GODFREY & KAHN S.C.

Indian Nations Law Focus

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Pierson and Clancy to present on solar finance at NAIHC Legal Symposium Dec. 5

By transitioning from reliance on coal-based energy produced by state-regulated utilities to reservation-based renewable energy, tribes enhance their economic independence, promote tribal environmental values and reduce energy costs.

Godfrey & Kahn Indian Nations Practice Group leader Brian Pierson and Energy Strategies Practice Group leader John Clancy will present "Financing the Transition to Cheap Clean Solar Energy" Dec. 5 at the National American Indian Housing Council's Legal Symposium at the Venetian Hotel in Las Vegas. Illustrating with real world, Indian country examples, they will describe how formation of limited liability companies enables tribes and Tribally Designated Housing Entities (TDHEs), otherwise unable to take advantage of tax credits, to obtain financing from investors through the federal renewable energy tax credits and explain the role of interconnection agreements, power purchase agreements, net metering and other issues relating to the economics of renewable energy. For registration information, click here.

Godfrey & Kahn works extensively with tribes on the solar, wind and other renewable energy projects. For more information, contact Brian Pierson at 414.287.9456 or bpierson@gklaw.com.

Selected court decisions

In *Makah Indian Tribe v. Quileute Indian Tribe*, 2017 WL 4767073 (9th Cir. 2017), Washington tribes had ceded lands to the United States through a series of treaties, including the 1855 Treaty of Olympia, negotiated by Governor Stevens (Stevens Treaties), which reserved to the tribes the "**right of taking fish** at all usual and accustomed grounds and stations" (U&A). The United States sued the State of Washington in the federal court for the Western District of Washington in 1970 to establish the continued validity of tribal treaty rights reserved in the Stevens-negotiated treaties. In 1974, Judge Boldt established standards and procedures for determining a tribe's U&A, made U&A determinations for several tribes and reserved jurisdiction to determine subsequent disputes. In the instant case, the Quileute and Quinault tribes sought a determination under the Treaty of Olympia, that the right of taking fish include the right of taking seals and whales. Over the objection of the Makah Tribe, whose whaling rights were explicitly reserved in a different treaty, the district court ruled that it did and determined the tribes' U&A fishing grounds. The Ninth Circuit affirmed the tribes' right to take seals and whales but reversed the district court's territorial fishing determinations based

The Godfrey & Kahn Indian Nations Law Practice Group provides a full range of legal services to Indian nations, tribal housing authorities, tribal corporations and other Indian country entities, with a focus on business and economic development, energy and environmental protection, and housing development.

on longitude lines: "The Makah … advocate for its seemingly limitless rule that the Indian canon is inapplicable whenever another tribe would be disadvantaged. Not surprisingly, the Makah cites authority involving tribes claiming contradictory rights under the same statute or treaty; in those circumstances, the Indian canon is indeterminate because the government owes the same legal obligations to all interested tribes and 'cannot favor one tribe over another.' … Here, by contrast, we are faced with an interpretive choice that would favor the signatory tribes on the one hand and the United States on the other. … That conceptualization of the Indian canon also fits with Judge Boldt's recognition that a tribe may establish U&A in an area 'whether or not other tribes then also fished in the same waters.' … To the extent the Indian canon plays a part in understanding the Treaty, it is appropriate to invoke it here. … Based on the considerable evidence submitted throughout the lengthy trial, the district court's finding that the Quileute and Quinault intended the Treaty's 'right of taking fish' to include whales and seals was neither illogical, implausible, nor contrary to the record. We conclude that the district court properly looked to the tribes' evidence of taking whales and seals to establish the U&A for the Quileute and the Quinault and did not err in its interpretation of the Treaty of Olympia. We do not address or offer commentary on whether the same result would obtain for the 'right of taking fish' in other Stevens Treaties. … The court decided to use longitudinal lines because it had done so in a prior proceeding with respect to the Makah's boundaries. … Although the Quileute and Quinault assert that the longitudinal lines also are appropriate because they are supported by the evidence, the boundaries do not reflect the district court's findings. The Quileute and Quinault cannot vastly expand their U&A determinations without accompanying findings by the district court."

