



EQUALITY STATE  
POLICY CENTER

---

# **The Wind River Reservation Boundary Dispute – Some Facts**

# **Table of Contents**

## **How did we get here?**

**How did the EPA boundary decision come about?**

**Exactly what land is involved?**

## **The EPA Decision**

**Did the EPA decision expand the Wind River Reservation?**

**Haven't the courts already determined that Riverton is off the reservation?**

**Isn't Congress supposed to set reservation boundaries?**

**What right did the EPA have to decide the reservation boundary issue?**

**Aren't the courts supposed to interpret the laws?**

**The 1905 Act uses words like "ceded" and "diminished" to characterize the reservation land. What's unclear about that?**

**How did the EPA reach its decision in this case?**

**Is it true that the EPA decided the boundary issue without input from the State?**

**Can an EPA decision involving the Clean Air Act really affect issues like criminal jurisdiction in Riverton?**

## **The Lawsuit**

**What is the lawsuit all about?**

## **Living on the reservation**

**What does living on the reservation mean for individual non-Indians?**

**What does it mean for businesses operating on the reservation?**

**Are there any benefits to non-tribal businesses in Indian County?**

**What does being in Indian Country mean for Native Americans?**

## **Private Property Issues**

**What does it mean if my house is in Indian country; will I still be able to sell it?**

**Will the value of my home/business be affected by this lawsuit?**

**How is the title to my house affected by the EPA decision?**

## **Tax Issues**

**Will I be paying my property taxes to the Tribe now?**

**Will non-Tribal members pay property taxes to the Tribe?**

**Will members of the Tribe have to pay property taxes?**

**Are there tax benefits for non-Indians?**

## **Law Enforcement Issues**

**Will non-Indians fall under the jurisdiction of Tribal law or Tribal police?**

**Who will have criminal law enforcement authority within the Reservation?**

**I am not a member of the Tribe. Do Tribal Police have the right/ability to arrest me?**

**Do State, County, or City officers have the authority to arrest tribal members?**

**Who will I call if I have a problem?**

**I am not a Tribal member. What will happen if there is a problem between a tribal member and me? Who do we call then? Would only reservation police be able to intervene or make an arrest?**

**Are the reservation police my police protection since I now live on the reservation?**

## **Oil and Gas Issues**

**Is it true the Tribes will enact regulations that will end reservation energy production?**

*This document is a product of the Equality State Policy Center as part of its mission to educate Wyoming residents about issues and policy matters that affect the state and its people. See [www.equalitystate.org](http://www.equalitystate.org).*

## **How did we get here?**

### **How did the EPA boundary decision come about?**

The Northern Arapaho and Eastern Shoshone tribes have long asserted that a 1905 Congressional Act that opened roughly 171,000 acres of reservation land, including the town of Riverton, to non-Indian settlers did not extinguish the reservation status of the land. This was a common arrangement in that era. Some people in Riverton and members of the State government have disagreed and consequently exerted jurisdiction over tribal members and property within the 171,000-acre area.

On December 17, 2008, the Northern Arapaho and Eastern Shoshone tribes jointly filed an application with the Environmental Protection Agency (EPA) for “treatment as a state” (TAS) under the Clean Air Act. As part of the process, federal law required the EPA to determine whether the disputed 171,000 acres is reservation land. The EPA considered arguments and comments on this issue from city, county, and state authorities, as well as private parties and industry.

On December 13, 2013, the EPA approved the Tribes’ TAS status. It also issued an 83-page legal analysis concluding that the 171,000-acre area remains part of the reservation. The EPA decision is under appeal to the U.S. Court of Appeals for the 10<sup>th</sup> Judicial District.

### **Exactly what land is involved?**

In 1905, Congress invited non-Indians to settle a large land area including most Wind River Reservation lands north of the Big Wind River and east of the Popo Agie River. Subsequent congressional acts restored most of that land to tribal trust ownership; however, about 171,000 acres, including Riverton and lands stretching northwest toward Ocean Lake, were never restored to tribal ownership.

## **The EPA Decision**

### **Did the EPA decision expand the Wind River Reservation?**

It depends who you ask. The Northern Arapaho and Eastern Shoshone Tribes believe the contested 171,000 acres have always been part of the reservation. The State, the Wyoming congressional delegation, and others, meanwhile, believe Congress in 1905 “disestablished” the land from the Wind River Reservation. The EPA’s analysis of the issue determined that the Tribes’ view is correct — the

171,000 acres, including Riverton, have always been part of the reservation. That question is now before a federal appellate court.

