

AUGUST 2012 – AUGUST 2013
CASE LAW ON AMERICAN INDIANS

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UNITED STATES SUPREME COURT

1. *Adoptive Couple v. Baby Girl*, No. 12–399, 133 S. Ct. 2552 (U.S. June 25, 2013). Prospective adoptive parents filed petition to adopt child. Biological father, a member of an Indian tribe, opposed adoption, and Cherokee Nation intervened. The Family Court denied petition and required prospective adoptive parents to transfer child to father. Prospective adoptive parents appealed. The South Carolina Supreme Court, 398 S.C. 625, 731 S.E. 2d 550, affirmed. Certiorari was granted. The United States Supreme Court held that: (1) Indian Child Welfare Act (ICWA) section conditioning involuntary termination of parental rights for Indian child on a showing regarding merits of continued custody of child by parent does not apply where Indian parent never had custody; (2) ICWA section providing that party seeking to terminate parental rights to Indian child under state law shall satisfy court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent breakup of Indian family and that these efforts have proved unsuccessful does not apply where Indian parent abandoned Indian child prior to birth and child had never been in Indian parent’s legal or physical custody; and (3) ICWA section providing placement preferences for adoption of Indian children does not bar a non-Indian family from adopting an Indian child when no other eligible candidates have sought to adopt the child. Reversed and remanded.

OTHER COURTS

A. ADMINISTRATIVE LAW

2. *Gila River Indian Community v. U.S.*, No. 11-15631, 2012 WL 3945301, 2013 WL 2171652 (9th Cir. Sept. 11, 2012). City and Indian tribe brought actions challenging Department of Interior’s decision to accept property in trust for benefit of another tribe. State legislative and executive branch leaders intervened as parties plaintiff, and other tribe intervened as party defendant. The district court, 776 F. Supp. 2d 977, granted summary judgment for the government, and city and other parties appealed. The appellate court held that: (1) Gila Bend Indian Reservation Lands Replacement Act created a cap only on land held in trust for the tribe, not on total land acquisition by the tribe under the Act; (2) Department of Interior’s interpretation of Act so as to exclude parcel located on a county island fully surrounded by city land from city’s corporate limits was reasonable; and (3) Act was valid exercise of Congress’s power under the Indian Commerce Clause. Affirmed.

3. *Jicarilla Apache Nation v. U.S. Department of the Interior, et al.*, No 10-2052, 2012 WL 4373449 (D.D.C. Sept. 26, 2012). Indian tribe brought action, under the Administrative Procedure Act (APA), against Department of the Interior (DOI), challenging decision of the Interior Board of Land Appeals (IBLA) which determined that DOI had jurisdiction, on review of notice of noncompliance issued against energy company based on its failure to comply with order to perform (OTP) directing company to recalculate royalties due to tribe on oil and gas leases, to consider company’s challenge to substance of the OTP. Company intervened, and all parties filed motions for summary judgment. The court held that DOI’s determination that it had jurisdiction to consider challenge to company’s underlying liability was

entitled to substantial deference. Plaintiff's motion denied and defendants' and intervenor's cross-motions granted.

4. *George v. United States*, No. C 11-06159, 2012 WL 4755038 (N.D. Cal. Oct. 4, 2012). Plaintiff Laura Lee George challenged the denial, by the Assistant Secretary Indian Affairs (AS-IA), of her appeal from a determination, by the Superintendent of the Northern California Agency, Bureau of Indian Affairs, rejecting her application for enrollment in the Hoopa Valley Tribe under the Hoopa-Yurok Settlement Act, 25 U.S.C. § 1300i, *et seq.* George challenged the AS-IA's decision under the Administrative Procedure Act, 5 U.S.C. § 706. Before the Court were the parties' cross-motions for summary judgment. The court granted defendants' motion and denied plaintiff's motion.

5. *Cachil Dehe Band Of Wintun Indians of the Colusa Indian Community v. Salazar, et al.*, No. 12-3021, 2013 WL 417813 (E.D. Cal. Jan. 30, 2013). Before the Court were three Applications for Temporary Restraining Orders and Preliminary Injunctions. The first was filed by Plaintiff Cachil Dehe Band of Wintun Indians of the Colusa Indian Community (Colusa). The second was filed by the United Auburn Indian Community of the Auburn Rancheria (UAIC). The third was filed by Stand Up for California!, Citizens for a Better Way, and Grass Valley Neighbors. The Citizen Plaintiffs also sought a writ of mandamus. Each application sought to prohibit Defendants Kenneth Lee Salazar, Secretary and the U.S. Department of the Interior from accepting a parcel of land into trust for the Enterprise Rancheria of Maidu Indians of California (Enterprise). Enterprise also sought to intervene as a defendant in the lawsuit. At the heart of this litigation are two decisions by Defendants to take a parcel of land near Olivehurst, California into trust for Enterprise (Proposed Site) in order to construct a gaming facility. Pursuant to the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719(b)(1)(A), Defendants were required to proceed through a "two-step determination" before taking land into trust for Enterprise. The § 2718(b)(1)(A) exception permits such an acquisition if the Secretary of the Interior (Secretary) consults with state, local, and nearby tribal officials and determines that the acquisition will be in the best interests of the tribe and not detrimental to the surrounding community. Section 2718(b)(1)(A) requires that the Governor of the state concur in the Secretary's determination. On September 1, 2011, Assistant Secretary of Indian Affairs Echo Hawk signed a Record of Decision (ROD) that the § 2718(b)(1)(A) exception was met with respect to the Proposed Site. Simultaneously, AS-IA Echo Hawk sent a letter to California Governor Brown, requesting his concurrence. Governor Brown concurred by letter dated August 30, 2012 and Defendant Washburn signed another ROD on November 21, 2012 and published it in the Federal Register on December 3, 2012 announcing Defendants' decision to acquire the Proposed Site in trust for Enterprise. Plaintiffs collectively opposed the acquisition of the Proposed Site based on alleged violations of the Indian Gaming Regulatory Act, the National Environmental Policy Act, the Indian Reorganization Act of 1934, the Clean Air Act, and the Administrative Procedure Act. Plaintiffs sought to preserve their challenges by enjoining Defendants' transfer of the Proposed Site into trust so that the merits of their challenges can be considered. Plaintiffs argued that the threat that their suit will be barred by the federal government's sovereign immunity once the Proposed Site is transferred into trust necessitates injunctive relief. Defendants took the position that a 2012 Supreme Court case, *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, made it clear that the QTA does not bar lawsuits like Plaintiffs' and there was therefore no reason to delay the transfer because the transfer would not divest this Court of jurisdiction to review Defendants' actions and

strip title from the government if appropriate. 123 S. Ct. 2199 (2012). The Court denied Plaintiffs' Motions for Temporary Restraining Orders; ordered that Defendants and Enterprise provide a 30-day notice to the Court prior to commencing any activity at the Proposed Site.

6. *Muwekma Ohlone Tribe v. Salazar*, No. 11–5328, 2013 WL 675009 (D.C. Cir. Mar. 1, 2013). Tribe brought action challenging U.S. Department of the Interior's refusal to recognize it as an Indian tribe. The District Court, 813 F. Supp. 2d 170, granted Interior's cross-motion for summary judgment and denied tribe's summary judgment motion, and tribe appealed. The appellate court held that: (1) Department of the Interior did not violate petitioning tribe's equal protection rights or act arbitrarily and capriciously in summarily recognizing other tribes outside the Part 83 process but not doing the same for petitioning tribe; (2) whatever due process interest Indian tribe might have had as a previously-recognized tribe disappeared because that previously-recognized tribe no longer existed; and (3) Interior's final determination denying tribal recognition was not arbitrary and capricious. Affirmed.

7. *Hansen v. Salazar, et al.*, No. C08-0717, 2013 WL 1192607 (W.D. Wash. Mar. 22, 2013). Hansen, as Chairwoman of the Duwamish Tribe, alleged that defendants' denial of plaintiffs' petition for federal acknowledgement as an Indian tribe violated the Administrative Procedure Act and plaintiffs' Constitutional rights. Following the 1978 adoption of the Interior Department's regulations in 25 CFR Part 83, the Department returned the Duwamish Tribe's previously-filed petition for acknowledgement. The Duwamish submitted a documented petition in 1987 and a revised petition in 1989. In 1994 the Department promulgated revised acknowledgement regulations. The Duwamish elected to have its petition evaluated under the 1978 regulations. On the last day of the Clinton administration, the Acting Assistant Secretary for Indian Affairs, Michael Andersen, revised a proposed final determination to approve the Duwamish petition under both the 1978 and 1994 regulations. However, that determination was not published in the Federal Register and in 2001 the new Assistant Secretary made a final determination declining to acknowledge the Duwamish and considering the Duwamish petition only under the 1978 regulations. However, in a similar context, the Assistant Secretary made a final determination in favor of recognition of the Chinook Indian Tribe, considering the tribe's petition under both the 1978 and 1994 regulations. The Department offered no reasons for the different treatment of the two petitions. Of the 15 petitioners the Department has declined to acknowledge since the 1994 regulations were adopted, the Duwamish are the only group whose petition was not considered under those regulations. Plaintiffs' Motion for Summary Judgment is granted; the Department's final determination is vacated and the matter is remanded to the Department.

