

Whose Land?

By John D. Barton

This was a draft of a chapter for A History of Duchesne County. Even though Duchesne County is not the largest or probably not the most significant county in Utah the issues discussed in this chapter bring to light the problems with modern growth and old time values over land and resources, and urban verses rural views, and how the history of the past causes problems that must be dealt with in modern society such as the land jurisdiction issue. Although these issues are discussed in this chapter about Duchesne County they are the types of issues that are common throughout the state and region that citizens and lawmakers must understand and deal with.

With the complexities of an ever changing society, yesterday's maligned and mistreated are sometimes the winners in today's court battles. Sometimes not. The Ute Tribal members, having been the losers in nineteenth and early twentieth century land disputes, found themselves the victors for a short time in federal court. Those who came and homesteaded at the government's invitation in 1905 had little idea the problems later generations would face over jurisdictional issues. However jurisdictional issues are far from the only ownership and land use concern facing county residents. As the nation's policies have evolved since the Depression, the same agencies that were started with a policy of use, now create policies that seem to many county residents limiting to insure that federal land is used only in specifically mandated and increasingly restrictive ways.ⁱ As populations increase throughout the region and state so does tension over land use. The differing land users feel that their own opinions and views are correct and others are wrong, archaic, or misinformed.

Battle lines are drawn for the new range wars, and ownership and control over the land and other resources is being challenged on several fronts.ⁱⁱ Replacing the shootouts of the past century's range wars, the varying parties hire lawyers and fight their battles in courts of law. Many also lobby politicians hoping to sway lawmakers to their point of view. And the trend of the last decade is to form environmental legislation in courtrooms rather than in the capital buildings through the use of court injunctions. There are extreme environmentalists trying to stop ranchers from using public land for grazing, state verses federal control of lands, county verses state and federal controls, wilderness acts, antiquities acts, wetlands acts; people are moving into, or purchasing land in Duchesne County in the belief that society will break down in the next few years and they want to be able to get out of the cities where they can live undisturbed in a survivalist manner. Many want to see the archaeological wonders of Nine Mile Canyon preserved and protected from vandals but these centuries old remnants of past cultures are, for the most part, on private land. Should a government agency step in and oversee Nine Mile? And what about the lands presently owned by the Ute Tribe? Who controls those lands, the tribe? the BIA? What role does the terminated Utes play in Ute lands and resources? And most significantly of all is the question of who owns and/or controls the land that was once set aside as a reservation for the Ute Indians by President Abraham Lincoln that was later opened for homesteading.

Federal, State, and County Lands

Most county residents have strong feelings about land use issues. With a population of less than 13,000 individuals in the county, and 72 percent of the county owned by the federal government, county residents often feel they have little voice in the direction and management of much of their county. State Legislator Beverly Evans explains: "Most local people are distraught. They have concerns over land use and feel that they haven't had access or input on multiple use issues. The bureaucracy allows little input when federal planners over-ride local concerns."ⁱⁱⁱ

At present 77 percent of Utah's population is urban. There has been a huge shift from the agricultural foundation of our parents and grandparents to present times. In the last two generations most Utahns moved from the farms to urban centers, the same as the rest of the nation has done. As this has occurred, the traditional Western values and uses of land have come into question by even the Utahn city-dweller who feel that they understand rural land use issues because their grandparents lived in the country.^{iv}

Nationwide the trend is to preserve public lands for hiking, sight-seeing, camping, catch-and-release fly-fishing, and other non-consumptive uses of those public lands. This greatly effects hunting, grazing, timber, oil exploration and production, and mining in Duchesne County. To an ever greater degree the nation-wide trend is against these *old west* uses of public land. And much of the problem is not just with Utahns who have become urbanized. With federally owned lands most people throughout the nation feel they should have as much say in what occurs in western lands as the people who live there. And as the population of the state increases, coupled with increasing numbers of tourists who come to the state and county, the use of and debates about land increases significantly. For example in the primitive area of the Uinta Mountains hikers with backpacks are as commonly seen as horsemen with pack animals. In the slickrock country mountain bikers probably outnumber horsemen.^v The central issue is, "Who will determine how public land in the West and in Duchesne County will be used? Those who have made a living from it for several generations or those who want it preserved to be used only in non-consumptive ways?"^{vi}

No Net Gain of Federal Lands

Duchesne County officials are concerned with these questions and want to have voice in land use issues within the county. After almost two years of meetings and discussions by county officials, involved citizens, and state and federal agency representation, the Duchesne County General Plan has been prepared. In this plan the county's objectives on policy and economic growth are clearly outlined. Of top concern is public land management, recreation, and tourism. On the issue of public lands and the federal and state agencies the county objectives include: Active county participation in the federal and state planning process, county support for maintaining multiple-use public land management practices, participation by county leaders in public land classification and use designations, and finally, strong county support for "no net increase" of public land within the county.^{vii} These objectives clearly demonstrate county officials and residents desire to have a strong voice in the policies and management of the land within the county and to stop, or at least slow down, the bureaucratic control of county land and resources.

