Indian Nations update

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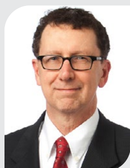

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The information contained herein is based on a summary of legal principles. It is not to be construed as legal advice and does not create an attorney-client relationship. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.

In *Sault Ste. Marie Tribe of Chippewa Indians v. Haaland*, 2022 WL 332819 (6th Cir. 2022), the **Michigan Indian Land Claims Settlement Act** (MILCSA), enacted by Congress in 1997, had established a trust fund for the Sault Ste. Marie Tribe (Tribe) from money judgments awarded under the Act and provided that (i) interest and other investment income from this fund could be used "for consolidation or enhancement of tribal lands," (ii) that "lands acquired using amounts from interest or other income of the [trust fund] shall be held in trust by the Secretary for the benefit of the tribe" and that (iii) "the approval of the Secretary for any payment or distribution from the principal or income of the Self-Sufficiency Fund shall not be required and the Secretary shall have no trust responsibility for the investment, administration, or expenditure of the principal or income of the Self-Sufficiency Fund." The Tribe requested that the U.S. Department of the Interior (Department) take into trust the "Sibley Parcel," which the Tribe intended to use for gaming under the Indian Gaming Regulatory Act (IGRA), several hundred miles from its reservation. The Department refused on the ground that the tribe had not shown how the parcels would enhance the value of its existing landholdings and that parcels cannot be consolidated unless they are contiguous. The Tribe sued in federal court. Two Michigan tribes and several commercial casinos intervened. The district court held that the Department had no authority to deny the application to take land into trust based on its determination that the acquisition of the Sibley Parcel would not enhance the Tribe's lands and held further that the Sibley Parcel would, in fact, enhance the Tribe's reservation lands. The Sixth Circuit reversed: "Interior's interpretation comports with the plain meaning of the Michigan Act because an 'enhancement of tribal lands' does not include an acquisition of lands with no connection to increasing the quality or value of existing tribal lands. We need not define 'enhancement of tribal lands' for all purposes, but we reject the Tribe's argument that 'enhancement' necessarily includes any acquisition of land."

In *Grondal v. United States*, 21 F.4th 1140 (9th Cir. 2021), Evans, the owner of a 5.4% interest in a trust allotment known as MA-8 near the Confederated Tribes of Colville Reservation, obtained the consent of a majority of the other allottee interest holders to a **lease** of MA-8 for 25 years, with an option to renew for an additional 25 years (Master Lease), for purposes of operating a campground. Campground residents organized as the Mill Bay Members Association (Mill Bay). Bureau of Indian Affairs (BIA) approved the lease in 1984. Upon Evans' death in 2003, Wapato Heritage LLC (Wapato) acquired Evans' interest. Evans, Wapato and Mill Bay all believed that Evans had renewed the lease for an additional 25 years by sending a renewal notice to BIA, but BIA informed Wapato in 2009, before the expiration of the initial lease term, that the notice of renewal to BIA was ineffective because the lease required that individual allottees (IA) also be given notice. Mill Bay and Wapato contested the BIA's interpretation in court, but lost. Grondal (Wapato's sublessee under the Master Lease) and Mill Bay filed a new suit seeking a declaratory judgment that would recognize their right to remain on MA-8, naming as defendants

the fractionated owners of MA-8 (IA's, Wapato Heritage, and the Tribe), as well as the BIA. BIA counterclaimed with a suit in trespass. In defense, Wapato and Mill Bay asserted, for the first time, that BIA had no standing to pursue trespass because M-8 had lost its trust status in the early 20th century. In separate decisions, lower courts dismissed the defendants' arguments and granted summary judgment in favor of BIA. The Ninth Circuit affirmed, rejecting the argument of plaintiffs' and sellers' successors-in-interest, that the BIA held no legal title to land as trustee and holding that (1) purchasers were not judicially estopped from arguing that BIA lacked standing as trustee to seek ejectment, (2) landlord-tenant estoppel did not apply to prevent purchasers from arguing that BIA lacked standing, (3) issuance of patents in trust, rather than in fee, for allotments did not deprive BIA of standing, (4) a Presidential executive order extended trust period for allotments, (5) amendments to the Indian Reorganization Act (IRA) further extended trust period for allotments, (6) a previous state court settlement agreement did not bar, under res judicata, BIA from seeking ejectment, and (7) provision of the expired lease that required allottees to honor any sublease or subtenant agreements after the lease terminated 'by cancellation or otherwise' did not apply to memberships.