In *Koniag. Inc. v. Kanam*, 2017 WL 4712428, Fed. Appx. (9th Cir. 2017), Koniag and O'Connell, non-members of the Native Village of Karluk, were threatened arising out of their involvement in a merger involving the Karluk Native Corporation. They filed a federal suit against officials of the Karluk Tribal Court to enjoin any proceeding against them in the tribal court. The district court granted the injunction and the Ninth Circuit Affirmed: "It is undisputed that Koniag and O'Connell are not members of the Native Village of Karluk. As for the two *Montana exceptions*, the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq., eliminated all but one Indian reservation in Alaska, the Annette Island Reserve of the Metlakatla Indians. ... That reservation is not at issue here. And, even if the consensual relationship exception applied, Kanam and Mullins have not shown the existence of such a relationship. On its face, the challenged merger involved Karluk Native Corporation, among others. Kanam and Mullins have never explained the relationship between the Karluk Native Corporation and the Native Village of Karluk. In sum, the Karluk Tribal Court does not have jurisdiction over Koniag or O'Connell. … Kanam and Mullins are not entitled to sovereign immunity, as the immunity of the tribe does not extend to its officials. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 59 (1978). Because of the tribal court's obvious lack of jurisdiction, Koniag and O'Connell were not required to exhaust their claims in tribal court."

In *Upper Skagit Indian Tribe v. Suquamish Indian Tribe*, 871 F.3d 844 (9th Cir. 2017), the Upper Skagit Tribe brought a subproceeding in the treaty rights case initiated in 1970 and previously presided over by Judge Boldt (**Boldt Litigation**) to obtain a ruling that the Suquamish Tribe had no right to fish in Samish Bay, Chuckanut Bay, and a portion of Padilla Bay, where the Upper Skagit had its own Court-approved usual and accustomed (U&A) fishing grounds. The district court granted summary judgment to Upper Skagit, finding that it had met its burden of demonstrating that Judge Boldt did not intend to include these areas in Suquamish's usual and accustomed fishing grounds. The Ninth Circuit affirmed: "[W]e find unavailing the Suquamish's attempts to broaden the evidence bearing on Judge Boldt's intent in delineating the Suquamish's U&A determinations. Based on our review of the entire record before Judge Boldt, we agree with the district court that Judge Boldt did not intend to include Chuckanut Bay, Samish Bay, and the portion of Padilla Bay in the Suquamish's U&A determinations."

In *Wyoming v. Zinke*, 871 F.3d 1133 (10th Cir. 2017), the Bureau of Land Management (BLM)

promulgated a regulation governing hydraulic fracturing **(fracking) on lands owned or held in trust** by the United States (Fracking Regulation). Multiple parties, including the Ute Indian Tribe, challenged the proposed regulation on the ground that it was beyond BLM's statutory authority. The Tribe raised an additional objection based on the Indian Mineral statutes. The district court had invalidated the regulation. After the election, BLM began the process of rescinding the Fracking Regulation. The Tenth Circuit dismissed the appeals as prudentially unripe. "As a result, we dismiss these appeals and remand with directions to vacate the district court's opinion and dismiss the action without prejudice" over the dissent of Judge Hartz: "I would affirm the permanent injunction with respect to the Ute Indian Tribe. The Tribe has adequately raised the issues specific to it both in district court and in this court. Yet the other parties have failed to challenge the Tribe's reasoning. I would treat that failure as a waiver and affirm judgment for the Tribe with respect to Indian lands."