If "No Moo in '92" Fails Then It Will Be 'Cattle Free in '93"

One of the focal points of use and control of federal lands that impacts Duchesne County is grazing. Not only Duchesne County cattlemen voice concerns over this issue but most county residents, with their roots closely tied to the land, believe multiple use concepts include grazing in a well organized plan. Since the 19th century cattle and sheep men have grazed their herds on public lands. In the cowboy days a century ago most of the large ranchers owned only a small portion of the land they controlled. From this era developed the public grazing permits that are common today. The movement of the past few years to rid federal lands of cattle grazing is almost beyond comprehension to most county cattle growers. Although both "No Moo in 92" and "Cattle Free in 93" have failed,^{viii} the thought behind such political efforts by environmentalists are germane to land control issues. The argument posed by those wanting to rid federal land of stock varies by degrees. Some desire to restore a more pristine land to provide more homeland for natural species. Others move a step further in their arguments claiming that cattle are hard on delicate ranges and destroy many species of flora which negatively impacts natural fauna species. Some think that the cattle destroy the riparian lands, or delicate lands along stream banks and lakes; and others go so far as to believe that the flatulence and belching of cattle are destroying the ozone layer of the earth's atmosphere. Little wonder that cattlemen have a hard time accepting the challenges to their way of life and livelihood.^{ix}

The Peatross Ranch in Strawberry and Avintaquin is a prime example of modern cattlemen caught in the conflict. When William Peatross started expanding from Strawberry up Avintaquin Creek in 1942, he bought out seven of nine original homesteads. The homesteaders had overgrazed the land so badly that the lower Avintaquin would only support 30 cow/calf units in the summer months. At present William's son Kent Peatross runs about 250 cow/calf units on those former homesteads, cuts over 100 ton of hay each summer, supports 600 to 800 deer for six weeks every spring that graze on sprouting alfalfa, and over 100 elk that pasture there in the fall. In the 1940s and 1950s there were very few deer and almost no elk along Avintaquin Creek, there was too little feed to support them. For over fifty years the Peatross family has worked on the riparian lands along Avintaquin Creek and Strawberry River at their own time and expense knowing it was vital to developing and improving their grazing. Yet they have had their fences cut and stock watering troughs destroyed by those who think cattle on public lands are damaging the forest. Kent Peatross says: "There is so much federal land around us we are dependant upon the multiple use of it. The environmentalists are out of touch with how we use it. We are healing the land from the abuses of the past."^x

At present there are 60 grazing permits, varying in number of cow/calf units from 15 to 50, given to stockmen in Duchesne County on forest lands. The cost of the permits are two dollars per cow/calf unit per month.^{xi} To many this seems far below market value -- and it may be. However, Duchesne County cattlemen do not only graze cattle on public lands they also develop grazing lands and springs for watering their cattle which has assisted the habitat allowing expansion of large game such as elk.

Prominent cattle rancher and high school science teacher Brent Brotherson explains:

Most of the decisions are made on emotion by those who want to lock-up land for their own use. If they relied on science it allows room for grazing, timber, mining,

as well as recreation in the multiple use concept. Lots of grazing lands are in better shape today than 100 years ago. We've had land in the area for three generations now and the range is better now than when my grandparents homesteaded. Wildlife has also benefitted. There are far more deer and elk now because of improved range.^{xii}

Restricted Use and Regulations

In the last few years the number of laws and restrictions that apply to land use and ownership have greatly increased. Many feel these restrictions are barely sufficient to protect archeological sites as well as flora and fauna species from further destruction. Others see the many laws as simply an effort to restrict freedom and use of the land and its resources.