In *Cross v. Fox*, 2022 WL 127944 (8th Cir. 2022), members of the Three Affiliated Tribes of the Fort Berthold Reservation (TAT) challenged provisions in the Tribe's constitution requiring nonresidents to return to the reservation to vote in tribal elections and prohibiting nonresidents from holding tribal office, asserting that these provisions violated the Voting Rights Act (VRA) and the **Indian Civil Rights Act** (ICRA). The district court dismissed for lack of subject-matter jurisdiction and the Eighth Circuit Court of Appeals affirmed: "We have previously held that a provision of the VRA that applies by its terms to states and political subdivisions did not apply to Indian tribes because Indian tribes are not states or political subdivisions. … we affirm the dismissal on the separate ground that the ICRA does not contain a private right of action to seek injunctive or declaratory relief in federal court, and therefore, the district court lacked subject-matter jurisdiction under 28 U.S.C. § 1331." (Internal quotations and citations omitted.)

In *Ute Indian Tribe of the Uintah and Ouray Reservation v. Lawrence*, 2022 WL 53421 (10th Cir. 2022), Becker had entered into an agreement with the Ute Tribe (Tribe) in 2004 under which Becker would assist the Tribe in developing its mineral resources and the Tribe would pay him 2% of mineral revenues. Becker sued the Tribe in Utah state court in 2014, contending that the Tribe had failed to pay him amounts due under the contract. The presiding Judge Lawrence, denied the Tribe's motion to dismiss. In 2016, the Tribe sued Becker and Judge Lawrence in federal court, challenging the state court's jurisdiction. The federal district court dismissed for lack of jurisdiction but the Tenth Circuit reversed and remanded, holding that the Tribe's claim that federal law precluded state-court jurisdiction over a claim against Indians arising on the reservation presented a federal question. On remand, the district court denied a preliminary injunction, finding that the Tribe was unlikely to succeed on the merits of its claim that the Utah state court lacks jurisdiction, holding that even assuming Becker's claims involved events that occurred on the reservation, 25 U.S.C. § 1322 authorized the state court to exercise jurisdiction. On appeal, the Tenth Circuit reversed, holding that the **state court lacked jurisdiction** that the Tribe's claims arose on the Tribe's reservation: "The Agreement concerned Becker's work marketing and developing tribal mineral assets located exclusively within the reservation; as the district court put it, '[a]t all times relevant to this matter, the Tribe did not acquire or own oil, gas, or mineral interests in lands off of' the reservation. … while Becker may have performed some tasks off tribal land, his actions were always in furtherance of his role managing those resources. This factor overwhelmingly supports the conclusion that Becker's claims arose on the reservation. … To summarize, both parties signed the Agreement on the reservation, and the Tribe necessarily performed its duties there. And crucially, even though Becker performed his duties off the reservation about half of the time, his work was always in service of his role managing tribal mineral resources located on the reservation. For these reasons, we conclude that no 'substantial part' of the conduct supporting Becker's claims occurred off the reservation." The statute cited by the district court judge, 25 U.S.C. § 1322, the Court observed allows for states to assume jurisdiction over Indian country matters only with a Tribe's consent, absent in the case of the Ute Tribe. The Court remanded to the district court with instructions to enter an order permanently enjoining Becker's lawsuit in Utah state court and to resolve the Tribe's pending motion for sanctions.