In *No Casino in Plymouth v. Zinke*, 2017 WL 4480089 (9th Cir. 2017), No Casino in Plymouth and Citizens Equal Rights Alliance challenged the Department of the Interior's 2012 decision to take certain **lands into trust** for the benefit of the Ione Band of Miwok Indians for gaming purposes. The district court granted summary judgment for the defendants, but the Ninth Circuit vacated and remanded with instructions to dismiss for lack of subject matter jurisdiction based on the plaintiffs' lack of standing to sue on behalf of their members: "For an entity that sues on behalf of its members to establish that it has organizational standing, it must show that '(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to vindicate are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.' … Here, neither Plaintiff has 'set forth' by affidavit or other evidence 'specific facts' to show that any of its members would have had standing to sue in his or her own right at the time the complaint was filed. … The 'undisputed facts' cited by Plaintiffs were not stipulated to by Defendants or sworn to under oath, nor did they comply with 28 U.S.C. § 1746; accordingly, they cannot be considered for purposes of summary judgment. … And the evidence contained in the administrative record, even if it can be considered for other purposes, is not admissible to establish Plaintiffs' standing, because it does not meet the requirements of Federal Rule of Civil Procedure." (internal quotations and citations omitted)

In *County of Amador v. United States Department of the Interior*, 2017 WL 4448127 (9th Cir. 2017), the Department of the Interior (DOI) had in 2012 published a record of decision (ROD) which concluded that the Ione Band of Miwok Indians (Ione Band) and (1) a restored tribe, pursuant to an administrative determination made by the Assistant Secretary – Indian Affairs, in 2006 and (2) had been "under federal jurisdiction" in 1934, as required by the Supreme Court's 2009 *Carcieri* decision and was, therefore, eligible to have **lands acquired for its benefit in trust** under the Indian Reorganization Act. The ROD announced the DOI's intention to take the "Plymouth Parcels" into trust under the "restored lands" exception to the Indian Gaming Regulatory Act' s (IGRA) prohibition against gaming on lands acquired after the enactment of IGRA in 1988. Amador County sued the DOI under the Administrative Procedure Act, challenging both the agency's decision to take the Plymouth Parcels into trust and its conclusion that the land could be used for gaming under the "restored tribe" exception of IGRA. The Ione Band intervened. In 2015, the district court granted summary judgment to the DOI. The Ninth Circuit affirmed: "The phrase 'recognized Indian tribe now under Federal jurisdiction,' when read most naturally, includes all tribes that are currently—that is, at the moment of the relevant decision—'recognized' and that were 'under Federal jurisdiction' at the time the IRA was passed. … We therefore hold that a tribe qualifies to have land taken into trust for its benefit under § 5108 if it (1) was 'under Federal jurisdiction' as of June 18, 1934, and (2) is 'recognized' at the time the decision is made to take land into trust. … In other words, 'under Federal jurisdiction' should be read to limit the set of 'recognized Indian tribes' to those tribes that already had some sort of significant relationship with the federal government as of 1934, even if those tribes were not yet 'recognized.' Such

an interpretation ensures that 'under Federal jurisdiction' and 'recognized' retain independent meaning. … In summary, Interior's reading of the ambiguous phrase 'under Federal jurisdiction' is the best interpretation." The Court also ruled that the Ione Band would be "grandfathered" by virtue of the 2006 determination that it was a restored tribe, notwithstanding 2008 regulations stipulation that restored tribe status must be based on a judicial ruling, act of Congress or determination under the Part 83 procedures.

In *Moody v. United States*, 2017 WL 4564503 (Fed. Cl. 2017), the Moodys entered into five, **five-year farming leases** with the Oglala Sioux Tribe, dealing exclusively with the Bureau of Indian Affairs (BIA). Although the Moodys had delivered a cashier's check to the BIA for amounts due, the BIA canceled their leases for failure to make payments and failure to meet bonding requirements. Moodys sued the BIA in the Court of Federal Claims seeking $1.5 million in damages allegedly caused by the cancellation. The court dismissed on the ground that the Tribe, not the BIA, was the party to the lease: "Thus, although the Secretary is mentioned in the lease, subsequent language clarifies that his or her role is as a fiduciary. The combination, on the one hand, of the language that the Indians and the Moodys are the lessors and lessees respectively with, on the other hand, the language of the Secretary's fiduciary role, leads the Court to the conclusion that the Defendant is not in privity of contract with the Moodys. The Court's conclusion is bolstered by that fact that the regulations explicitly define a lease as a 'written agreement between Indian landowners and a tenant or lessee, whereby the tenant or lessee is granted a right to possession of Indian land, for a specified purpose and duration.' 25 C.F.R. § 162.101. The Court does not consider it significant that individual Indians were not signatories to the lease, as the regulations permit tribes to be lessors. 25 C.F.R. § 162.101. Nor, given the language of the lease discussed above, is it significant that the lease form was provided by the BIA and that the lease was executed at the BIA Pine Ridge Agency."