The Wilderness Act prohibits any motorized vehicle from entering lands designated as Wilderness. The high Uintas were designated as Wilderness Area in 1982, an upgrade from the primitive designation that it had formerly carried. This is, of course, not popular with mining and timber users of the national forest and they too feel restricted by federal laws and mandates. And the restrictive use laws do not apply to only federal lands. As was outlined previously, the Wetlands Act encroaches upon and dictates land use to land owners. The Endangered Species Act is yet another move by the government to protect animals and plants from extinction -- certainly an applaudable motive. Any new construction sites must give one-half mile clearance to a raptor nest. In the oil field south of Myton, drilling was shut down because the Mountain Plovers' (a bird that looks something like a snipe) potential migratory routes may have been disturbed by the drilling rig.^{xiii} Before any site can receive approval for construction, an environmental impact study must be conducted to ensure that it will not harm any endangered species. Some extreme environmentalists think that the dams on Uinta Basin rivers should be removed to restore original river flows for endangered fish species.^{xiv}

Hunting rights (or are they privileges?) are also being challenged by animal rights groups throughout the nation. As one of the best hunting regions of the state, these concerns over land use also impact the county. Presently the hunting portion of the population is a very small percentage nationwide. Again, if the lands are controlled by the voice of the majority, whose concerns and rights should control federal land? the majority of those who live in the region or the majority of the nation as a whole? Another concern of the hunting population of the county is the rapid rise of Wasatch Front hunters coming to the area to hunt. In the last few years the Division of Wildlife Resources has drastically cut down the number of regions for open bull elk hunts. The Uinta Mountains is the best and largest open bull hunt left in the state. This has attracted thousands more hunters which has angered and frustrated many county residents for they have felt that their interests and concerns have not been taken into account.

There are even acts that are federally mandated but not funded by the federal government. This forces the state and county governments to pay for the bills they may not even want. The Clean Air Act and Pure Water Act are but two examples of this. Again the ideas behind both bills are applaudable but they often have negative ramifications on local economies. Environmental Protection Agency regulations, in regard to the Clean Air Act, have succeeded in closing down the Pennziol Refinery in

Roosevelt, which was the largest non-government employer in the county. Corporation owners simply could not afford to meet new regulations and keep the refinery profitable. The county lost over 150 of its best paying jobs, yet no one can argue with the desirable concept of clean air. What is the correct and right balance between families' livelihoods and environmental issues?

These many laws and regulations generate great concern by all interested parties. Little wonder that the state and national congresses despair over what to do with these issues. Any legislative attempt to impose new and stricter regulations angers constituents with opposing points of view. To uphold and protect the status quo alienates and angers large numbers of voters who are demanding change. Ignoring the issues and passing no new legislation angers all sides. From a political point of view it is a no-win situation. The radical from both sides of the issues, environmentalists on the one side and ultra-conservatives on the other, both feel that their concerns are correct and legislation should be implemented to protect their individual point of view.^{xv}

Nine Mile Coalition

In Nine Mile Canyon are found some of the best archeological evidences of the Fremont Culture. The many rock drawings fire the imagination and cause all who see them to wonder more about the people who lived there centuries ago. It has been termed internationally as *the longest art gallery in the world*. Found within the canyon, in addition to drawings and rock art, are many dwellings, granaries, lookouts, and caves that were used by the Fremonts. Also found within the canyon are many historic sites: the Nutter Ranch, homesteaders' cabins, stage route, telegraph poles and relay station, freighters names on rock walls written in grease from the hubs of their wagons a century ago, and the road the army built to accommodate travel. All these archeological and historic sites are under threat of destruction because Nine Mile Canyon, unlike Mesa Verde, is not protected by any agency of local, state, or federal government. All the marvels of past peoples are on private land. Sadly many of the rock-art murals on smooth rock walls have been used as targets for gun shooters. The number of pottery, tools, arrowheads, and other such items that have already been plundered and carried off is incalculable.

As ever greater numbers of people become aware of Nine Mile Canyon, due largely to the promotion of regional travel councils, the canyon is receiving more visitors each year. At present there are no public facilities of any kind in the canyon. It is still isolated, hard to access due to poor roads that are unpaved, lacks law enforcement, and historic and cultural interpretations are up to the expertise of the visitor. All in all many feel that the canyon should be preserved and developed in a manner that would protect and assist those who want to visit it.

In 1991 discussion was initiated by the Duchesne County Historic Preservation Committee on the future and possible preservation of Nine Mile Canyon. H. Bert Jenson was appointed chairman of the Nine Mile Canyon Committee. The central topic was what could be done for the canyon.^{xvi} In January 1993, the Nine Mile Canyon Coalition was formed with the support of the Moab and Vernal Districts of the BLM, Duchesne County, Carbon County, Utah State University, College of Eastern Utah, the Ute Tribe, historic organizations, tourism councils, chambers of commerce, and private citizens. It was proposed that research into a land trade being offered the private land

owners in the canyon for land of similar or greater grazing and ranching value in Argyle Canyon, and the archeological region of the canyon come under the control and protection of the BLM.^{xvii} The present by-word of state and county governments in their interactions with federal agencies that own or control land is *no net loss of additional lands*. In the proposed plan for the BLM to trade equal number of acres to private citizens for the canyon, this goal will be met. If the Nine Mile Coalition is successful the canyon's scenic and historic past will be better preserved and hopefully businesses will come in to offer concessions and services for the many interested visitors to the canyon. If not, at the present rate of destruction, much will be lost forever, and landowners, angered by abuse and trespass of their property, will make access ever more difficult.