8. *Villa v. Salazar*, No. 12–1086, 2013 WL 1245759 (D.D.C. Mar. 28, 2013). Under the Administrative Procedure Act, Nicolas Villa, Jr., challenged the decision of the Bureau of Indian Affairs to acquire in trust a parcel of land in Amador County, California, for Indian gaming purposes. Chief Villa alleged that Interior should not have acquired the land and should not have recognized the Ione Band of Miwok Indians as a "restored tribe" under the Indian Gaming Regulatory Act (IGRA) because that group is unconnected to the tribe led by Chief Villa, called the Ione Band of Miwok Indians of California. Interior moved to transfer the case to the United States District Court for the Eastern District of California. For the following reasons, transfer will be granted. According to Chief Villa, the Ione Band of Miwok Indians applied to Interior in 2004 for an "opinion as to whether the Plymouth Tracts," a 228-acre parcel

of land in Amador County, “would qualify for gaming if [Interior] agreed to acquire the lands in trust for its benefit” under the Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701-21. In 2006, an Associate Solicitor for Indian Affairs determined that the Plymouth Tracts would qualify as “restored lands” under IGRA. Chief Villa contended that the Ione Band of Miwok Indians has not achieved the formal acknowledgement necessary to qualify as a “restored” tribe under IGRA and its regulations promulgated in 2008. Chief Villa asserts that in 2009 Interior “reverse[d] and withdr[ew]” the 2006 Solicitor’s opinion, concluding instead that the Ione Band of Miwok Indians is “not a restored tribe.” Notwithstanding this disavowal, Interior approved the acquisition in trust of the Plymouth Tracts in May 2012, relying on the 2006 ruling and determining that “the group purporting to be the Ione Band of Miwok Indians [is] eligible to conduct gaming operations there on the basis of IGRA’s restored lands exception.” Interior filed a Motion to Transfer Venue to the United States District Court for the Eastern District of California, relying in large part on the fact that two similar cases are pending in that court. The Court found that the “consideration[s] of convenience and fairness” in this case weigh in favor of transfer to the Eastern District of California under 28 U.S.C. § 1404(a) and granted Interior’s Motion to Transfer.

9. *St. Germain, et al. v. U.S. Dep’t of the Interior, et al.*, No. 13–945, 2013 WL 3148332 (W.D. Wash. June 19, 2013). This matter was before the court on Plaintiffs’ motion for a temporary restraining order. Plaintiffs Rudy St. Germain and Michelle Roberts are members of the federally-recognized Nooksack Indian Tribe of Washington (the “Tribe”). They are also members of the Tribe’s eight-person Tribal Council. Plaintiffs are also among approximately 300 Nooksack members whom the Tribe may soon strip of their Nooksack membership, or “disenroll.” On March 1, the Council passed Resolution No. 13–38, which commenced proceedings to amend the Tribe’s Constitution to remove a clause that grants membership in the Tribe to “[a]ny person who possesses at least one-fourth (1/4) degree Indian blood and who can prove Nooksack ancestry to any degree.” According to Plaintiffs, the disenrollment proceedings and constitutional amendment, if successful, would not only strip them (and 300 others) of Nooksack membership, it would eliminate the only provision of the Tribe’s Constitution that would give them an alternative basis to claim membership in the Tribe. The Tribe’s Constitution requires amendments to be approved “in an election called for that purpose by the Secretary of the [Department of] the Interior” Plaintiffs want to court to enjoin Defendants from “conducting the Secretarial Election set for June 21” Plaintiffs advanced two substantive claims in support of their motion: that the Secretarial election violates the Reorganization Act, and that it violates the Administrative Procedures Act. The court found that Plaintiffs did not show a likelihood of success on the merits of their claims, or even serious questions going to the merits. Particularly where a post-election challenge remains available, the public interest does not favor Plaintiffs. The court denied Plaintiffs’ motion for a temporary restraining order.

10. *Board of Commissioners of Cherokee County, Kansas v. Jewell, et al.*, No. 08–317, 2013 WL 3828661 (D.D.C. July 25, 2013). In 2008, the Quapaw Tribe of Oklahoma opened the Downstream Casino Resort, a large complex that straddles the borders of Kansas, Missouri, and Oklahoma. The actual casino is situated on a plot of land, the Meh–No–Bah allotment, acquired by the Secretary of the Interior and the tribe by means of the Indian Land Consolidation Act. The Meh–No–Bah allotment dates from 1895. In 2007, the Secretary purchased four of the five undivided interests in the Meh–No–Bah allotment. She did not perform any environmental review of the acquisition. The tribe purchased the remaining one-sixth interest. In 2008, the Downstream Casino Resort opened on the forty-acre plot allotted to Meh–No–Bah more than a hundred years before. It has been in continuous operation ever since. The Board of Commissioners of Cherokee County, Kansas, where another portion of the casino complex is located, filed suit several months before the casino opened to invalidate the Secretary’s land acquisition and to force the National Indian Gaming Commission to determine whether the Indian Gaming Regulatory Act permits the Quapaw to operate a casino on the land in question. The Board of Commissioners alleged, first, that the Secretary violated the Indian Gaming Regulatory Act by failing to determine whether the Meh–No–Bah allotment was eligible for gaming before acquiring it, and that the National Indian Gaming Commission was obligated to make that determination before allowing the casino to open. The Board also alleged that the Secretary failed to comply with the National Environmental Policy Act, the land into-trust regulations and her own internal policies when she acquired the fractional interests in the Meh–No–Bah allotment. The court concluded that the NIGC is not required to issue a determination as to the gaming eligibility of the Meh–No–Bah allotment, and that the Board of Commissioners has not established its standing to challenge the Secretary’s decision to take that land into trust, because it has not shown a substantial probability that a judgment in its favor would redress its injuries.

11. *Fort Belknap Housing Dep’t, et al. v. Office of Public and Indian Housing*, No. 12–70221, 2013 WL 4017285 (9th Cir. Aug. 8, 2013). (From the Opinion.) This case involves a federal rent-subsidy program for Indian Tribes and Tribally Designated Housing Entities (“TDHE”) that lease housing to Indians. The program provides per-unit payments while the Tribe or TDHE is leasing housing units to Indians, with a view that each unit eventually be conveyed to the Indian lessees. When the Tribe or TDHE conveys a unit, or a unit becomes eligible to be conveyed, unless such a conveyance is impractical, the Tribe should no longer receive rent subsidy money for the unit. Here, the Fort Belknap Housing Department (“Fort Belknap”), a TDHE which received funds through the program, claimed and received rent subsidy payments for units that were no longer leased, but had been conveyed, and for units that were eligible to be conveyed. There were no circumstances which made the conveyance of such units impractical. After investigation, the Department of Housing and Urban Development (“HUD”) demanded the return of the overpayments it had made. Fort Belknap petitions this court for review of HUD’s decision to withhold the amount of overpayments from future program payments. Fort Belknap argues this court has jurisdiction pursuant to 25 U.S.C. § 4161(d). On the merits, it claims HUD’s actions in procuring repayment of the overpayments were “arbitrary and capricious” and based on a misinterpretation of various regulations. Section 4161(d), however, allows an appeal only when HUD takes action pursuant to § 4161(a). Because HUD has taken no action pursuant to § 4161(a), we lack jurisdiction to entertain this appeal and dismiss Fort Belknap’s petition without reaching the merits.

B. CHILD WELFARE LAW AND ICWA

12. *In re Christian P.*, No. B236528, 2012 WL 2990034 (Cal. Ct. App. July 23, 2012). County Department of Children And Family Services (DCFS) filed dependency petition. The superior court sustained jurisdictional allegations. Mother appealed. The appellate court held that: (1) attorney for DCFS was not required to petition for access to files in other children's dependency case; (2) hearsay allegations against mother were adequately corroborated; (3) evidence supported finding that mother's use of methamphetamines rendered her incapable of caring for children; but (4) DCFS failed to give adequate ICWA notice. Reversed and remanded with directions.

13. *In re H.R.*, No. A134137, 2012 WL 3568325 (Cal. Ct. App. Aug. 20, 2012). Dependency proceeding was commenced regarding Indian child. The Superior Court selected traditional state law adoption as the permanent plan and terminated parental rights, and Indian tribe appealed. The appellate court held that: (1) tribal customary adoption order did not necessarily preclude trial court from selecting a different permanent plan, and (2) tribal customary adoption was preferred as child's permanent plan. Reversed and remanded.

14. *In re A.W.*, J060417; 10136J; J010086; 10137J; A149947, 2012 WL 3594662 (Or. Ct. App. Aug. 22, 2012). Mother and father appealed from a combined dispositional and permanency judgment of the Circuit Court changing the permanency plan of two children, one being an "Indian child" under the Indian Child Welfare Act (ICWA), from reunification to adoption. The appellate court held that: (1) evidence established that the Department of Human Services (DHS) made active efforts to reunify Indian child with mother; (2) evidence established that DHS made reasonable efforts to reunify second child with mother; but (3) evidence failed to establish that DHS made active efforts to reunify Indian child with father. Affirmed in part, reversed in part, and remanded.

15. *In re Anthony T.*, No. D061309, 146 Cal. Rptr. 3d 124 (Cal. Ct. App. Aug. 22, 2012). County health and human services agency filed dependency petition. Father's tribe intervened. The Superior Court, No. NJ14540, placed child in foster care with an Indian family. Mother and child appealed. The appellate court held that foster home placement was not "within reasonable proximity to" child's home under Indian Child Welfare Act (ICWA). Reversed.

16. *In re Interest of Zylena R. and Adrionna R., children under 18 years of age, State of Nebraska, appellee and cross-appellee, v. Elise M., appellant, and Omaha Tribe of Nebraska, intervenor-appellee and cross-appellant*, Nos. S-11-659, S-11-660, 284 Neb. 834 (Neb. Dec. 14, 2012). State filed petitions to terminate the parental rights of mother and father to their purportedly Indian children. Indian tribe intervened and sought transfer of proceedings to Tribal Court. The Juvenile Court denied transfer. Mother and tribe appealed. The appellate court, 2012 WL 1020275, affirmed. Mother and tribe petitioned for further review. The Supreme Court held that: (1) foster placement and termination of parental rights proceedings involving an Indian child are separate and distinct under the Indian Child Welfare Act and should not be conflated in determining whether a "proceeding" is at an "advanced stage" such as to warrant denial of transfer of proceeding from state court to tribal court; abrogating, *In re Interest of Louis S. et al.*, 17 Neb. App. 867, 774 N.W. 2d 416, *In re Interest of Leslie S. et al.*, 17 Neb. App. 828, 770 N.W. 2d 678; (2) termination of parental rights proceedings were not at

an “advanced stage,” such as would warrant denial of transfer; and (3) state court is not permitted to consider best interests of an Indian child in deciding whether there is good cause to deny motion to transfer child custody proceeding to tribal court; overruling, *In re Interest of C.W. et al.*, 239 Neb. 817, 479 N.W. 2d 105. Reversed and remanded with directions to sustain the motions to transfer the cases to the Omaha Tribal Court.