In *Stockbridge Munsee Community v. State of Wisconsin*, 2017 WL 4857646 (E.D. Wis. 2017), the United States in 1969 had acquired land in trust for the Ho-Chunk Nation (Ho-Chunk) near the community of Wittenberg, Wisconsin, within Shawano County (Wittenberg Parcel), subject to the seller's reversionary interest if Ho-Chunk did not commence construction of housing within five years. No housing construction occurred but the seller formally waived its reversionary interest anyway by quitclaim deed in 1993. Meanwhile, the Stockbridge-Munsee Mohican Tribe (Stockbridge) had opened a casino on its reservation, also located in Shawano County, in 1992. In 2008, Ho-Chunk opened a casino on the Wittenberg Parcel. When Ho-Chunk undertook a major expansion of its Wittenberg casino in 2016, Stockbridge sued the State of Wisconsin and Ho-Chunk, contending that Ho-Chunk had acquired the Wittenberg property in trust after 1988, rendering the property ineligible for gaming under the **Indian Gaming Regulatory Act** (IGRA) and that the Wittenberg facility would violate the provision in Ho-Chunk's gaming compact with Wisconsin that "fifty percent or more of the lot coverage of the trust property upon which the [Wittenberg] facility is located, is used for a Primary Business Purpose other than gaming." The district court dismissed Stockbridge's claims against Ho-Chunk as time-barred, holding that Stockbridge's IGRA-based claims were subject to a state-borrowed six-year limitation and that the "continuing violation" doctrine did not apply: "[I]t is entirely reasonable to expect the Stockbridge-Munsee to have sued the Ho-Chunk over the operation of the Wittenberg casino well before 2014. They have known of the facts supporting each element of their claims since 2008. They could have sued the Ho-Chunk then. Instead, they acquiesced to the Wittenberg casino for nearly a decade until the Ho-Chunk decided to expand."

In *Oneida Nation v. Village of Hobart*, 2017 WL 4773299 (E.D. Wis. 2017), the Oneida Nation (Nation) sued for declaratory and injunctive relief to prevent the Village of Hobart (Village) from asserting jurisdiction over the Nation within the **boundaries of the Nation's reservation** established under treaty in 1838. In response to the suit, the Village challenged the continued existence of the reservation. On the Nation's motion, the court clarified the parties' respective burdens of proof: "Implicit in the Village's response to the Nation's motion is the assumption that the Village has

unquestioned authority to enforce its ordinance within its boundaries on land that is not held in trust by the United States for the benefit of the Nation. … [T]hat is not the law. Unlike *Oneida I*, this is not a case where the Village is seeking to exercise *in rem* jurisdiction over land that is held in fee by the Nation. … In this case, by contrast, the Village seeks to regulate the conduct of the Nation and its members within the boundaries of the Nation's Reservation. Unless the Village is able to show that the Nation's Reservation has been diminished by Congress, *Cabazon* and not *County of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation, ... or City of Sherrill v. Oneida Indian Nation of New York*, …, provides the rules governing the determination of the case. … The Nation carries the burden of proof on the creation of the Oneida Reservation in the Treaty of 1838, 7 Stat. 566, and the applicability of the Indian Reorganization Act … in 1934 to the Nation and its Reservation. … The Village carries the burden of proof that the Oneida Reservation has been diminished or disestablished by an act of Congress or otherwise, and other affirmative defenses it has or may raise in pleadings, specifically including any claimed exceptional circumstances that would allegedly justify the exercise of its jurisdiction over the Nation on the Reservation, notwithstanding the absence of express congressional authorization to do so."