A Nation Divided -- Termination

Land questions in Duchesne County are not only restricted to county residents and officials concerns over federal policies and preservation of Nine Mile Canyon. The federal government's policies concerning the Ute Tribe and part-blood Ute people have raised many questions over ownership of land and resources within the region as well. When President Lincoln set aside the Uintah Reservation in 1861, there were originally 2,284,474 acres determined to be the adjacent lands of the Duchesne River drainage. On January 5, 1882, President Chester Arthur signed the bill that created the Uncompahgre Reservation. When the Allotment Act broke up the reservation lands, the federal government under the BIA took 630,000 acres of northern lands (lands at the foothills of the Uinta Mountains) and 430,000 acres of the Hill Creek extension, a total of 1,060,000 acres to be held in trust for the Ute Tribe. Access and control of these lands that spread across both Duchesne and Uintah counties is managed by the tribe.

The Ute Tribe formally organized in 1937, under the Wheeler-Howard (Indian reorganization Act) which stopped the allotment process and provided for Indians to reconstitute themselves into traditional tribes governed by constitutions. Membership eligibility for the Northern Ute Tribe consisted of being born in the tribe and residing on the reservation. By October of that year it was determined that one must be 1/8 Indian to qualify for membership. On 27 May 1953, Resolution Number 600 was passed by the tribe that stipulated that enrollees must be one-half Indian to be a member of the Ute Tribe.^{xviii}

This was the era that the governmental Indian policy included a provision called Termination. Congress, in 1953, attempted to end or terminate federal assistance and involvement with the Indian tribes with the passage of House Concurrent Resolution 108. The plan called for the ending of BIA involvement in the lives and affairs of both tribal members and tribal government. Health, education, and other services once provided by the federal government to Indians were now the responsibility of county and state governments for Indian tribes that accepted termination. This plan was aimed at mainstreaming Indians into the larger society. Although much less harsh than the Allotment Act of 1887, the same problems with integration of Indians brought this policy about. Tribal resources could be divided and distributed to members, or the tribe could form a corporation and divide assets with stock certificates issued to the tribal members. When the Utes met, 1,408 members voted to terminate from tribal rolls all members with one-half or less Ute Blood.

Public Law 671

On 27 August 1954, federal *Public Law 671* was adopted that provided for individuals with mixed blood be terminated from tribal rolls. There were 490 mixed blood Utes, and a surprising fifteen full-blood Utes who accepted this termination. This left on tribal rolls 1,514 members after termination. The Ute Tribe then adopted the present *5/8 plus a drop* and living on the reservation quota to determine eligibility for tribal membership. This *5/8 and a drop* policy remained from 1958 until 1984 when Haskel Chapoose, a full-blood Ute who had married a white woman, sued the tribe over discrimination of his half-blood children. He argued that as a member of the tribe his children should be eligible for any benefit that he, or anyone other tribal member's children ought to have. He won the case and a window opened that allowed 1500 children of non-terminated Utes to become tribal members.

Of the several tribes that accepted termination throughout the United States, only the Ute Tribe adopted a partial termination which consisted of terminating the part-blood and the fifteen full-blooded Utes from Ute Tribal Rolls by meeting the provisions of House Resolution 108. The passage of Public Law 671 made it legal for this to occur. The terminees had seven years to prepare for termination which was to take place in 1961. It was also determined, on a pure percentage basis, that the terminees made up 27.16186 percent of the tribe and the full-bloods constituted the rest of the tribe (72.83814 percent). Using this as the figure to divide the assets, the terminated individuals were to be cashed out of their share of tribal interests.

The Affiliated Ute Citizens (AUC), as they called themselves, were the terminated portion of the tribe, organized with a board of directors to manage their share of land and assets. The AUC organized The Ute Distribution Corporation (UDC) to manage non-dividable assets particularly mineral, water, oil, and natural gas resources on tribal lands. Most of the 27 percent of the land that the AUC members received was in the Rock Creek and Antelope areas. Here they formed the Rock Creek Cattle Corporation and the Antelope Sheep Corporation. These two corporations failed within a few years due to mismanagement. The assets were sold with the proceeds going to the members of the AUC. The Ute Distribution Corporation continued to manage the affairs resulting from the undividable assets. To protect AUC members from being taken advantage of, no shares in the UDC could be sold or traded until 1964. When those rights could be sold the tribe retained the right of first refusal. If the tribe did not buy the shares they then could be sold to anyone.

