judge Payne refused to accept or even consider any form of federal restrictions he may be bound by in regard to the federal trust assets held by Mr. Van and purports to have the authority as a State Judge to sign over Mr. Van's tribal property to a non-Indian, which Judge Payne subsequently personally did. Additionally, the Judge signed a garnishment order for the remainder of Mr. Van's tribal proceeds, distributed by the UDC, despite a federal statute prohibiting any court from so doing (76 Stat. 597). The 94 year-old man has been stripped by this Judge, the opposition Attorney, and the Ute Distribution Corporation Attorneys of all his income, thus depriving him of any means in which to pay bills and pay for medical or personal expenses.

Neither of these cases, and many other cases involving Affiliated members of the Uintah Band of the Ute Indian Tribe, falls under the jurisdiction of the State Judicial system but tribal members are being forced into State Courts through the facade of "termination" at the local state and federal levels and by the failures of federal protections. The Tribe of Affiliated Ute Citizens are denied any administrative funds from their tribal capital assets, by the BIA, that would pay for the costs of governmental services to its members.

In 1996 the Board of Directors of Affiliated Ute Citizens, under mandate of its membership, dissolved the Ute Distribution Corporation according to the procedures of Utah State Law. This legal action was nullified by the State with the re-instatement of the UDC two days later without any kind of hearing. Further, the officers of Affiliated Ute Citizens were summoned by the Utah Attorney General and threatened with criminal prosecution if they interfered in the business of the Ute Distribution Corporation again. A "gag order" was subsequently issued by a Utah Judge against the AUC Officers.

At this same time the U.S. Acting Field Solicitor, William R. McConkie, located in the Western Regional Office in Salt Lake City issued a Memorandum dated May 17, 1996 to the Fish and Wildlife Management and Assistance Office where he states; "The Ute Partition Act did not intend that all tribal assets be divided as between the Full-blood and Mixed-blood groups". "The United States Supreme Court affirmed the Tenth Circuit and ruled: There is, and can be no dispute that the United States holds title to the land, including the mineral interest, constituting the Uintah & Ouray Reservation." He continues; "The Supreme Court ruled: the termination proclamation, contemplated by § 23 of the Act, was issued and published by the Secretary effective at midnight August 27, 1861 (26 Fed.Reg. 8042) This, of course, did not purport to terminate the trust status of the undivided assets."

Mr. McConkie then declares in said memo: " Net proceeds received from nondivided assets held in trust by the United States on behalf of the Full-bloods of the Tribe are covered into a Ute Tribe Account in the United States Treasury. Until such funds are delivered to the Tribe in a budget approved by the Secretary they are trust funds." See 25 U.S.C. §§671-72 and section cited therein.

"Likewise, net proceeds received from nondivided assets held in trust by the United States on behalf of the mixed-bloods are covered into a UDC Account in the United States Treasury, and only lose their trust nature when they are thereafter delivered to the UDC." (emphasis added)

It is a well established principle of equity that a third party who pays money to a fiduciary for the benefit of the beneficiary, with knowledge that the fiduciary intends to misappropriate the money or otherwise be false to his trust, is a participant in the breach of trust and liable therefore to the beneficiary. See Bogert, Trust and Trustees (1935), Vol. 4, §§ 901, 955; Scott Trusts (1939), Vol 3, § 321.1; American Law Institute, Restatement of Law of Trusts (1935), § 321. (Mr. McConkie's knowledge of the embezzlement of commonly held Tribal Capital Assets of the Ute Indian Tribe, at the Treasury level, is culpable conduct.)

Section 11 of the Act provides that; "Notwithstanding any other provision of existing law, the tribal funds now on deposit or hereafter deposited in the United States Treasury to the credit of the Tribe (Ute Indian Tribe), or either group thereof shall be available for advance to the Tribe or the respective groups... as may be designated by the Tribal Business Committee for the full-blood members, and by the Affiliated Ute Citizens for the mixed-blood members, and in either event subject to the approval of the Secretary."

As a consequence of all this, the Affiliated members' trust assets are being plundered in the Utah Courts, their trust lands are settled upon by non-Indians and claimed by adverse possession, and their capital proceeds (money) is distributed by the State incorporated (non-profit) Ute Distribution Corporation to non-Indian stockholders, primarily individual Mormons throughout Utah and the United States and includes the Mormon Church. Parts of this scenerio has been going on since 1959. The special administration of this Act destroyed the family nucleus of many tribal members and inflicted hardship and personl harm upon them.

The Affiliated Uintah Band of the Ute Indian Tribe is neither, by Federal definition, a "terminated tribe" nor a "non-Federally recognized tribe". The Indians are treated as though they do not exist. The Secretary of the Interior could administratively correct this situation and should before it goes any further. We are Indians when the Ute Distribution Corporation is trying to gain possession of some tribal right or asset but not Indians for any purpose that would actually benefit the Affiliated Uintah members as an Indian tribal society.

For this, and other reasons, the Affiliated Ute Citizens issued Resolution No. 08-001 seeking to revoke two prior resolutions that purportedly created the three corporations issued by the Board of Directors of Affiliated Ute Citizens in 1958 and 1959 that are not pursuant to and in accordance with the terms of Public Law 671 as herein stated. The current Resolution 08-001 was submitted to the Secretary of the Interior for his approval. A copy is also being sent to other Federal authorites, since it is abundantly clear that the Ute Distribution Corporation is, according to Chris Denver, former Treasurer of UDC, "absolutely invincible".