In *Amerind Risk Management Corporation v. Blackfeet Housing*, 2017 WL 4712211 (D.N.M. 2017), Blackfeet Housing sued Amerind Risk Management Corporation, a risk pool comprised of more than 400 tribal entity members, in the Blackfeet Tribal Court after Amerind denied its claim for $1.4 million to remediate mold contamination. Amerind sued in the New Mexico federal court, one of three dispute resolution forums designated in the parties' participation agreement (PA), seeking a declaratory judgment that the **Blackfeet Court, a jurisdiction** that was not designated in the PA, lacked jurisdiction. The court had previously denied Blackfeet Housing's motion to dismiss on jurisdictional and exhaustion grounds. In the instant decision, the court granted summary judgment to Amerind and permanently enjoined tribal court proceedings: "Defendant presents deposition testimony that Plaintiff markets itself as being willing to go into tribal court. But these vague statements by corporate officials cannot act to waive Plaintiff's sovereign immunity. … Consequently, Plaintiff is immune from suit on Defendant's tribal court claims. Defendant's reliance on *Montana*, 450 U.S. 544, to support the exercise of jurisdiction over Plaintiff by the Blackfeet Tribal Courts is unavailing because such jurisdiction must stem from the tribe's inherent sovereign authority. … The Blackfeet Tribe has no inherent authority to subject another sovereign entity to suit in its courts. Plaintiff has demonstrated success on the merits of its claim because, as discussed above, the Blackfeet Tribal Courts lack jurisdiction over Defendant's suit against Plaintiff. Continued litigation in the Blackfeet Tribal Courts or enforcement of the invalid order would be in excess of their jurisdiction and in violation of Plaintiff's sovereign immunity."

In *Allegan, Inc. v. Teva Pharmaceuticals USA*, 2017 WL 4619790 (E.D. Tex. 2017), Teva Pharmaceuticals USA and others had sued Allergan Inc, (Allergan),challenging the validity of Allergan's patent on the drug Restasis. After trial, Allergan moved to add the Saint Regis Mohawk Tribe (Tribe) as a party on the ground that the patent had been transferred to the Tribe. Several of the plaintiffs opposed the joinder of the Tribe on the ground that Allergan and the Tribe intended that the Tribe would assert its **sovereign immunity** to prevent challenges to Allergan's patent and that the Tribe had already done so in connection with inter partes review (IPR) proceedings pending before the Patent and Trademark Office (PTO). The court granted the motion to join the Tribe as a party but questioned whether the assignment of the Allergan patent to the Tribe was valid and opined that, in any event, the court would have continued jurisdiction: "Some provisions of the exclusive license, such as the limitations on Allergan's rights to as particular field of use—specifically, to practice the patents in the United States for all FDA-approved uses—give the Tribe at least nominal rights with regard to the Restasis patents. It is, however, questionable whether those rights have any practical value. There is no doubt that at least with respect to the patent rights that protect Restasis against third-party competitors, Allergan has retained all substantial rights in the patents, and the Tribe enjoys only the right to a revenue stream in the form of royalties. The questions as to

the validity of the assignment and exclusive license transaction and whether the Tribe is an owner of the Restasis patents within the meaning of the Patent Act may be dispositive in the IPR proceedings. But those issues do not bear on this Court's power to hear this case. Regardless of whether Allergan's tactic is successful in terminating the pending IPR proceedings, it is clear that the assignment does not operate as a bar to this Court's continued exercise of its jurisdiction over this matter. This case was brought by Allergan, the Tribe's predecessor in interest, seeking affirmative relief, and thus any possible immunity from suit that might be applicable to avoid litigation brought against the Tribe has no application to this action."