Little did those who encouraged partial termination of the Utes know the many court cases and battles this would cause. In 1956, just two years after the Termination of Mixed Blood Utes, the U. S. Congress restored to the Utes the mineral, oil, and gas resources for 36,000 acres of land taken from them by Congress in 1905. When extensive oil and gas drilling was done on tribal lands in the 1970s and 1980s; hard feelings and law suits followed as the AUC sued the Ute Tribe over payment for the resources and hunting rights.^{xix}

Jurisdiction and the 1994 Supreme Court Ruling

___National history and Indian reservation policy was reshaped when in 1994 the federal Supreme Court issued a ruling regarding the jurisdiction of the Ute Tribe in the Uinta Basin stating that the reservation that had been set aside by President Abraham Lincoln for the Utes in 1861 had been diminished when Congress opened the lands for

homesteading in 1905.^{xx} Certainly the largest question of the past decade in Duchesne County has been the issues and legal battles over who had jurisdiction; the State of Utah with subordinate powers residing in Duchesne County and the various cities that are situated on former reservation lands or the Ute Tribe. This question was of such monumental weight that the United States Supreme Court finally had to make a ruling on the issue that will likely be the final deciding case for not only the Utes but also all other reservations throughout the nation. This complex question's roots lie in trying to determine what Congress really intended in 1905, when they opened the Ute Lands for homesteading. To begin to understand the many issues of this present situation one must begin at the turn of the century.

In 1905, the Congress of the United States made provision for the Ute Reservation lands not specifically allotted to an Indian, or the lands set aside in holding for the Utes, to be opened for homesteading. This was part of the Indian policy of the day with the Dawes Act and the allotment of Indian lands. This had come about because of the 1902, *Lone Wolf Case* when it was decided by the federal courts that the government had plenary power, or full power to act for and in behalf of the tribe without their consent. This ruling granting plenary power over Indians was endorsed by Congress with their subsequent actions in forcing allotment on non-consenting tribes. Utilizing their plenary power, Congress decided that it was in the best interests of the Ute Tribe to force them into allotment and then open for homesteading the surplus lands. This decision, which may or may not have been right or fair at the time, is the cardinal issue. The main point of the jurisdiction question was centered in *what did Congress really intend when it forced the Utes into compliance with the Dawes Act and then returned the surplus lands to the public domain?* For seventy-six years, between 1905 and 1981, the question did not surface in a significant case.^{xxi}

In 1981, the Ute Tribe sued Duchesne County, Duchesne City, and Roosevelt City over jurisdiction of their lands. The Utes argued that although Congress had in fact opened the lands to homesteading in 1905, Congress never intended that the tribe should lose jurisdiction of those lands. The Ute Tribe argued that it should have legal jurisdiction over all of the lands that were established as their reservation in 1861. With that jurisdiction the Ute Tribe maintained that they should retain taxation rights, and privilege status as a *nation within a nation*. The tribe argued that even with the loss of lands due to homesteading, it should still be the governing body of all lands that were once theirs with full precedence over any other governing body including city, county, and state powers. With this interpretation the tribe wanted governing rights to all the land that had been theirs, including private lands, state lands, and all federal lands.

The case was argued before Judge Bruce Jenkins of the 10th District Court. He ruled that the Uncompahgre Reservation was terminated with allotment but that the Uintah Reservation was not terminated and therefore the tribe did have jurisdictional rights. Duchesne County, Roosevelt, Duchesne, and Ballard cities were the losers in Jenkins' ruling. With some reluctance the State of Utah appealed to the Appellate Court. After reviewing the case Appellate Court, which consisted of a three judge panel, ruled with a two to one decision that with the exception of trust lands, the reservation was terminated and the lands were returned to public domain and therefore governed by the laws of the national government and the State of Utah.

With the Appellate Court ruling most parties thought the matter closed. Then in 1983, the federal Supreme Court ruled on a similar case of *Solom v. Bartlett*. This

opened the door for the Ute Tribe to ask for another hearing based on the *Solom v. Bartlett* decision that said other factors can be considered in tribal land cases including such questions as: if the land that was put back into public domain does it automatically remove it from the reservation? Were the Indians paid for their land? Did they agree to lose of their lands at the time of allotment? and if they did not, what rights do they now have concerning that land? In other words, what did congress really intend as they terminated the reservation?

The Ute Tribe requested another appeal; this time from the entire Judicial Panel of the 10 Circuit Court of Appeals, based upon the *Solom v. Bartlett* decision. The 10th Circuit Court ruled that Public Domain was insufficient reason to dis-establish the reservation. This meant that all the land that the Ute Tribe had once owned they still had jurisdiction over -- until the next court decision. The State of Utah asked for an appeal and was denied. They then asked the Supreme Court for a writ of *certiorari*, which is a petition for the Supreme Court to make a ruling where lower courts have contradicted one another. That too was denied.