### **Haven't the courts already determined that Riverton is off the reservation?**

No. In fact, a Wyoming Supreme Court case involving water adjudication in the Wind River Basin held that all of the 1905 Act area is within the reservation. Subsequent cases, mostly in the context of criminal prosecutions, have held otherwise. The EPA decision represents the first time a federal agency or court has fully considered this question of federal law.

### **Isn't Congress supposed to set reservation boundaries?**

Yes. In this case, Congress set the Wind River Reservation boundary by treaty and other acts of Congress. Courts and administrative agencies like the EPA must interpret what Congress intended.

### **What right did the EPA have to decide the reservation boundary issue?**

Federal law requires the EPA to identify reservation boundaries as part of the TAS process. In the past, the EPA declined to do so when a TAS application involved a disputed reservation boundary. An important federal court later determined that the law requires the EPA to do just that, however, so in this case, the EPA was just doing its job.

### **Aren't the courts supposed to interpret the laws?**

The judicial branch usually interprets the law. In matters involving a federal administrative agency like the EPA, the agency itself is responsible for interpreting laws applying to that agency. In this case, the EPA drafted its analysis of the reservation boundary dispute just like a court would, applying federal regulations, statutes, and U.S. Supreme Court case law.

### **How did the EPA reach its decision in this case?**

This whole matter unfolded within a specialized area of law called administrative law or agency law. In the context of administrative law, the federal agency must identify the key facts and interpret the law. In this case, the EPA considered arguments from the Tribes, the Wyoming Attorney General, the Fremont County Attorney, the Riverton City Attorney, the Wyoming congressional delegation, and others. The EPA then consulted with the federal government's Indian law experts in the Department of Interior, who concluded that the 1905 Act did not disestablish the disputed lands. Finally, the EPA produced an 83-page legal

decision determining that the disputed lands have always been part of the Wind River Reservation.

**Is it true that the EPA decided the boundary issue without input from the State?**

No. All the interested parties — the Tribes, the State, Fremont County, Riverton, and others — collectively offered arguments on the reservation boundary issue. The EPA considered all the arguments before issuing its decision.

**Can an EPA decision involving the Clean Air Act really affect issues like criminal jurisdiction in Riverton?**

Yes. Reservation boundary questions enter the courts in many ways. For example, they arise in legal disputes over zoning and in criminal cases. Here, the question entered the courts when the State of Wyoming appealed the EPA decision to the U.S. Court of Appeals for the 10<sup>th</sup> Circuit. Ultimately, a ruling by the 10<sup>th</sup> Circuit Court, or perhaps even the U.S. Supreme Court, will likely decide the reservation boundary issue, and will affect issues including criminal jurisdiction and taxation of tribal members in Riverton.

## **The Lawsuit**

**What is the lawsuit all about?**

Initially, after EPA issued its decision, three separate lawsuits were filed in this matter. The State of Wyoming appealed the EPA decision to the U.S. Court of Appeals for the 10<sup>th</sup> Circuit. Devon Energy and the Wyoming Farm Bureau independently asked the same court to review the EPA decision. The court later consolidated the claims into a single suit. The Northern Arapaho and Eastern Shoshone Tribes joined the case.

## **Living on the reservation**

### **What does living on the reservation mean for individual non-Indians?**

If you are not a member of a federally recognized tribe you are unlikely to notice any change in your daily life because of the mandated boundaries of the Wind River Reservation. You will still be subject to all State and local taxes, laws, ordinances and regulations.

Hundreds of non-Indian Wyoming residents now live on private property within the rest of the Wind River Reservation and generally are not subject to tribal authority.

### **What does it mean for businesses operating on the reservation?**

As is the case off the reservation, federal laws generally are applicable to Indian Country, including federal liquor laws. That could mean some tribal interest in the sale of alcohol.

In addition, some environmental permits now issued by the Wyoming Department of Environmental Quality (DEQ) will instead come from the EPA.

### **Are there any benefits to non-tribal businesses in Indian Country?**

Yes. For example, Riverton retailers will see a competitive price advantage over non-reservation communities such as Casper because tribal members do not pay state sales tax in Indian Country.

The State will also save money because tribal and federal authorities will prosecute some crimes involving tribal members. The Tribe also may have access to federal grants for road construction or other infrastructure projects that will benefit both tribal members and non-Indians living in the 171,000-acre area.

### **What does being in Indian Country mean for Native Americans?**

The EPA decision has the greatest impact on members of the Indian tribes who live within the disputed area. The Tribes may assert sovereignty over matters affecting their members and property that Tribal members own within the reservation.