17. *State, ex rel., Children, Youth and Families Dept. v. Marsalee P.*, No. 31,784, 302 P.3d 761 (N.M. Ct. App. Apr. 9, 2013). Children, Youth and Families Department filed a neglect/abuse petition against mother. The District Court terminated mother’s parental rights, and she appealed. The appellate court held that: (1) children were not “members” of Navajo Nation, and as such, the children were not “Indian children” who were subject to Indian Child Welfare Act (ICWA); (2) Department failed to fulfill its statutory obligation under Abuse and Neglect Act to pursue enrollment on behalf of the children; and (3) district court erred by terminating mother’s parental rights before it ensured that Department had fully complied with section of Abuse and Neglect Act. Reversed.

18. *In re K.T., a Minor*, No. 3–12–0969, 2013 IL App (3d) 120969 (Ill. App. Ct. June 7, 2013). State filed juvenile petition alleging that child, who was a member of Indian tribe, was neglected. Mother moved for continuance to allow tribe to enter case. The Circuit Court denied motion and proceeded to dispositional phase, naming child as ward of court and finding that child should remain in custody of Department of Children and Family Services (DCFS). Mother appealed. The appellate court held that notice provided to Indian tribe was insufficient under Indian Child Welfare Act. Reversed and remanded.

19. *In re Guardianship of K.B.F.*, No. 43922, 2013 WL 2606570 (Wash. Ct. App. June 11, 2013). Following adjudication of child as dependent, child’s maternal grandparents filed guardianship petition. The Superior Court granted petition, and father appealed. As matter of first impression, the Court of Appeals, held that: (1) juvenile court lacked authority to convert dependency proceeding to one for guardianship, absent showing as to which reunification services were actually court-ordered, and not just offered to father, and (2) Department of Social and Health Services was required to continue to make reasonable efforts towards child’s reunification with father, despite decision to convert dependency proceeding to one for guardianship, until guardianship was actually established. Vacated and remanded.

20. *Native Village of Tununak v. State of Alaska, et al.*, No. S–14562, 303 P.3d 431 (Alaska June 21, 2013). After mother’s parental rights to Indian child were terminated, maternal grandmother and tribe sought to enforce the Indian Child Welfare Act’s (ICWA) placement preferences and child’s foster parents petitioned for adoption. The Superior Court granted foster parents’ petition for adoption. Tribe appealed. The Supreme Court held that: (1) statute that required placement with family member unless there was clear and convincing evidence to deviate from that placement preference did not apply to adoptive placement determinations, and (2) the ICWA required the clear and convincing standard of proof for departing from ICWA adoptive placement preferences. Reversed and remanded.

21. *In re S.E.*, Case No. B244326, 217 Cal. App. 4th 610, (Cal. Ct. App. June 26, 2013). County department of children and family services (DCFS) filed dependency petition. The Superior Court sustained jurisdictional allegations, denied reunification services, ordered that child be placed under legal guardianship with maternal grandparents, and terminated jurisdiction over the case. Parents appealed. The appellate court held that: (1) DCFS was required to include child's great-great-grandfather in Indian Child Welfare Act (ICWA) notice, and (2) failing to investigate father's alleged Indian heritage was prejudicial under ICWA. Reversed and remanded.

22. *Adoptive Couple v. Baby Girl*, No. 2011–205166, 2013 WL 3752641 (S.C. July 17, 2013). Prospective adoptive parents filed petition to adopt child. Biological father, a member of an Indian tribe, opposed adoption, and Cherokee Nation intervened. The Family Court denied petition and required prospective adoptive parents to transfer child to father. Prospective adoptive parents appealed. The South Carolina Supreme Court, 398 S.C. 625, 731 S.E. 2d 550, affirmed. Certiorari was granted. The United States Supreme Court, 133 S. Ct. 2552, reversed and remanded. On remand, the South Carolina Supreme Court held that: (1) Indian Child Welfare Act's (ICWA) placement preferences did not apply, and (2) father's consent to adoption was not required. Remanded.

23. *Adoptive Couple v. Baby Girl, et al.*, No. 2011–205166, 2013 WL 3820596 (S.C. July 24, 2013). Prospective adoptive parents filed petition to adopt child. Biological father, a member of an Indian tribe, opposed adoption, and Cherokee Nation intervened. The Family Court denied petition and required prospective adoptive parents to transfer child to father. Prospective adoptive parents appealed. The South Carolina Supreme Court, 398 S.C. 625, 731 S.E. 2d 550, affirmed. Certiorari was granted. The United States Supreme Court, 133 S. Ct. 2552, reversed and remanded. On remand, the South Carolina Supreme Court remanded, __ S.E. 2d __, 2013 WL 3752641, directing entry of order finalizing adoption and termination biological father's parental rights. Biological father and Cherokee Nation filed petitions for rehearing, and biological father filed petition for supersedeas in which Cherokee Nation joined. The Supreme Court held that remand for entry of order finalizing adoption and terminating biological father's parental rights was appropriate. Petitions denied.

C. CONTRACTING

24. *Yakama Nation Housing Authority v. United States*, No. 08–939C, 106 Fed. Cl. 689 (Fed. Cl. Sept. 25, 2012). Indian nation's housing authority brought action against United States, alleging that Department of Housing and Urban Development (HUD) improperly reduced Indian Housing Block Grants that authority received under Native American Housing and Self–Determination Act (NAHASDA) over course of several years and seeking to account for and recover purportedly withheld grant funds. The Court of Federal Claims, 102 Fed. Cl. 478, granted in part and denied in part government's motion to dismiss. Authority moved to vacate, alter, or amend that order. The Court of Federal Claims held that authority stated separate claim for relief under NAHASDA section regarding remedies for non–compliance. Motion granted.

25. *Twenty-Nine Palms Enterprises Corporation v. Paul Bardos*, No. E051769, 2012 WL 5458870 (Cal. Ct. App. Oct. 11, 2012). Tribal project owner brought action against sole proprietor contractor and its owner, seeking to recover money on grounds that contractor was unlicensed and alleging unfair competition. The Superior Court, No. 908132, entered summary judgment for tribal project owner, and owner appealed. The appellate court held that: (1) contractor could not assert defense that licensing statute was not enforceable in contract made with tribal entity for work done on tribal land; (2) court abused its discretion in making blanket ruling sustaining all objections to contractor's declaration; (3) fact that owner was the responsible managing officer of a corporation with a contractor license did not allow owner to perform work under sole proprietorship's name without an individual license; (4) alter ego and piercing the corporate veil doctrines did not apply to allow sole proprietorship to borrow corporation's license; (5) sole proprietorship did not substantially comply with state contractor's licensing statutes; and (6) conflict in evidence regarding estoppel was created solely by defendants and did not show a genuine issue of material fact. Affirmed.

26. *Muscogee (Creek) Nation Division Of Housing v. U.S. Department Of Housing And Urban Development, et al.*, No. 11-7040, 698 F.3d 1276 (10th Cir. Oct. 30, 2012). Indian tribe brought action against Department of Housing and Urban Development (HUD) under Administrative Procedure Act, challenging limitation of investment of grant money awarded under the Native American Housing Assistance and Self-Determination Act to a period of no longer than two years. The district court, 819 F. Supp. 2d 1225, granted HUD's motion to dismiss. Tribe appealed. The appellate court held that: (1) HUD did not exceed its statutory authority by promulgating requirement that investments of block grant funds not exceed two years in length; (2) court had subject matter jurisdiction to consider whether HUD was authorized to demand remittance of interest earned in violation of that requirement; and (3) HUD's demand for remittance was consistent with federal law. Affirmed.

27. *Arctic Slope Native Association, LTD. v. Sebelius*, No. 2011-1485, 699 F.3d 1289 (Fed. Cir. Nov. 9, 2012). Indian Self-Determination and Education Assistance Act contractor appealed from a decision of the Civilian Board of Contract Appeals, 2011 WL 2570533, dismissing its breach-of-contract claim under the Contract Disputes Act as time-barred. The appellate court held that equitable tolling of statutory time limit for contractor's breach-of-contract claim under the Contract Disputes Act was warranted. Reversed and remanded.

28. *Leisnoi, Inc. v. Merdes & Merdes, P.C.*, No. S-13790, 2013 WL 386373 (Alaska Feb. 1, 2013). Law firm filed motion for a writ of execution to enforce judgment against Alaska Native corporation. Alaska Native corporation moved for relief from the judgment. The Superior Court granted law firm's motion to execute and denied Alaska Native corporation's motion for relief from judgment. Alaska Native corporation appealed. The Supreme Court held that: (1) as a matter of first impression, Alaska Native corporation did not waive its right to appeal trial court orders as a result of paying judgment for law firm after writ of execution was issued; (2) arbitration award for law firm violated provision in Alaska Native Claims Settlement Act (ANCSA) prohibiting ANCSA attorney fee contingency contracts; (3) entry of judgment on arbitration award violated the ANCSA; (4) issuance of writ of execution violated the ANCSA; (5) Alaska Native corporation could recover sums paid to law firm after issuance of writ of execution; but (6) illegal judgment was not void; and (7) Alaska Native corporation could not recover fees paid to law firm prior to the issuance of the writ of execution on the ground that the

judgment was released or discharged. Reversed in part and affirmed in part. *See also* 969 P.2d 1139, 545 F.3d 1161.