The next several months were tense for both the Indian and non-Indian communities on the land in question. The tribe had won a major legal victory but knew that they still had to live with the non-Indian population in the area. Anything rash or hasty could trigger more bad feelings and negative reactions. As is often the case with major court cases a pair of non-related incidents occurred that eventually landed the whole affair in the Supreme Court of the United States.

In 1983, Clinton Perank, a part-blood Ute was arrested in Myton for breaking into the American Legion Building. Perank, whose mother was non-Indian and his father was Ute, was not a member of the Ute Tribe at the time of his arrest. He pled guilty in the Circuit Court and was placed on probation. In 1986, he was again arrested. This time for violation of probation. Between his two arrests he had become a member of the Ute Tribe with the membership window that had opened due to the *Haskel Chapoose Case*. In his hearing Perank's attorney argued that the circuit court decision that had first found him guilty of breaking into the American Legion building him was wrong due to the fact that did not have the right to try him because he was not tried in Indian Court, therefore, Perank's attorney argued, the circuit court had no jurisdiction over him based upon the 1983, 10th Circuit Court of Appeals Jurisdiction ruling. The 10th Circuit Court's decision was that Perank was in violation of his parole and that 1) the original ruling was correct because his enrollment status was in question at the time of the original ruling, and 2) Myton was not on the reservation. Perank was sent to the state prison for parole violation. Perank appealed in October 1988, and the State Supreme Court of Utah upheld this decision.

About this time, 1988, the second key case came up. Robert Hagen, a member of the Little Shell Band of Chippewa, was caught in a drug bust and arrested on possession and distribution of marijuana. Hagen argued that the Sheriff's department of Duchesne County did not have the right to arrest him because he was an Indian on reservation lands, therefore they had no jurisdiction over him. Hagen was turned over to a U.S. Attorney and was arraigned in a BIA court. Judge George Tabone ruled that Duchesne County had no jurisdiction over Hagen because he was a member of a recognized Indian tribe and on reservation lands at the time of his arrest. However, Duchesne County processed the charges against Hagen and a trial was held. Hagen

pled guilty to one count of possession of marijuana. In the sentencing he still claimed that Duchesne County did not have jurisdiction over him.

Hagen appealed and the Utah Court of Appeals reversed the decision, making Duchesne County prove that Hagen was not an Indian. The State of Utah appealed the case for Duchesne County to the Utah Supreme Court. The Utah Supreme Court agreed to hear the case which focused on to important factors: was Hagan an Indian, and a clear determination had to be made regarding the meaning of tribal lands. With all the questions of the *Hagen Case*, Perank's attorneys appealed his case on the jurisdiction questions once again.

On the same day that the Perank Case was decided, the Utah Supreme Court ruled that the reservation had been diminished and therefore Hagen's status of whether he was an Indian or not was immaterial. This then resulted in the federal court and the Utah Supreme Court having made contradictory rulings with one another. With this contradiction the Supreme Court of the United States agreed to hear the *Hagen Case* and rule on the issue of jurisdiction. The federal Supreme Court agreed to use the records of the *Perank Case* in deciding the *Hagen Case*. The decision of the Supreme Court for Hagen would also determine the jurisdictional arguments in the *Perank Case*.

On 2 November 1993, Jan Graham, Attorney General for the State of Utah, and Martin Seneca and Daniel Israel represented Hagen and the Ute Tribe, presented their case to the Supreme Court. At issue before the court what was the intent of Congress when it returned surplus reservation lands to public domain in 1905. Did Congress intend the land to be returned to public domain and leave jurisdiction to the tribe, or had jurisdiction over the land also diminished? To determine this, after the court heard the arguments from both sides, they needed to determine if the reservation was diminished by congress in 1905 based upon 1) the statutory language used to open the Indian lands to homesteading, 2) the contemporaneous understanding of the action, and 3) the identity of the persons who moved onto the reservation lands once they were returned to public domain.