For members of federally recognized tribes, the Tribes will exercise their sovereignty in matters affecting you in terms of law and ordinance enforcement.

Some legal claims will be adjudicated in Tribal Court or federal court. Some business licensing requirements may change.

## **Private Property Issues**

### **What does it mean if my house is in Indian Country; will I still be able to sell it?**

Land ownership is unaffected by the EPA decision. There is no change in status to any piece of property owned by any individual in Indian Country. All property that was privately owned prior to the EPA decision is still privately owned.

### **Will the value of my home/business be affected by this lawsuit?**

There is nothing in this EPA decision that would lead us to assume a resulting impact or effect on land values.

### **How is the title to my house affected by the EPA decision?**

The EPA decision will not have any effect on the title to your home or your ability to sell your property unencumbered. This matter has no impact on the private ownership of property.

## **Tax Issues**

### **Will I pay my property taxes to the Tribe now?**

No. If you live in Riverton or Fremont County and own property, whether you are a Tribal member or not, you will pay your property taxes as before.

### **Will non-Tribal members pay property taxes to the Tribe?**

No. Non-Indians will continue to pay property taxes to the same local unit of government as before.

### **Will members of the Tribe have to pay property taxes?**

This question is complicated and depends upon whether lands known as “allotted lands” remain in trust. The law says that Indian lands “allotted” to Indians under now-defunct federal programs and still owned by tribal members may be subject

to state taxation. However, reservation lands owned by tribal members are generally exempt from state taxation.

**Are there tax benefits for non-Indians?**

Yes. Businesses will qualify for a federal tax credit on up to \$30,000 of salary paid to tribal employees. Businesses will also enjoy quicker depreciation for some assets.

**Law Enforcement Issues**

**Will non-Indians fall under the jurisdiction of Tribal law or Tribal police?**

As before, non-Indians will be governed by local, state, and federal law and rarely if ever subject to tribal law or Tribal Court action.

**Who will have criminal law enforcement authority within the Reservation?**

Indian tribes do not have authority to enforce their criminal laws against non-Indians, and the EPA decision did not change that. Non-Indians will continue to be subject to all local, state, and federal criminal laws. Conversely, state and local governments generally do not have authority to enforce their criminal laws against Indians within a reservation; Indians are instead subject to both tribal and federal criminal laws.

**I am not a member of the Tribe. Do Tribal Police have the right/ability to arrest me?**

Technically, there is no tribal police force. Bureau of Indian Affairs officers are responsible for policing the reservation. As federal officers, the BIA police have authority to detain non-Indians and await transfer to state or local law enforcement.

**Do State, County, or City officers have the authority to arrest tribal members?**

Federal law prohibits local and state authorities from prosecuting crimes by or against Indians on reservation lands. Tribal and federal courts have jurisdiction over those matters.

## **Who will I call if I have a problem?**

Any resident with an emergency should call 9-1-1. When dispatch receives a call for help, operators will dispatch the closest car.

## **I am not a Tribal member. What will happen if there is a problem between a tribal member and me? Who do we call then? Would only reservation police be able to intervene or make an arrest?**

As before, non-Indians will call their local law enforcement office. If you are arrested, you will be taken to the county jail and prosecuted by the city or county prosecutor pursuant to city and state codes.

If a member of a Tribe is arrested and the incident took place within the reservation, either the tribal criminal code or federal law would be used. Tribal members would typically be lodged in the tribal jail and prosecuted in tribal or federal court.

## **Are the reservation police my police protection since I now live on the reservation?**

Public safety is the primary responsibility of all law enforcement agencies. Those living in Riverton will still rely primarily on the Riverton Police Department. Those in the County will rely on the Fremont County Sheriff's Office.

## **Oil and Gas Issues**

### **Is it true the Tribes will enact regulations that will end reservation energy production?**

No. Both Tribes would suffer grievously by ending energy development. The Tribes depend upon revenue generated by oil and gas production to finance Tribal government. It is highly unlikely the Tribes will regulate themselves out of business.

Importantly, the TAS designation did not give the Tribes regulatory authority. The Tribes merely have the ability to monitor air quality on the reservation. They also have the right to notice and comment whenever anyone seeks to permit a major-source polluter within fifty miles of the reservation. An example of a major-source polluter is the sulfuric acid plant near St. Stephen's.

### ***The ESPC's Mission***

*The Equality State Policy Center, a broad-based coalition of Wyoming interests, works through research, public education and advocacy to hold Wyoming state and local governments accountable to the people they represent, and to encourage and assist state residents to participate effectively in public policy decision-making.*