29. *Grand Canyon Skywalk Development, LLC v. ‘Sa’ Nyu Wa, Inc.*, No. 12-08183, 2013 WL 525490 (D. Ariz. Feb. 11, 2013). Petitioner Grand Canyon Skywalk Development, LLC (GCSD) filed an application for confirmation of an arbitration award. Respondent ‘Sa’ Nyu Wa, Inc. (SNW) filed a response and a motion to vacate the arbitration award and dismiss the matter. GCSD is a limited liability company with its principal place of business in Las Vegas, Nevada. SNW is a tribally chartered corporation of the Hualapai Tribe with its principal place of business in Arizona. On December 31, 2003, the parties entered into a Development and Management Agreement (2003 Agreement) for the construction and operation of a glass viewing bridge (Skywalk) and related facilities at the south rim of the Grand Canyon on the Hualapai Indian Reservation. The 2003 Agreement provides that “[a]ny controversy, claim or dispute arising out of or related to this Agreement shall be resolved through binding arbitration” pursuant to the rules of the American Arbitration Association. After the Skywalk opened to visitors in March of 2007, controversies arose between GCSD and SNW over such things as completion of infrastructure, bookkeeping, and payment of management fees. The arbitration proceeded with SNW’s participation until the Hualapai Tribal Council passed a declaration of taking by eminent domain of GCSD’s interests in the 2003 Agreement and the Tribe took physical possession of the Skywalk. The Tribe then submitted a declaration of taking to the Hualapai Tribal Court and requested that the court issue an order declaring that absolute title in GCSD’s contractual interests had vested in the tribe, subject to just compensation estimated to be about \$11,040,000. The Tribe also requested a temporary restraining order to prevent GCSD from destroying or removing any property from the Skywalk, which the Tribal Court granted. The Tribe then filed a notice of dismissal in the arbitration action, attempting to dismiss GCSD counsel and GCSD’s arbitration claims on the grounds that the taking had substituted the Tribe in the place of GCSD for all purposes under the 2003 Agreement. The arbitrator ruled that the parties to the arbitration remained the same and that the Tribe was a non-party and therefore without authority to dismiss the arbitration. The arbitrator ordered arbitration to proceed with a final hearing scheduled for April 2012. The court granted Petitioner Grand Canyon Skywalk Development, LLC’s application for confirmation of an arbitration award; denied Respondent ‘Sa’ Nyu Wa, Inc.’s motion to vacate the arbitration award and dismiss the matter; and ordered Respondent ‘Sa’ Nyu Wa, Inc. to remit damages in the amount of \$28,572,810.25 to Grand Canyon Skywalk Development, LLC, as set forth in the August 16, 2012 Arbitration Order.

30. *Lac Vieux Desert Band Of Lake Superior Chippewa Indians Holdings Mexico, LLC., et al. v. Cardona, et al.*, No. 1-11-0128, 2013 WL 1641316 (Ariz. Ct. App. Apr. 16, 2013). Plaintiffs–Appellants Lac Vieux Desert Band of Lake Superior Chippewa Indians and Lac Vieux Desert Band of Lake Superior Chippewa Indians Holdings Mexico (collectively “Tribe”) appealed the trial court’s dismissal of their Second Amended Complaint for insufficient service of process. In 2006, the Tribe loaned \$6.5 million dollars to defendants in exchange for a 26% share in the building and running of a casino venture in Guadalupe, Mexico. Among other claims, the Tribe asserted that defendants failed to comply with the partnership agreement, failed to pay contractually obligated profits and converted funds. As part of the transaction, the parties made a Master Term Sheet and ultimately signed a Security Agreement, a Depository Agreement and a Pledge Agreement. The Master Term Sheet states the “Security and

Depository Agreements shall be under the jurisdiction and laws of the State of Arizona, United States,” but also states the parties will submit all disputes to binding and final arbitration in Mexico. The Security Agreement says the “Mexican Counterparts,” a term defined as the defendants other than Juan Cardona, consent to “the jurisdiction of the courts of the State of Arizona” and agree “any action or claim arising out of, or any dispute in connection with, this Agreement . . . may be brought in the Courts of Arizona” and that service of process in any action may be made upon them by certified mail or international courier at a Nuevo Leon, Mexico address listed in the Security Agreement. The procedural history of this matter is complex. The Tribe raised four issues on appeal: (1) It was error for the trial court to sua sponte dismiss the suit in its entirety, as Guadalupe Recreation Holding was not a party to the insufficient service motion, was properly served and therefore remained a defendant in the suit. (2) It was error to find the Hague Convention applied to service within the United States. (3) It was error for the trial court to determine that service was insufficient on foreign defendants’ domestic counsel given that service was court-ordered as “other means” service under Rule 4.2(i)(3) on domestic counsel. The Tribe asserts such service was valid and effective even if Attorney Davis was not an authorized agent. (4) It was error to dismiss the suit instead of permitting appellants to attempt re-service as there is no time deadline for foreign service. The appellate court reversed and remanded as to defendant Guadalupe Recreation Holding. As to all other defendants, it affirmed.

31. *Quantum Entertainment, Ltd. v. Department of the Interior*, No. 12-5133, 2013 WL 1799002 (D.C. Cir. Apr. 30, 2013). Quantum, which was engaged in the business of managing gas distribution businesses in New Mexico, entered into an agreement with a tribal corporation of the Santo Domingo Pueblo in 1996. Under the agreement, Quantum provided day to day operation of the business, maintained records and books of account, and exercised nearly exclusive control. The parties also covenanted not to have any interest in any other gas distribution businesses within New Mexico (with one exception). Quantum received an annual management fee of 49% of net income and a fee based on each gallon of fuel sold. In 2003, the Pueblo determined that the agreement had never been approved and was too lucrative for Quantum. The Bureau of Indian Affairs Regional Director declared the agreement never to have been legally valid under old 25 U.S.C. § 81. The Interior Board of Indian Appeals (IBIA) agreed and concluded that applying new § 81 to the agreement would have an impermissible retroactive effect of “rendering valid an otherwise invalid contract.” *Applying Landgraf v. USI Film Products*, 511 U.S. 244 (1994), the Court of Appeals affirmed. The Court also agreed that the IBIA’s decision treating the Pueblo and its corporation together as a single party was not arbitrary or capricious.

32. *Sue/Perior Concrete & Paving, Inc. v. Lewiston Golf Course Corp., et al.*, 968 N.Y.S. 2d 271 (N.Y. App. Div. June 14, 2013). Concrete and paving contractor brought action against, inter alia, corporation that was formed under laws of Seneca Nation of Indians, asserting causes of action for foreclosure of mechanic’s lien, breach of contract, breach of implied covenant of good faith and fair dealing, quantum meruit, promissory estoppel, and fraud, in relation to contract to build golf course with associated driving range, club house, and pro shop. The Supreme Court denied corporation’s motion to dismiss on sovereign immunity grounds. Corporation appealed. The Supreme Court, Appellate Division held that: (1) corporation was not arm of tribe, and thus was not entitled to share tribe’s immunity from

suit, and (2) contractor's breach of implied covenant of good faith and fair dealing was duplicative of its breach of contract claim. Affirmed as modified.

D. EMPLOYMENT

33. *Gilbertson v. Quinault Indian Nation*, No. 11–35970, 2012 WL 3877627 (9th Cir. Sept. 7, 2012). Plaintiffs filed Title VII action against Indian tribe. The district court entered judgment on pleadings in tribe's favor, and plaintiffs appealed. The appellate court held that: (1) statement in employee handbook did not constitute waiver of Indian tribe's sovereign immunity, and (2) tribe's limited waiver of sovereign immunity for suits in tribal court did not constitute waiver of such immunity for all purposes. Affirmed.

34. *Rivera v. Puyallup Tribe Of Indians, et al.*, No. 3:12–05558, 2012 WL 4023350 (W.D. Wash. Sept. 12, 2012). This matter was before the Court on Defendants' Motion to Dismiss under Fed.R.Civ.P. 12(b)(1) for lack of jurisdiction. Plaintiff Michelle Rivera presented claims arising from her termination as Director of the Tribal Council Office. Defendants Puyallup Tribe of Indians and the individual Tribal Council Members argued that there is no federal question jurisdiction, and they have sovereign immunity in federal court. Rivera argued that federal jurisdiction is appropriate because no other forum is available. Rivera alleged that Council members participated in a long-standing pattern of abuse and belligerent behavior against her, culminating in the passage of a Tribal Resolution that reorganized her office and terminated her employment. Rivera, a Tribe member, filed suit in Puyallup Tribal Court. After all three Tribal Court judges recused themselves, Rivera filed suit in federal court. A judge pro tempore has since been appointed to hear the case in Tribal Court. The court granted Defendants' Motion to Dismiss for Lack of Jurisdiction and dismissed Plaintiff's claims with prejudice.

35. *Sanderford v. Creek Casino Montgomery*, No. 2:12–455, 2013 WL 131432 (M.D. Ala. Jan. 10, 2013). Plaintiff Pamela Sanderford brought suit against her employer, Defendant Creek Casino of Montgomery, after she was injured on the job. Defendant moved to dismiss on the basis of tribal sovereign immunity. The court found that it lacks subject matter jurisdiction over Plaintiff's complaint because the Poarch Band of Creek Indians (Tribe) enjoys tribal sovereign immunity. As a threshold issue, Defendant Creek Casino is indistinguishable from the Tribe for the purposes of tribal sovereign immunity. The Tribe is a federally recognized Indian tribe and enjoys sovereign immunity absent Congressional abrogation or waiver. Defendant is a gaming operation wholly owned and operated by the Tribe. Poarch Band of Cr. Ind. Code § 20–1–1(d). It exists to fund and support, among other things, the Tribe's "operations or programs," the "general welfare of the Tribe and its members," and "economic development." Poarch Band of Cr. Ind. Code § 20–1–1(c). Accordingly, the court will treat the Tribe and the Casino as one and the same for immunity purposes. The motion to dismiss was granted.

36. *Mastro v. Seminole Tribe of Florida d/b/a Seminole Indian Casiono—Immokalee*, No. 2:12-cv-411, 2013 WL 3350567 (M.D. Fla. July 2, 2013). This matter was before the Court on the Motion of Seminole Tribe of Florida to Dismiss for Lack of Subject Matter Jurisdiction and for Failure to State a Claim for Relief and Memorandum of Supporting Points and Authorities (“Motion to Dismiss”). For the reasons set forth below, Defendant’s Motion to Dismiss is granted. Defendant, Seminole Tribe of Florida (“Tribe”) is a federally recognized Native American tribe doing business as Seminole Indian Casino (“Casino”). Plaintiff, Stephanie Mastro (“Mastro”) was hired by the Casino on or about November 2008 as a card dealer. The Casino is wholly owned and operated by the Tribe on restricted tribal trust land in reservation status within the geographical confines of Collier County, Florida. Mastro accused Defendant of sexual harassment and retaliation under Title VII of the Civil Rights Act of 1964 and the Florida Civil Rights Act of 1992 (“FCRA”). Defendant moved to dismiss, arguing that tribal sovereign immunity prohibits the District Court from exercising jurisdiction over Plaintiff’s claims. Plaintiff responded that under Title VII, Defendant is not cloaked with immunity, the Casino is a separate and distinct entity not subject to tribal immunity, and that even if sovereign immunity applies, Defendant has unequivocally waived its right to invoke its protections. The Court concludes that Defendant had not waived its sovereign immunity. The court (1) granted the Motion of Seminole Tribe of Florida to Dismiss for Lack of Subject Matter Jurisdiction and for Failure to State a Claim for Relief; and (2) dismissed the case without prejudice.