In *Allergan, Inc. and the Saint Regis Mohawk Tribe v. Teva Pharmaceuticals USA*, Case No. 2:15-cv-1455-WCB,__WL__(E.D. Tex. 2017), decided the same day as the decision summarized above, the federal district court invalidated six patents held by the Saint Regis Mohawk Tribe (Tribe) relating to Restasis, a drug manufactured by Allergan Inc. (Allergan) intended to address "dry eye." The patents had been challenged by manufacturers of generic drugs, who challenged the patents on the ground of obviousness. The Court agreed: "In this setting, based on the extensive amount of pertinent prior art and the Court's factual assessment of Allergan's showing of unexpected results, the Court has concluded that Allergan is not entitled to renewed patent rights for Restasis in the form of a second wave of patent protection. The Court therefore holds that while Allergan has proved by a preponderance of the evidence that the defendants have infringed the asserted claims of the Restasis patents, the defendants have proved by clear and convincing evidence that the asserted claims of the Restasis patents are invalid for obviousness."

In *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 2017 WL 4564714 (D.D.C. 2017), the district court had determined that the U.S. Army Corps of Engineers (Corps) violated the **National Environmental Policy Act** (NEPA) when it determined that the 1,200-mile Dakota Access Pipeline would not have a significant environmental impact. At the same time, the court found that the agency had "substantially complied" with the statute. The court remanded to Corps to address the three discrete deficiencies the court had identified in the Corps' analysis. In the instant ruling, the court determined that, during the remand period, the court would not vacate the Corps' environmental assessment, as well as the easement granted to Dakota Access in reliance on that determination: "The propriety of vacatur during remand is determined by a two-prong test that requires the Court to consider (1) the seriousness of the deficiencies in the agency action and (2) the disruptive consequences of vacating that prior approval. As to the first, the Court ultimately concludes that the three errors identified in the prior Opinion are not fundamental or incurable flaws in the Corps' original analysis; rather, the agency has a significant possibility of justifying its prior determinations on remand. Although the Court finds that the equities of disruption do not tip sharply in Defendants' favor on the second factor, prevailing on the first is enough here for them to avoid vacatur."

In *Agua Caliente Band of Cahuilla Indians v. Riverside* County, 2017 WL 4533698 (C.D. Cal. 2017), the Agua Caliente Band of Cahuilla Indians (Tribe) leased thousands of acres of its reservation trust lands in Palm Springs to non-Indians. Riverside County sought to impose its **possessory interest tax** (PIT) on the full cash value of the lessees' interest. The Tribe, citing Section 5 of the Indian Reorganization Act (IRA), federal leasing regulations, 25 C.F.R. § 162.007, the federal preemption doctrine articulated by the U.S. Supreme Court in its 1980 decision in *White Mountain Apache v. Bracker* and the negative effect of the PIT on the Tribe's ability to enforce its own possession interest tax, sued for a declaration that the PIT was invalid. The district court granted the County's motion for summary judgment and denied the Tribe's motion: "The plain language of section 465 unambiguously restricts its tax exemption to those lands or rights that were placed in the United States' name in trust for the Indian's benefit under the IRA or the Act of July 28, 1955—neither of which are at issue here. … Under the Court's balancing analysis thus far, the strong federal interests must nonetheless yield to the state interests that justify the imposition of the PIT on the non-Indian lessees. Given the finite number of essential services that the Tribe provides on the Trust Lands, the fact that the

non-Indian lessees pay the PIT, the lack of evidence that the PIT interferes with tribal governance or economic development, and the minimal effect the PIT has on the Tribe's leasehold marketability and revenue collection, the Court concludes that any adverse effect the PIT has on the Tribe is minimal and insufficient to tip the *Bracker* scale in favor of preemption. … To the extent that the PIT intrudes on the Tribe's economic interests, that interference is too insignificant to compel the conclusion the Tribe seeks, particularly given the proportionally low number of leaseholds that financially support the Tribe here. … Further, as explained in depth above, the tax is intimately connected with services provided to those who pay it—non-Indian lessees—and there is no evidence that it actually impairs Agua Caliente's ability to self-govern."