On 23 February 1994, the Supreme Court handed down its decision that the reservation was in fact diminished and that was the intent of Congress in 1905. In the decision the court quoted the Act of 27 May 1902, which provided for allotments of some Uintah Reservation land to Indians, and that "all [of] the unallotted lands within said reservation shall be restored to the public domain." This decision was based upon three specific arguments that bore consideration. The first was Congress' intent to eliminate the Ute Reservation through allotment of Tribal lands. Second, since the homesteaders who moved onto the former reservation lands in 1905 were non-Indian, and the population that presently (1994) occupies lands from the terminated reservation are "approximately 85 percent non-Indian and 93 percent non-Indian in the area's largest city (Roosevelt); by the fact that the seat of local tribal government is on Indian trust lands, not opened lands," and third, by the State of Utah's assumption of jurisdiction over the opened lands from 1905 until the Tenth Circuit decision over the jurisdiction issue.^{xxii}

The problems and misconceptions over jurisdiction have led to flare-ups of old prejudices and misunderstandings between the Indian and non-Indian communities. On 21 September 1994 the Ute students of Union High School walked out in protest over what they voiced as unfair and prejudicial treatment. District officials met with Ute Tribal leaders to hear their concerns and school resumed with no further incident.^{xxiii}

On the up-side of the situation, as a result of the jurisdictional issues, tribal leaders and elected officials from Duchesne and Uintah Counties have much better dialogue and a mutual desire to arbitrate issues and concerns before they get to the courtroom than they have in the past. For the first time ever the Ute Tribal Business Council invited anyone interested to attend and give input in one of their meetings on 22 March 1994. The leaders of both communities hope that a new era of mutual trust and understanding can evolve. Dialogue has led to two proposed bills in the state legislature by Beverly Ann Evans. Passage of these bills will return the state's severance tax to the county where it is taken. The net gain for the tribe would be about \$2 million and nearly one-half million for Duchesne County. The partnership between the State of Utah, Duchesne County, Uintah County, and the Ute Tribe; in this manner would be a first since the jurisdiction issue came up in 1981.^{xxiv}

With the depletion of tribal monies due to the decrease in oil and gas revenues since 1985, and the doubling of enrolled members in that same year, the Ute Tribe needs additional funds. One of their proposed measures was for the tribe to tax businesses and charge business licenses for those on tribal lands. Another strategy involved sending the Central Utah Project offices the bill for 33 million dollars, mentioned in chapter 9, for Ute water taken out of the Stillwater Dam in the past decade that they claim was not paid for. The CUP did not pay the bill and the tribe is looking to market their water to the thirsty desert states of California or Arizona if they can prove that they own unpaid for water.^{xxv}

The combined governments working in partnership with new levels of cooperation for the good of the Ute community is a positive step forward. As individuals of both the white and Indian communities follow this lead, the fears and frustrations of the past can be quelled.

Conclusion

Duchesne County's history is a microcosm of the history of the American West. There have been pre-historic Indians, Spanish explorers, lost Spanish mines, mountain men and fur trade forts, an Indian reservation, near-by was a military fort complete with cavalry troops; there were sooners and settlers, land rushes and homesteaders, droughts, boom-bust cycles in an extractive-based economy, and legal battles between individuals, the Ute Tribe, county, state, and federal governments. These each have their own story and are unique in Duchesne County's history, but they are representative of most issues in Western History. Each of these groups in turn have sought control and ownership of the land in the county. Ownership and control of land and resources is one of the surest and oldest measures of wealth and power. Beginning with the displacement of the early Fremont cultures by the Numics, to the jurisdictional and federal mandated policies and issues of today -- the central issue is not whose land was it, but, whose land is it?

As the county moves into the 21st Century, these land ownership and/or control questions will be solved; perhaps fairly, certainly not to the liking of all parties, and quite likely some solutions will be viewed by some county residents as unfair. Some matters have already been concluded. New concerns will certainly arise. But the issues outlined in this chapter have their beginnings and origins with historical events that predate the problems themselves. The seeds of tomorrow's ownership and control battles have already been sown, just as this chapter outlines the harvest of historical-

based concerns and our attempts to solve them. The next historian to write the county's history, twenty-five or fifty years from now, can address these issues again with the truest and best perspective of all -- time.

Notes for Ute Indians:

i . Clyde A. Milner II, editor, Major Problems in the History of the American West, (Lexington, Massachusetts: D. C. Heath and Company, 1989), 629.

ii . Barry Sims, "Private Rights in Public Lands? The New Range War moves to a Familiar Battleground -- The Courts." The Workbook, 18, (Summer 1993), 50-58. The Workbook is an environmental-social change quarterly published by Southwest Research and Information Center, Albuquerque, New Mexico.

iii . Beverly Ann Evans, interview by the author, 30 December 1996, Mt. Emmons, Utah. Evans went on to explain that many of her legislative colleagues have the feeling that "We don't care about what the Uinta Basin wants, we'll do what is good for Utah," and their concept of Utah is often the Wasatch Front.

iv . Evans interview.