E. ENVIRONMENTAL REGULATIONS

37. *Native Village Of Kivalina, et al. v. Exxonmobil Corp., et al.*, No. 09-17490, 696 F.3d 849 (9th Cir. Sept. 21, 2012). Alaskan city located on tip of barrier reef and native Alaskan tribe, members of which resided in city, brought action for damages under federal common-law claim of public nuisance, and dependent civil conspiracy claim, against multiple oil, energy, and utility companies, alleging that companies’ massive greenhouse gas emissions had resulted in global warming which in turn severely eroded land upon which city was situated. The district court, 663 F. Supp. 2d 863, granted companies’ motions to dismiss for lack of subject matter jurisdiction. Plaintiffs appealed. The appellate court held that Clean Air Act and agency action authorized thereunder displaced federal common law, precluding claim for public nuisance. Affirmed.

38. *Voices For Rural Living v. El Dorado Irrigation District, Shingle Springs Band of Miwok Indians, Real Party in Interest and Appellant*, No. C064280, 209 Cal. App. 4th 1096 (Cal. Ct. App. Oct. 04, 2012). Objector petitioned for writ of mandate challenging irrigation district’s determination that its agreement to provide water to a casino located on tribal land was exempt from California Environmental Quality Act. The Superior Court granted petition. Objector and tribe appealed. The appellate court held that: (1) fair argument standard of review applies to “unusual circumstances” exception to categorical exemptions; (2) project to provide water service to casino and hotel involved “unusual circumstances”; (3) there was a fair argument that providing water service could have significant effect on environment; but (4) ordering district to prepare environmental impact report exceeded trial court’s authority;

but (5) district could not disregard allegedly unconstitutional local agency formation commission restrictions. Affirmed in part and reversed in part with directions.

39. *Friends Of The Everglades, et al. v. United States Environmental Protection Agency*, Nos. 08–13652, 08–13653, 08–13657, 08–14921 and 08–16283, 699 F.3d 1280 (11th Cir. Oct. 26, 2012). Environmental advocacy organizations, nine states, Canadian province, and Indian tribe petitioned for review of final rule issued by Environmental Protection Agency, 40 CFR Part 122, creating permanent exemption from Clean Water Act (CWA) permit requirements for pollutants discharged from transfers of waters of United States. Judicial Panel on Multidistrict Litigation consolidated petitions, and state water management district and sugar company intervened to defend water-transfer rule. The appellate court held that: (1) CWA jurisdictional provision governing effluent or other limitations did not apply; (2) CWA jurisdictional provision governing issuance or denial of permits did not apply; and (3) hypothetical jurisdiction could not be exercised. Petitions dismissed.

40. *Seminole Tribe of Florida v. Hendry County, Florida, et al*, No. 2D12–1657, 2013 WL 238231 (Fla. Dist. Ct. App. Jan. 23, 2013). Indian tribe filed petition for writ of certiorari, seeking to quash county ordinance that rezoned land from general agriculture to planned unit development (PUD) for purpose of constructing natural gas power plant and solar energy farm. The Circuit Court denied petition. Tribe sought second-tier certiorari review. The District Court of Appeal held that: (1) statute providing exclusive methods for party to challenge consistency of development order with comprehensive plan precluded tribe from raising in certiorari petition its claim that ordinance was inconsistent with comprehensive plan; (2) Circuit Court afforded procedural due process and applied correct law as to issues of compatibility of ordinance’s approved uses with adjacent Indian reservation; (3) limited scope of second-tier certiorari review precluded District Court of Appeal from deciding tribe’s claim that Circuit Court improperly reweighed the evidence regarding compatible uses; (4) local development code (LDC) did not require that water needs for proposed PUD be entirely self-contained; and (5) Circuit Court afforded procedural due process and applied correct law as to Indian tribe’s claim that ordinance violated LDC’s termination section. Petition denied.

41. *Center For Biological Diversity, et al. v. Salazar, et al.*, No. 11–17843, 2013 WL 440727 (9th Cir. Feb. 4, 2013). Environmental organizations and Indian tribe brought action against Secretary of the Interior, and the Bureau of Land Management (BLM), alleging that defendants violated the National Environmental Policy Act, the Federal Land Policy and Management Act, and BLM regulations, by permitting mining company to restart mining operations at a uranium mine site, after a seventeen-year hiatus, under a plan of operations that BLM approved. The District Court, 791 F. Supp. 2d 687, and 2011 WL 4709874, granted two summary judgments in favor of defendants, and plaintiffs appealed. The appellate court held that: (1) approval of a new plan of operations was not required before regular mining activities could recommence; (2) issuance of a gravel permit to county, and requirements that mining company obtain a new air quality control permit, and approval of an updated reclamation bond before restarting mining operations did not require supplementation of prior environmental analysis; and (3) invocation of categorical exclusion from environmental impact statement requirement for issuance of gravel permit was not arbitrary and capricious or otherwise not in accordance with law. Affirmed.

42. *Quechan Tribe of the Fort Yuma Indian Reservation v. U.S. Department of the Interior, et al.*, No. 12-1167, 2013 WL 755606 (S.D. Cal. Feb. 27, 2013). Plaintiff filed a complaint against Federal Defendants challenging the U.S. Department of the Interior's approval of the May 11, 2012 Record of Decision approving the Ocotillo Wind Energy Facility Project, a utility-scale wind power project in the Sonoran Desert in Imperial County, California. Plaintiff filed a first amended complaint which added causes of action concerning events subsequent to the Record of Decision. Plaintiff filed a motion for summary judgment. The Court denied Plaintiff's motion for summary judgment; granted Federal Defendants' motion for summary judgment; and granted Defendant Intervenor's motion to dismiss and for summary judgment.

F. FISHERIES, WATER, FERC, BOR

43. *United States v. Washington*, No. 70-9213, Subproceeding 11-02, 2012 WL 4846239 (W.D. Wash. Oct. 11, 2012). This matter was before the Court for consideration of the motion for summary judgment filed by the Requesting Tribes, namely the Jamestown S'Klallam, Lower Elwha Klallam, and Port Gamble S'Klallam Tribes. They requested that the Court grant summary judgment on the issues presented in their Request for Determination filed November 8, 2011. The Request for Determination asked the Court to find that the actions of the Lummi Nation in fishing in the "case area" is not in conformity with Final Decision # 1. The Lummi Nation opposed the motion. The court granted the motion.

44. *Ahtna Tene Nené v. Alaska Department Of Fish & Game, et al.* Nos. S-13968, S-14297, 288 P.3d 452 (Alaska Nov. 9, 2012). Resident brought action against state, challenging amended system of distributing permits to subsistence hunters in a caribou and moose hunting area. Tribe intervened on the side of the State, and a private organization intervened on the side of the resident. The Superior Court entered summary judgment in favor of resident and enjoined the hunt as unconstitutional, and awarded attorney fees to resident and organization. Tribe appealed. The Supreme Court held that: (1) appeal from summary judgment was moot; (2) public interest exception to mootness doctrine did not apply; (3) issue of attorney fees did not warrant Supreme Court to consider merits of otherwise moot appeal; and (4) resident was not an attorney and, thus, could not recover attorney fees. Appeal dismissed, and attorney fees award partially vacated.

45. *In re. Yakima River Drainage Basin*, No. 86211-7, 2013 WL 865457 (Wash. Mar. 7, 2013). Department of Ecology filed an action seeking a general adjudication of the surface water in the Yakima River Basin. The Superior Court entered order determining the parties' water rights to creek that was part of basin. Parties appealed. The appellate court transferred appeal to the Supreme Court. The Supreme Court held that: (1) decision in action brought by United States as trustee for Indian tribe in *United States v. Ahtanum Irrigation District* adjudicated the nontribal water rights of northside users; (2) federal court case did not preclusively determine the reservation's practicably irrigable acreage; (3) trial court erred in denying the Indian reservation a right to store water from creek bordering reservation outside the irrigation season; (4) rights in excess water from creek could not be exercised by parties that were not confirmed a right in federal litigation; and (5) future development exception did

not apply so as to give property owners water rights to creek after rights were relinquished by statute. Affirmed in part, reversed in part, and remanded.

46. *United States v. Washington*, No. 70-9213, Subproceeding 01-01, 2013 WL 1334391 (W.D. Wash. Mar. 29, 2013). Plaintiff tribes asked the Court to find that the State of Washington has a treaty-based duty to preserve fish runs and sought to compel the State to repair or replace culverts that impede salmon migration to or from spawning grounds. In 2007, the Court ruled in favor of the tribes and declared that “the right of taking fish, secured to the tribes in the Stevens Treaties, imposes a duty upon the State to refrain or building or operating culverts under State-maintained roads that hinder fish passage and thereby diminish the number of fish that would otherwise be available for tribal harvest.” In 2009, the Court held a trial on remedies. The Court found that 1,000 to 3,000 miles of freshwater spawning and rearing habitat is blocked by barrier culverts. Given the rate of replacement since trial, it would take the State more than 100 years to replace the significantly blocking culverts that existed in 2009. The number of barrier culverts with significant potential habitat in the Northwest and Olympic regions had increased since trial. The blocking culverts are responsible for a demonstrable portion of the diminishment of salmon runs. The Court issued a Permanent Injunction requiring the State Department of Transportation to provide fish passage at identified culverts by 2030. Other State agency culverts shall be repaired by 2016.

47. *Western Montana Water Users Association, et al. v. Mission Irrigation District, et al.*, No. 13-0154, 2013 WL 1428631 (Mont. Apr. 9, 2013). Water users brought action against irrigation districts seeking to enjoin irrigation districts from entering into a water use agreement with Indian Tribes without submitting the final agreement to a vote of irrigators and receiving court permission. The district court issued a writ of mandate and injunction enjoining irrigation districts from entering into the water use agreement. Irrigation districts appealed. The Supreme Court held that: (1) district court improperly issued a mandate and injunction on the basis that the terms of the water use agreement exceeded the districts’ authority, as none of the parties made any arguments regarding the issue of the districts’ authority, and (2) statutes did not require the districts to obtain member and court approval before entering into the water use agreement with Indian Tribes. Reversed.