In *United States v. Abousleman*, 2017 WL 4364145 (D.N.M. 2017), the United States, on its own behalf and on behalf of the Pueblos of Jemez, Santa Ana, and Zia, sued to assert the pueblos' **aboriginal water rights** in the Jemez River. The magistrate judge found that the Pueblos had historically possessed aboriginal rights but that these rights had been extinguished by the Spanish crown and that the pueblos' rights were shared with non-Indian users. The district court adopted the magistrate's conclusion: "Prior to the arrival of the Spanish, the Pueblos were able to increase their use of public waters without restriction. After its arrival, the Spanish crown insisted on its exclusive right and power to determine the rights to public shared waters. Spanish law plainly provided that the waters were to be common to both the Spaniards and the Pueblos, and that the Pueblos did not have the right to expand their use of water if it were to the detriment of others. Although Spain allowed the Pueblos to continue their use of water, and did not take any affirmative act to decrease the amount of water the Pueblos were using, the circumstances cited by the expert for the United States and Pueblos plainly and unambiguously indicate Spain's intent to extinguish the Pueblos' right to increase their use of public waters without restriction and that Spain exercised complete dominion over the determination of the right to use public waters adverse to the Pueblos' pre-Spanish aboriginal right to use water."

In *Chemehuevi Indian Tribe v. Brown*, 2017 WL 2971864 (C.D. Cal. 2017), the Chemehuevi Indian Tribe and the Chicken Ranch Rancheria of MeWuk Indians (Tribes) negotiated gaming compacts with the State of California in 1999, approved by the Department of the Interior, providing that the compacts would terminate in 2022 unless renewed by the parties. In 2016, the Tribes sued, arguing that duration was not a permissible subject of compact negotiation under the **Indian Gaming Regulatory Act** (IGRA) and that the duration provisions should be struck. The district court disagreed and granted the State's motion for summary judgment: "Plaintiffs argue that a fixed termination date is contrary to Congress's intention that the compacting requirement in the IGRA not be used to prevent Indian tribes from conducting gaming on their Indian lands because the duration provision grants the State the power to terminate Class III gaming and, thus, is void and unenforceable. … Although the Court agrees with Plaintiffs' observation that the IGRA does not mention 'duration' in the IGRA as a proper subject for compact negotiations, the Court concludes that the duration, or the length of time Class III gaming activities may occur, is a permissible subject for negotiation because it qualifies as either a 'standard for the operation ... of the gaming facility' under 25 U.S.C. § 2710 (d)(3)(C)(vi) or as 'directly related to the operation of gaming activities' under 25 U.S.C. § 2710 (d)(3)(C)(vii)."

In *People ex rel. Becerra v. Rose*, 2017 WL 4641261 (Cal. App. 2017), Rose, a member of the Alturas Indian Rancheria, ran two smoke shops, Burning Arrow I and Burning Arrow II, located in Indian country but distant from the lands governed by the Alturas Indian Rancheria, where he sold cigarettes to non-Indians without collecting state taxes. The State of California sued to stop the sales and collect civil penalties. Finding that Rose violated the California tobacco directory law and the California Cigarette Fire Safety and Firefighter Protection Act and failed to collect and remit state cigarette excise taxes, the trial court imposed civil penalties of $765,000 under the unfair competition law and granted injunctive relief to the State. Citing the Supreme Court's 1980 decision in *Washington v. Confederated Tribes of Colville*

Indian Reservation, the appellate court affirmed, rejecting Rose's argument that California lacked jurisdiction to enforce California's civil/regulatory laws for his actions in Indian country: "There appear to be no federal statutes or regulations that would preempt California's statutory scheme. And the threat to Indian sovereignty is minimal, especially in a case such as this in which no tribe has expressed an interest in the matter. … While Rose holds an interest in the allotments, there is no tribal sovereignty issue involved in this case. Neither can he specify a federal priority that would allow him to avoid state regulation. Preemption exists to effectuate federal priorities and support tribal sovereignty, not to immunize nonmember Indians. Therefore, Rose stands on the same footing as non-Indians for the purpose of determining whether the State can assert its civil/regulatory authority over him."

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