v . In the past decade there was a strong movement led by Nevada and joined by Utah as well as other western states called the Sagebrush Rebellion. Although this movement was not successful in shifting ownership and control of federal lands to the states, it centralized and brought into focus for most westerners the issues at hand. See Michael P. Malone and Richard W. Etulain, The American West: A Twentieth Century History, (Lincoln: The University of Nebraska Press, 1989), 286-288; see also James Coates, "Is the Sagebrush Rebellion Dead? 1986," in Clyde Milner, editor, Major Problems in the History of the American West, 561-573.

vi . The battle over use and control of federal land in western states is so widely documented in newspapers, radio talk-shows, books, magazines, etc. that most informed westerners know the issues at hand. For an overview of the topic see Michael P. Malone and Richard W. Etulain, The American West: A Twentieth-Century History, (Lincoln: University of Nebraska Press, 1989), Chapters 4, 6, 7. Patricia Limerick, The Legacy of Conquest,

"The Strange Case of the Contemporary American Frontier," Frank J. Popper, and "Revisiting Turner's Vanishing Frontier," William Cronon, in Clyde A. Milner II, Major Problems in the History of the American West, (Lexington, Massachusetts: D.C. Heath and Company, 1989), 654-681.

vii. "Duchesne County General Plan," Prepared by the Bear West Corporation in conjunction with Duchesne County, 1996. See also Uintah Basin Standard, 6 February 1996.

viii. "No Moo in '92" and "Cattle Free in '93" were the catch-phrases used by lobbyists attempts to bring legislation to rid federal lands of cattle grazing in those years.

ix. Brent Brotherson, interview by the author, 30 December 1996, Boneta, Utah. When asked Brotherson's view of cattle destroying the ozone layer he responded with a view shared by most cattlemen, "That is ludicrous."

x. Kent Peatross, interview by the author, 30 December 1996, Strawberry, Utah. Peatross holds a 135 cow/calf unit grazing permit on forest lands, he also serves on the Central Utah Water Conservancy Board.

xi. RIM Report.

62. Brotherson, interview.

xiii. The Uintah Basin Standard, 4 May 1994.

xiv. Brotherson, interview. The razor-backed sucker, bony chub, and Colorado squawfish are all endangered species that are found in the Green and lower Duchesne rivers. The argument by environmentalists is that these fish species are dependant upon the water flow in an unrestricted manner in the spring for spawning and because they were in the rivers before irrigation projects began they should have first right to the waters.

xv. Evans interview.

xvi. The Duchesne County Historical Preservation Committee was organized in September 1991, under the direction of the Duchesne County Commission. The author, John D. Barton, was elected chairman of that committee. One of the first topics of discussion was the condition of Nine Mile Canyon. All were concerned and hoped something could be done. Bert Jenson, known throughout the county for his knowledge of Nine Mile Canyon, was asked to come and assist with the Nine Mile Canyon preservation. From that small beginning, the much larger Nine Mile Canyon Coalition developed due to the efforts of many. It is hoped that Nine Mile Canyon's scenic and historical sites will be preserved for the study and enjoyment of future generations.

xvii. Department of the Interior, Bureau of Land Management, "Recreation and

Cultural Area Management Plan: Nine Mile Canyon, Special Recreation and Cultural Management Area," (Draft 1993), 2.

xviii. The Roosevelt Standard, 8 April 1954.

xix. Information on Termination and the Affiliated Utes came from Chris Denver, Director of UDC. See also The Uintah Basin Standard, 30 January 1958, for more information on the return of oil and gas rights to the Ute Tribe.

xx. Supreme Court of the United States, Syllabus, Hagen v. Utah, Certiorari to the Supreme Court of Utah, No. 92-6281, I-iii.

xxi. The only exception was the *Clifford Washington v. Duchesne County Case*. In 1965 George Stewart, attorney, argued in the *Clifford Washington Case* that the court proceedings were occurring on a reservation and the court system, being a regular court not the tribal court, did not have jurisdiction on his client. The case was dismissed without any ruling on the argument. This is the first recorded case where jurisdiction was argued as an issue of right for the court to try a Ute.

xxii. The information on the jurisdiction issue was prepared from materials given the author by Herb Gillespie, Duchesne County Attorney. For more information on the actual Supreme Court Ruling see Supreme Court of the United States, Syllabus, Hagen v. Utah, Certiorari to the Supreme Court of Utah, No. 92-6281. I-iii. Justice O'Conner delivered the opinion of the Court, in which Justices Rehnquist, Stevens, Scalia, Kennedy, Thomas, and Ginsburg, agreed; Blackmun and Souter were dissenting.

xxiii. The Uintah Basin Standard, 27 September 1994.

xxiv. The Vernal Express, 7 December 1994.

xxv. The Uintah Basin Standard, 2 February 1994, see also The Vernal Express, 9 February 1994.