48. *Native Village of Chickaloon, et al. v. National Marine Fisheries Service, et al.*, No. 3:12-cv-00102, 2013 WL 2319341, (D. Alaska May 28, 2013). Village and environmental council brought action challenging National Marine Fisheries Service’s (NMFS) issuance of “Incidental Harassment Authorization” that allowed corporation to conduct seismic surveys in inlet designated as critical habitat for certain marine mammals, including the endangered Cook Inlet beluga whale, and alleging violation of Marine Mammal Protection Act (MMPA), Endangered Species Act (ESA), and National Environmental Policy Act (NEPA). Plaintiffs moved for summary judgment. The district court held that: (1) determination that seismic surveys would only take small numbers of beluga whales was not arbitrary and capricious; (2) beluga whale take calculations were arbitrary and capricious; (3) NMFS’s use of a take threshold of 160 decibels for harassment for beluga whales in inlet was reasonable, supported by the record, and entitled to deference; (4) determination in biological opinion that significant disruption to behavior patterns would not occur to any beluga whales during seismic surveys was not arbitrary and capricious; and (5) NMFS relied on inaccurate assumptions with respect to

takes when determining whether environmental impact statement (EIS) was required under NEPA. Motion granted in part and denied in part.

49. *People of the State of New York v. Smith*, No. 13–CV–0428, 2013 WL 3305381 (E.D. N.Y. June 28, 2013). State charged member of Shinnecock tribe with misdemeanor possession of undersized bay scallops. After removal, state moved to remand. The district court held that: (1) state’s prosecution of tribal member for misdemeanor possession of undersized bay scallops did not implicate federal statute providing for racial equality, and (2) tribal member failed to establish that he was denied opportunity to enforce federal civil rights in state court. Motion granted.

50. *John, et al. v. U.S.*, Nos. 09–36122, 09–36125, 09–36127, 2013 WL 3357880, __ F.3d __ (9th Cir. July 5, 2013). State of Alaska and various environmental organizations brought action challenging rules promulgated by the Secretary of the Interior and the Secretary of Agriculture identifying which navigable waters within Alaska constituted “public lands” under Alaska National Interest Lands Conservation Act (ANILCA), and thus entitled to a priority given to rural Alaska residents for subsistence hunting and fishing on such lands. The district court upheld the rules, and plaintiffs appealed. The appellate court held that: (1) Secretaries appropriately used notice-and-comment rulemaking, rather than adjudication, to identify those waters that were “public lands” for the purpose of determining the scope of ANILCA’s rural subsistence priority; (2) Secretaries reasonably concluded that adjacent waters were appurtenant to, and could be necessary to fulfill the primary purposes of, the federal reservations identified in the 1999 rule; (3) Secretaries did not act arbitrarily or contrary to law in refusing to extend the federal rural subsistence priority to waters upstream and downstream from federal reservations. Affirmed.

51. *United States v. Washington*, No. 9213, 2013 WL 3421838 (W.D. Wash. July 8, 2013). This matter was initiated by the filing of a Request for Determination by the Makah Indian Tribe, asking for a determination of the Usual and Accustomed Fishing Grounds (“U & A”) in the Pacific Ocean of the Quinault Indian Nation (“Quinault”) and the Quileute Indian Tribe (“Quileute”). It was before the Court for consideration of a motion by the Makah for partial summary judgment. The motion was opposed by the Quinault and the Quileute, as well as the Hoh Indian Tribe as an Interested Party. The State of Washington, also an Interested party under the procedures established in this case, also filed a response to the motion. For the reasons set forth below, the Makah motion shall be substantially granted. The Request for Determination (“RFD”) asserted that the Quinault and Quileute have been fishing (along with Makah and other Tribes) for salmon, halibut, groundfish, and highly migratory species of fish in the Pacific Ocean under regulations promulgated by the Secretary of Commerce, acting through the National Marine Fisheries Service (“NMFS”). The Makah have been fishing for Pacific whiting in the offshore coast waters since 1996, under allocations or set-asides determined by NMFS. Beginning in 2008, the Quileute and Quinault informed NMFS that they intended to also participate in the Pacific whiting fishery. In response to this information, NMFS began the process to determine the “overall Indian treaty allocation in the Pacific whiting fishery.” Because the whiting migrate from south to north, any fishing for this species by the Quinault or Quileute in the offshore waters south of the Makah U & A would have an impact on the Makah whiting fishery. The Makah sought to engage the Quinault and Quileute in management planning discussions for the whiting fishery in 2008 and 2009 but the two tribes declined to

participate. Makah then informed Quinault and Quileute that “the manner in which they proposed to participate in the pacific whiting fishery” would “trigger the need for a judicial determination” of their U&A’s in the Pacific Ocean. According to the Makah, the western (offshore) boundary of the other tribes’ U&A’s “appears to be approximately 5 to 10 miles offshore” If that is the case, asserted Makah, then the Quinault and Quileute have been conducting fisheries for salmon, halibut and black cod outside their U&A’s. The court granted the Makah motion for partial summary judgment, except as regarding whether Judge Boldt “specifically determined” the extent of the Quinault and Quileute U&A’s in Final Decision # 1. The Court directed the parties to again confer prior to further proceedings.

52. *United States v. Washington, et al.*, No. 70–9213, Subproceeding No. 05–04, 2013 WL 3897783 (W.D. Wash, July 29, 2013). This matter was before the Court for consideration of three pending motions for summary judgment, partial summary judgment, and declaratory judgment. The Tulalip filed a motion for declaratory judgment, which is essentially a motion for summary judgment on the merits of their Request for Determination. The Suquamish Tribe, as responding party, filed a motion for summary judgment as to its affirmative defenses. The extent of the usual and accustomed fishing grounds (“U&A”) of the Suquamish Tribe was described in 1978 by the Honorable George Boldt as follows: “The usual and accustomed fishing places of the Suquamish Tribe include the marine waters of Puget Sound from the northern tip of Vashon Island to the Fraser River including Haro and Rosario Straits, the streams draining into the western side of this portion of Puget Sound and also Hood Canal.” This Request for Determination, filed as Subproceeding 05–04 by the Tulalip, asks the Court to find that certain inland marine waters on the east side of Admiralty Inlet but west of Whidbey Island, as well as Saratoga Passage, Penn Cove, Holmes Harbor, Possession Sound (south to Point Wells), Port Susan, Tulalip Bay, and Port Gardner, do not lie within the Suquamish U&A as it was defined by Judge Boldt. The court: (1) Denied the Suquamish motion for summary judgment of dismissal of the Tulalip Request for Determination on grounds of judicial estoppel, res judicata and/or laches; (2) Dismissed the Suquamish Counter–Request for Determination for failure to properly invoke the Court’s jurisdiction under Paragraph 25 of the Permanent Injunction; (3) Granted the Swinomish motion for partial summary judgment, and found that Saratoga Passage, Penn Cove, and Holmes Harbor are not included within the U&A of the Suquamish as described by Judge Boldt in April, 1975; and (4) Granted in part and denied in part the Tulalip motion for summary judgment and declaratory judgment. The motion was granted as to Skagit Bay, Saratoga passage and its bays Penn Cove and Holmes Harbor, and as to Port Susan. The Court found upon review of the evidence that was before Judge Boldt that there was none presented that would have led him to include these waters within the Suquamish U&A. The motion was denied as to Possession Sound, Port Gardner Bay, and the bays on the west side of Whidbey Island, specifically Admiralty Bay, Mutiny Bay, Useless Bay, and Cultus Bay. The Court found that there was reliable evidence before Judge Boldt from which he could find, and most likely did find, that the Suquamish fished these areas in treaty times.

G. GAMING.

53. *State of Michigan and Little Traverse Bay Bands of Odawa Indians v. Bay Mills Indian Community*, No. 11–1413, 2012 WL 3326596 (6th Cir. Aug. 15, 2012). State of Michigan and Indian tribe filed action to prevent other Indian tribe from operating small casino on its property. The district court entered preliminary injunction to stop defendant from gaming. Defendant appealed. The appellate court held that: (1) proximity of two properties, along with likelihood that at least some gaming revenue from defendant's casino otherwise would have gone to plaintiff tribe through its casino, was enough to show injury in fact; (2) federal courts lacked jurisdiction to adjudicate claim under Regulatory Act, alleging that defendant Indian tribe's casino violated Tribal–State compact, to extent that claim had been based on allegation that defendant's casino was not on Indian lands; (3) federal courts lacked jurisdiction to adjudicate claim under Regulatory Act, alleging that defendant Indian tribe's casino violated Tribal–State compact, to extent that claim was based on allegation that defendant's property had not been acquired by Secretary of Interior in trust for benefit of defendant; (4) common law claims brought by State of Michigan against Indian tribe to prevent it from operating small casino, which depended on whether casino was located on Indian lands, arose under federal law, as required for federal question subject matter jurisdiction; (5) defendant was immune from suit on common law claims brought by State of Michigan to prevent tribe from operating small casino, which depended on whether casino was located on Indian lands, unless Congress had authorized suit or tribe waived its immunity; (6) provision of Regulatory Act that supplied federal jurisdiction and abrogated tribal immunity did not abrogate Indian tribe's sovereign immunity over claims that did not satisfy all textual prerequisites of Act; (7) inferential logic that federal statute governing gambling in Indian country abrogated sovereign immunity of Indian tribes with regard to gaming not conducted under approved Tribal–State gaming compact was not sufficient to abrogate tribe's sovereign immunity with regard to such gaming; and (8) tribal gaming ordinance waiving immunity only for tribal commission did not result waiver of Indian tribe's immunity. Vacated and remanded.