In *Cavazos v. Haaland*, 2022 WL 94040 (D. D.C. 2022), the Saginaw Chippewa Tribe, based on a tribal court ruling, had **disenrolled** a large number of persons formerly enrolled pursuant to the Judgment Funds Act of 1986 (JFA), which provided funds in settlement of the Tribe's land claims. When the Department of the Interior (DOI) declined to intervene, the disenrollees sued under the Administrative Procedure Act (APA), contending that provisions of

the JFA prohibiting discrimination in connection with access to benefits and services funded by the JFA, barred the disenrollment and required the DOI to intervene. The D.C. District Court remanded the matter to the DOI, holding that while the disenrollments did not constitute discrimination forbidden by the JFA, the DOI erred in construing the JFA's anti-discrimination provisions as only applicable to members: "Because the JFA also bars the Tribe from discriminating against disenrolled members in access to benefits and services funded by the JFA, the Court shall remand the matter to Interior to reconsider whether it should exercise its discretionary authority to intervene in the alleged inequitable provision of such benefits and services."

In *Northwestern Band of the Shoshone v. State of Idaho*, 2022 WL 170034 (D. Idaho 2022), the Shoshone Indians had entered into a **treaty with the United States in 1868**. The Tribe agreed to cede certain territory and settle on designated reservations: "The Indians herein named agree, when the agency house and other buildings shall be constructed on their reservations named, they will make said reservations their permanent home, and they will make no permanent settlement elsewhere; but they shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and so long as peace subsists among the whites and Indians on the borders of the hunting districts." While bands of Shoshone settled on the Fort Hall and Wind River Reservations, the plaintiffs, the Northwestern Band, did not. The Northwestern Band sued for a declaration that they were entitled to exercise hunting rights in the territory ceded under the 1868 Treaty but the court granted summary judgment to the State, holding that the reserved hunting rights were contingent on settling on the designated reservations: "After signing the 1868 Treaty, many members of the Shoshone Nation gathered to the Fort Hall and Wind River Reservations. *Nw. Bands of Shoshone Indians v. United States*, 324 U.S. 335, 345 n. 7, reh'g denied 324 U.S. 890 (1945) (cleaned up). Plaintiff Northwestern Band of the Shoshone Nation ("Northwestern Band"), by its own admission, did not relocate to either reservation. Dkt. 1, at 9. The Northwestern Band adapted to an agrarian way of life and settled in northern Utah, the area in which it still resides today. The Northwestern Band is a distinct sovereign Indian tribe with its own Tribal office and Tribal Code."

In *State v. Bear*, 2022 WL 258205 (Iowa 2022), Congress in 1948 had given the state of Iowa jurisdiction over crimes committed by or against "Indians" on the Meskwaki Settlement. Effective December 11, 2018, Congress took that jurisdiction back. Bear sought dismissal of the state criminal charges for domestic violence brought against him on November 16, 2018. The trial court denied the motion and the Iowa Supreme Court affirmed on the ground that the retrocession of jurisdiction did not affect pending prosecutions.

In *Durst v. Idaho Commission for Reapportionment*, 2022 WL 247798 (Idaho 2022), plaintiffs sued the Idaho Commission on Reapportionment on various grounds, including that Commission Plan proposed following the **2020 census** did not adequately preserve the Shoshone-Bannock and Coeur d'Alene tribes as communities of interest, instead splitting the Shoshone-Bannock tribe into three separate districts and the Coeur d'Alene tribe into two. The Idaho Supreme Court rejected the challenge: "We are unable to raise community interests, such as the Tribes', above the counties' interests, which are protected to a greater degree by the Idaho Constitution. To afford the Tribes the heightened status they seek, an amendment to the state constitution would be required. Likewise, Idaho Code section 72-1506(2) only requires that, '[t]o the maximum extent possible, districts shall preserve traditional neighborhoods and local communities of interest.' I.C. § 72-1506(2). The statute does not elevate a particular type of community of interest above another: cities, neighborhoods, and tribal reservations are all treated the same under the statute."