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THE UTE INDIAN TRIBE SUES DEPARTMENT OF THE INTERIOR TO STOP THE APPLICATION OF BLM'S HYDRAULIC FRACTURING RULE TO INDIAN LANDS

Ft. Duchesne, UT - June 18, 2015.

The Ute Indian Tribe (Tribe) has decided to intervene in the lawsuit challenging federal regulations that are contrary to tribal interests and will cause irreversible damage to the Tribe's economy. The Tribe, represented by its general counsel Fredericks Peebles & Morgan LLP, is bringing suit to challenge the U.S. Bureau of Land Management's (BLM) final rule governing hydraulic fracturing on federal public lands and Indian lands (the "HF Rule"). The Tribe joins various states and two oil and gas trade organizations already challenging the HF Rule.

It is the opinion of the Tribe that Secretary Jewell's HF Rule, which will take effect on June 24, is a throwback to the old paternalistic policies of the federal government that completely disregard tribal interests. The Tribe asserts that the tribal government is the entity that can best determine what is in their best interest with respect to tribal lands, not a federal agency. Disregarding the Tribe's position on this matter, Secretary Jewell seeks to inappropriately apply public lands standards to Indian lands in contravention of federal law and in violation of the current Federal policy of promoting Tribal Self-Determination.

Despite recognizing different obligations to public lands and Indian lands, the Secretary of the Interior seeks to justify a one-size-fits-all approach for economic reasons. The Final Agency Draft of the HF Rule confirms this, stating that "[t]he BLM believes it is fulfilling its part of the Secretary's trust responsibilities by requiring operations on Indian lands to meet the same standards as those on federal lands." This reveals the Secretary's misunderstanding of her trust duties.

Infringing upon tribal sovereignty and placing significant roadblocks to the development of tribal minerals will undermine the federal trust responsibility and serve to limit economic development opportunities for the Ute Indian Tribe. The trust responsibility requires the United States to manage tribal lands, assets, and resources in the best interest of the tribes. It also requires the United States to not merely permit but to support each tribe's governance and management of its own Reservation resources. This includes supporting each tribe's fundamental governmental authority to make the laws applicable to that tribe's homeland. Contrary to Secretary Jewell's conclusion, Tribes should be allowed to decide for themselves whether regulations governing hydraulic fracturing are necessary to protect tribal lands are able, and it is not appropriate for the United States' to determine for Tribes what is in their best interests by setting forth one federal rule for all tribes.

While the Interior Department claims that the Indian Mineral Leasing Act of 1938 and the Indian Mineral Development Act of 1982 require Indian lands to receive the "same protections" as public lands, the Tribe has repeatedly asserted that the BLM is exceeding its statutory authority by attempting to regulate activities on Indian lands. The Federal Land Policy and Management Act of 1976 (FLPMA) specifically states that the BLM does not have authority on Indian lands. When Congress created the BLM and defined the BLM's authority,

Congress specifically stated that BLM has authority over "public lands" and that "lands held for the benefit of Indians" are not a part of "public lands."

Speaking on behalf of the Ute Tribal Business Committee, Chairman Shaun Chapoose criticized the BLM's attempt to displace tribal authority. Chairman Chapoose noted that the Tribe, "not the federal government, is the proper steward for the Uintah and Ouray Reservation because this is our homeland and we live and work on these lands." Chairman Chapoose highlighted that the Tribe does not need more federal regulation, "[W]ith over fifty years of hydraulic fracturing operations on the Uintah and Ouray Reservation, there has not been a single documented instance of groundwater contamination, this corresponds with findings in the recent EPA study assessing the potential impacts of hydraulic fracturing on drinking water resources. Tribes must be given an opportunity to regulate hydraulic fracturing on tribal lands in accordance with our own Tribal policies and priorities," said Chairman Chapoose.

The lack of opportunities for tribal regulations are a direct result of the Secretary's failure to adequately consult with Indian tribes. The Secretary should have approached tribes on a government-to-government basis to determine whether, how, and by which entity hydraulic fracturing should be regulated on Indian lands. Despite repeated requests, the BLM disregarded a proposed opt-out provision that would enable to tribes to regulate hydraulic fracturing themselves. The variance existing in the HF Rule is not an acceptable solution as many tribes do not recognize a need for federal regulations in the first place.

The Tribe's claim in this litigation has long been supported by members of the U.S. Congress. Just today, the House of Representatives Committee on Appropriations approved an amendment to the Interior, Environment and Related Agencies appropriations bill offered by Congressman Tom Cole of Oklahoma that would prevent Interior from implementing its hydraulic fracturing rule. In seeking passage of his amendment, Congressman Cole noted that the hydraulic fracturing rule would only slow development and do nothing to protect drinking water.

The Tribe agrees with Congressman Cole and appreciates his work to prevent implementation of BLM's hydraulic fracturing rule. Congressman Cole's amendment builds off of a bill that was passed by the House in 2013. That bill, H.R. 1695, the Federal Lands Jobs and Energy Security Act, included provisions that would have prevented Interior from applying its hydraulic fracturing rule on Indian lands without the consent of the tribe.

The U.S. General Accountability Office (GAO) also recently weighed in providing additional support for the Tribe's claim. In a June 2015 report, entitled "Indian Energy Development – Poor Management by BIA has Hindered Energy Development on Indian Lands," the GAO found that the "Indian energy resources are underdeveloped relative to surrounding non-Indian resources." While this report was focused on the U.S. Bureau of Indian Affairs (BIA), the Tribe noted that its conclusions include poor management by BLM which is also understaffed and part of the complex regulatory framework cited by GAO as a significant problem for Indian energy development.

About the Ute Indian Tribe - The Ute Indian Tribe resides on the Uintah and Ouray Reservation in northeastern Utah. Three bands of Utes comprise the Ute Indian Tribe: the Whiteriver Band, the Uncompahgre Band and the Uintah Band. The Tribe has a membership of more than three thousand individuals, with over half living on the Uintah and Ouray Reservation. The Ute Indian Tribe operates its own tribal government and oversees approximately 1.3 million acres of trust land which contains significant oil and gas deposits. The Tribal Business Committee is the governing council of the Tribe.

About Fredericks Peebles & Morgan LLP - Fredericks Peebles & Morgan LLP serves as general counsel to the Ute Indian Tribe of the Uintah and Ouray Reservation of Northern Utah, and is dedicated to the representation of American Indian tribes and Native American organizations throughout the United States. Legal services include a wide spectrum of services related to Indian concerns in the areas of business transactions, litigation and governmental affairs.