54. *New Gaming Systems, Inc. v. National Indian Gaming Commission, et al.*, No. CIV–08–0698, 2012 WL 4052546 (W.D. Okla. Sept. 13, 2012). Gaming machine lessor brought action against National Indian Gaming Commission (NIGC), its chairman and vice chairman, the Sac and Fox Indian Nation, and Nation's business enterprise, seeking judicial review of NIGC's final decision under Administrative Procedure Act, that machine lease and promissory act constituted a management contract under Indian Gaming Regulatory Act (IGRA). The court held that: (1) IGRA implementing regulation was not void for vagueness; (2) NIGC's construction of IGRA in issuing implementing regulation was not contrary to clear congressional intent; (3) lessor was not entitled to a hearing prior to NIGC's final decision; and (4) machine lease and promissory note constituted a "management contract" for the operation of a gaming facility within the meaning of IGRA. Affirmed.

55. *City Of Duluth v. Fond Du Lac Band Of Lake Superior Chippewa*, Nos. 11–3883, 11-3884, 2013 WL 141725 (8th Cir. Jan. 14, 2013). City sued band of Native American tribe, alleging breach of contractual obligations created when city and band agreed to establish casino in city's downtown, and also seeking declaratory and injunctive relief. After it was compelled to arbitrate amount of withheld taxes owed to city, tribe moved for relief from final order. The District Court, 830 F. Supp. 2d 712, granted in part and denied in part band's

motion for relief, and band appealed. The appellate court held that: (1) city's only avenue for challenging National Indian Gaming Commission's (NIGC) determination, that agreement between band and city violated "sole proprietary interest" provision of Indian Gaming Regulatory Act (IGRA), was under the Administrative Procedure Act; (2) NIGC's determination that agreement violated IGRA permitted court to grant prospective relief from future enforcement of the agreement; and (3) rule providing relief from a final judgment for any reason justifying relief permitted retroactive relief from decision requiring that band pay withheld taxes. Affirmed in part, and reversed and remanded in part.

56. *Outsource Services Management, LLC v. Nooksack Business Corporation*, No. 67050–6, 2013 WL 149876 (Wash. Ct. App. Jan. 14, 2013). This was a breach of contract action by Outsource Services Management, LLC against Nooksack Business Corporation (NBC), a tribal corporation of the Nooksack Indian Tribe. The Whatcom County Superior Court denied NBC's omnibus motion to dismiss based on CR 12(b)(1), (2), and (6). Because NBC expressly waived its sovereign immunity in this action on contract, the appellate court held that the superior court had subject matter jurisdiction of the case. Moreover, the loan and other agreements between the parties were not "management contracts," which are void and unenforceable under the provisions of the Indian Gaming Regulatory Act. Accordingly, the appellate court found that the superior court has personal jurisdiction over NBC. The appellate court affirmed the amended order denying the omnibus motion to dismiss.

57. *Colombe v. Rosebud Sioux Tribe, et al.*, No. 11-3002, 2013 WL 211275 (D.S.D. Jan. 18, 2013). Plaintiff Charles Colombe, a shareholder, director, and officer of BBC Entertainment, Inc. (BBC) filed a Complaint against Defendants Rosebud Sioux Tribe (Tribe), Rosebud Sioux Tribal Court, and Judge Sherman Marshall (collectively "Defendants"). Both parties filed motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. Colombe's motion for summary judgment sought a ruling that the Supreme Court of the Rosebud Sioux Tribe lacked jurisdiction to determine that the oral modification of a casino management contract was invalid. Colombe contended that summary judgment is proper because the Tribe sued in Rosebud Sioux Tribal Court based on the Indian Gaming Regulatory Act (IGRA) and IGRA does not create a private cause of action. Colombe requested this Court vacate the Tribal Court judgment for lack of jurisdiction and prevent action to satisfy the Tribal Court judgment. Defendants opposed Colombe's motion for summary judgment and filed their own motion for summary judgment on Colombe's Complaint. Defendants argued that the Tribal Court had jurisdiction to determine whether an oral modification to a management contract required approval by the National Indian Gaming Commission and to declare an unapproved modification contract void. The Court denied Colombe's Motion for Summary Judgment and granted Defendants' Motion for Summary Judgment.

58. *City Of Duluth v. Fond Du Lac Band Of Lake Superior Chippewa*, No. 12-1324, 2013 WL 1500884 (Minn. Ct. App. Apr. 15, 2013). Appellant, the City of Duluth, challenged the dismissal of its breach-of-contract claim against respondent, the Fond du Lac Band of Lake Superior Chippewa, arguing that the district court erred by determining that (1) it did not have jurisdiction over the claim because the band had only waived immunity with respect to claims asserted in federal court and (2) the city's claims were not ripe because the contract at issue had not yet been breached. This appeal arose out of the legally complex relationship between the city and the band in relation to the Fond du Luth Casino in downtown Duluth. The

casino was created as a result of several agreements reached between the city and band in 1986 (the 1986 agreements). The agreement included a limited waiver of the band's tribal sovereign immunity, consenting to jurisdiction in Minnesota state or federal court: In 1994, in response to a determination by the National Indian Gaming Commission (NIGC) that the 1986 commission agreement violated the Indian Gaming Regulatory Act (IGRA), the city and band negotiated a new set of agreements (the 1994 agreements). Under the 1994 agreements, the band subleased the casino property back from the commission, and the commission assigned rent payments—calculated as a percentage of casino profits plus one dollar—to the city. The NIGC approved the 1994 agreements as consistent with IGRA, and the federal district court entered a consent decree. The 1994 agreements included two provisions relevant here: a limited waiver of sovereign immunity and a dormancy clause. In the waiver, section 9 of what the district court refers to as the umbrella agreement, the band consented to jurisdiction only in federal district court in Minnesota. In December 2011, the city became aware that the band had purchased and sought to put in trust a parcel of land near the casino. The city brought a breach-of-contract claim in state district court. The city moved for temporary injunctive relief; the band opposed the motion, arguing that the district court lacked jurisdiction under the 1994 waiver of sovereign immunity and, alternatively, that the band had not breached the agreement and thus that the controversy was not ripe. As part of determining the appropriateness of injunctive relief, the district court will be required to make findings regarding the city's likelihood of success on the merits. The district court's decision dismissing the case reflects its plain-language interpretation of the commission agreement's definition of "Indian Country" to preclude the city's claim. But we conclude that, when read in the context of the entire agreement, the "Indian Country" definition is ambiguous. Accordingly, on remand, the district court should consider all available evidence of the parties' intent and may, in its discretion, reopen the record to consider more recent developments that may bear on intent. Reversed and remanded.

59. *Tulalip Tribes of Washington v. Washington*, No. C12–688, 2013 WL 2253668 (W.D. Wash. May 22, 2013). (From the opinion.) "This matter comes before the court on plaintiff the Tulalip Tribes of Washington's motion for summary judgment and defendants' cross-motion for summary judgment. Plaintiff seeks a declaration that the State is in violation of the Tribal–State Compact, and an injunction requiring the State to execute an amendment with plaintiff incorporating Tulalip's proposed amendment. Defendant argues that Rule 19 requires dismissal, and that even if the case could proceed without joinder of other tribes, the plain language of the compact does not authorize the requested amendment. Having reviewed the memoranda, supporting documents, and the record herein, the court DENIES plaintiff's motion for summary judgment, and GRANTS defendants' cross motion for summary judgment."

60. *The Picayune Rancheria Of Chukchansi Indians v. Rabobank, et al.*, No. 1:13–cv–00609, 2013 WL 2434705 (E.D. Cal. June 4, 2013). ORDER DENYING REQUEST FOR TEMPORARY RESTRAINING ORDER. This case is an offshoot of an ongoing dispute between two factions within the Picayune Rancheria of Chukchansi Indians (the "Tribe"), a federally recognized Indian Tribe. Among other things, the Tribe, through the Chukchansi Economic Development Authority ("CEDA"), operates the Chukchansi Gold Resort and Casino, located in Coarsegold, California (the "Casino"). To fund construction of the Casino, CEDA issued roughly \$310 million in bonds. In 2012, CEDA restructured those debts by exchanging the original bonds for new ones issued under an Indenture Agreement between CEDA and Wells Fargo, National Association ("Wells Fargo"). The Indenture Agreement required that CEDA

deposit all revenues from the Casino's operation into deposit accounts at Rabobank, and also required that CEDA, Wells Fargo, and Rabobank execute a "Deposit Account Control Agreement" ("DACA"), which governs control of the Casino's accounts. On March 21, 2013, one Tribal faction, led by Nancy Ayala and purporting to represent the Tribe ("Plaintiff" or the "Ayala Faction"), filed suit against Rabobank in a judicial entity purporting to be the Picayune Rancheria Tribal Court (the "Ayala Tribal Court"), alleging Rabobank breached its contract with the Tribe by failing to release to the Tribe funds maintained in the Tribe's bank accounts. The Ayala Tribal Court issued a temporary restraining order followed by a preliminary injunction ordering the Bank to pay a portion of the funds in the disputed accounts to bondholders; directing the Bank to interplead the funds remaining in the Accounts with the Tribal Court; prohibiting withdrawal of funds from the accounts except by order of the court; and establishing a procedure for withdrawal of the funds to pay the legitimate operating expenses of the Casino. On May 25, 2013, Plaintiff filed a complaint for declaratory and injunctive relief against Rabobank and three members of the Tribe's Tribal Council, Chance Alberta, Carl Bushman, and Reggie Lewis (the "Lewis Faction"). In the federal action, Plaintiff sought to have the Court recognize and enforce the orders issued by the Tribal Court. On May 7, 2013, the Lewis Faction moved to intervene. That motion, which is opposed by the Ayala Faction, is still pending. On June 3, 2013, the Ayala Faction filed a request for a Temporary Restraining Order ("TRO") requesting that this Court direct Rabobank to make a loan payment to Wells Fargo on behalf of the Tribe pursuant to the DACA and to interplead any funds remaining in the Disputed Accounts until such time as the Court can determine the merits of this case. Rabobank filed an opposition to the TRO request, as did the Lewis Faction by way of a special appearance. The court denied Plaintiff's request for a temporary restraining order.

H. LAND CLAIMS

61. *Ahtna, Inc. v. State of Alaska, Department of Transportation & Public Facilities*, No. S-14075, 2013 WL 203070 (Alaska Jan. 18, 2013). State brought quiet title action against state regional native corporation arising out of title dispute for road building material site. The Superior Court, granted summary judgment to State. Corporation appealed. The Supreme Court held that: (1) even if waiver of administration by federal Bureau of Land Management transferred administrative authority to corporation regarding road building material site, corporation did not have authority to cancel prior right-of-way grant to state for nonuse or abandonment; (2) state's interest in site was an easement rather than a revocable permit; and (3) applicable version of federal highway regulation, allowing cancellation of easement for abandonment or nonuse, was preempted by provision of Federal Highway Act expressly authorizing state to determine when to terminate right-of-way. Affirmed.

62. *The Alabama-Coushatta Tribe Of Texas v. United States, et al.*, No. 2:12-83, 2013 WL 1279033 (E.D. Tex. Mar. 27, 2013). Before the Court were "Plaintiff's Objections to Magistrate Judge's Report and Recommendation" filed by The Alabama-Coushatta Tribe of Texas (Tribe). The Tribe objected to the recommendation that the Court grant the Motion to Dismiss filed by the United States based on a lack of subject matter jurisdiction. The Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction or, in the Alternative, for Failure to State a Claim was granted. The dispute traces back to before Texas joined the

Union in 1845 and concerns the claim by the Tribe to “aboriginal title” to millions of acres in what is known as the Big Thicket region of Texas, a substantial portion of which falls within the Eastern District of Texas. The Tribe was successful in persuading Congress to order a Congressional reference proceeding before the United States Claims Court in 1983, which issued its non-binding report to Congress in 2000. *See Alabama–Coushatta Tribe of Texas v. United States*, No. 3–83, 2000 WL 1013532 (Fed. Cl. June 19, 2000). The report of the Court of Federal Claims contained a finding that the United States failed to properly discharge its fiduciary obligation to the Tribe to protect several million acres of aboriginal lands from trespass by settlers in the period before 1946, and recommended the payment of compensation by Congress. However, Congress has not acted upon that recommendation. This lawsuit does not seek to compel compensation for those pre-1946 trespasses, but asserts that the Tribe does have aboriginal title to certain lands currently owned by the Government, all falling within three federal enclaves: the Big Thicket National Preserve, the Davy Crockett National Forest, and the Sam Houston National Forest. The Tribe claims that its aboriginal title rights are recognized and protected by the Indian Trade and Intercourse Act, 25 U.S.C. § 177, better known as the Nonintercourse Act. At issue is the Government’s management of the extensive timber, oil and natural gas resources in three national forests and preserves. Congress has not provided the remedy that the Tribe seeks, which is ultimately a share of the revenues derived from the exploitation of these resources. That remedy can only be obtained from Congress.

I. RELIGIOUS FREEDOM

63. *Native American Council Of Tribes, et al. v. Weber, et al.*, No. 09–4182–KES, 2012 WL 4119652 (D.S.D. Sept. 19, 2012). Native American organization and inmates brought action against Secretary of South Dakota Department of Corrections, alleging Department’s policy banning all tobacco from its facilities violated Religious Land Use and Institutionalized Persons Act (RLUIPA). Following a bench trial, the district court held that: (1) inmates’ use of tobacco was a religious exercise protected under RLUIPA; (2) policy placed a substantial burden on inmates’ exercise of their religious beliefs; and (3) policy was not supported by a compelling governmental interest. Ordered accordingly.

64. *The Navajo Nation v. U.S. Department of the Interior, et al.*, No. 11-08205, 2013 WL 530302 (D. Ariz. Feb. 12, 2013). (From the Opinion) Pending before the Court was the defendants’ Motion to Dismiss. This action stems from the long-standing desire of the plaintiff, the Navajo Nation, to obtain the immediate repatriation of 303 sets of human remains and other associated cultural objects removed by the National Park Service (NPS) from the Canyon de Chelly National Monument (Monument). The complaint alleges that since the establishment of the Monument, the NPS has dug up and carried off human remains and cultural objects from Canyon de Chelly and Canyon del Muerto, all without seeking or obtaining the consent of the plaintiff, and contrary to the spiritual, religious and cultural practice of the Navajo people. In approximately 1996, the NPS began an inventory of these human remains and cultural objects in its collection pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. § 3001 *et seq.*, despite the demands by the Navajo Nation Historic Preservation Department that these items had to be returned to the plaintiff because they are the property of the plaintiff inasmuch as they were removed from the plaintiff’s

original treaty lands. The NPS, over the plaintiff's repeated objections, has recently begun a cultural affiliation process pursuant to NAGPRA in order to repatriate the human remains and cultural objects at issue to either the Navajo, Hopi, Zuni, or potentially some other tribe; the plaintiff is participating in the NAGPRA process in order to protect its rights, while continuing to object to the process. On August 9, 2011, the Navajo Nation Department of Justice sent a written notice to Superintendent Clark of the plaintiff's intent to sue the NPS unless the NAGPRA process was immediately ceased and arrangements were made to return the human remains and cultural objects to the plaintiff. In a responsive letter dated September 7, 2011, Superintendent Clark stated that it was the position of the NPS that the repatriation of the human remains and cultural objects could not be made prior to the completion of the tribal consultation and cultural affiliation process mandated by NAGPRA. The Court agrees with the defendants that ARPA does not require that the NPS immediately repatriate the human remains and cultural objects to the plaintiff. Since 16 U.S.C. § 470dd, the portion of ARPA relied on by the plaintiff, does not specifically provide a nondiscretionary repatriation duty on the part of the defendants in the absence of any controlling regulation, the Court concludes that there has not been any withheld agency action that is reviewable under the APA at this time. Therefore, IT IS ORDERED that the defendants' Motion to Dismiss is granted to the extent that this action is dismissed in its entirety as barred by the sovereign immunity of the United States.

65. *Knight, et al. v. Thompson, et al.*, No. 12–11926, 2013 WL 3843803 (11th Cir. July 26, 2013). Native American inmates brought action against Alabama Department of Corrections, challenging its short-hair policy under Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court, 2012 WL 777274, entered judgment for Department, and inmates appealed. The appellate court held that: (1) policy furthered compelling governmental interests in security and discipline, and (2) policy was least-restrictive means of furthering those interests. Affirmed.

J. SOVEREIGN IMMUNITY and FEDERAL JURISDICTION

66. *Siemion, dba/White Buffalo Ranch v. Stewert, et al.*, No. 11–120, 2012 WL 1925743 (D. Mont. May 25, 2012). The United States Attorney for Montana, under 28 U.S.C. § 2679(d)(1) and 28 C.F.R. § 15.4(a), has certified that Scott, Hugs, Stewart, and Ten Bear (Federal Defendants) were acting within the scope of their employment with the Bureau of Indian Affairs (BIA) at the time of the incidents alleged in Siemion's Amended Complaint. Doc. 43. The certification is "prima facie evidence that a federal employee was acting in the scope of her employment at the time of the incident[.]" *Pauly v. U.S. Dept. of Agri.*, 348 F.3d 1143, 1151 (9th Cir.2003) (quoting *Billings v. United States*, 57 F.3d 797, 800 (9th Cir.1995)). Siemion, as plaintiff, bears the burden of disproving the certification by a preponderance of the evidence. *Pauly*, 348 F.3d at 1151. To disprove the certification, a court may allow a plaintiff to conduct some discovery provided the plaintiff has alleged "sufficient facts that, taken as true, would establish that the defendants' actions exceeded the scope of their employment." *Ikmatian v. U.S.*, 2010 WL 3893610, at *2 (D. Mont. Sept. 28, 2010) (quoting *Stokes v. Cross*, 327 F.3d 1210, 1214 (D.C. Cir. 2003)). Permitting such discovery, however, "must be balanced against the congressional intent 'to protect federal employees from the uncertain and intimidating task of defending suits that challenge conduct within the scope of

their employ.’” *Id.*, at *3 (quoting *Brown v. Armstrong*, 949 F.2d 1007, 1011 (8 Cir. 1991)). Siemion has not met her burden. All of the allegations stem from the named Federal Defendants’ conduct taken pursuant to their employment. Siemion has not alleged, nor has she presented any evidence to demonstrate, that any act by any of these Federal Defendants was done in furtherance of their own personal interest or beyond what is ordinarily incidental to duties performed on behalf of their employer. Thus, the Federal Defendants’ motion, to the extent it seeks to substitute the United States for Scott, Hugs, Stewart, and Ten Bear, is granted. The Court has carefully considered the parties’ arguments and relevant authority and concludes that the Tribal Defendants’ motion to dismiss should be granted. Siemion’s claims against Black Eagle and Cabrera are to be dismissed because they are immune from suit in their capacities as Tribal officials. Siemion’s claim against Tribal Defendants Tobacco, Snell, Wilhelm, Bends, V. Hill, and T. Hill are to be dismissed for lack of subject matter jurisdiction. To the extent that Siemion alleges that these named Tribal Defendants acted beyond their valid authority, Tribal sovereign immunity may not extend to them. In this event, Siemion’s claim against them is appropriately dismissed for lack of subject matter jurisdiction for a different reason. Civil jurisdiction over activities on reservation lands “presumptively lies in the tribal courts unless limited by federal statute or a specific treaty provision. Considerations of comity require the exhaustion of tribal remedies before the claim may be addressed by the district court.” Here, the record does not reflect that Siemion has sought relief in Tribal Court for the claim she asserts here against these named Tribal Defendants, her Tribal Court case involved only the leasing dispute. Accordingly, her claims against the Tribal Defendants must be dismissed.

67. *Gilmore v. Weatherford*, No. 11-5025, 2012 WL 3797736 (10th Cir. Sept. 4, 2012). Indian tribal members with restricted, undivided interests in mine tailings, or “chat,” that was being sold and removed by other parties who also had interest in chat brought cause of action against these other parties, as well as against the Secretary of the Interior and several Bureau of Indian Affairs officials, seeking to compel accounting, to obtain other equitable relief, and to recover on theory that private party defendants were guilty of conversion in removing/selling chat without approval of the Secretary of the Interior. The district court, 748 F. Supp. 2d 1299, dismissed claims against federal defendants based on plaintiffs’ failure to exhaust their administrative remedies, and later ruled, 2010 WL 5462476, that it did not have federal question jurisdiction over plaintiffs’ accounting and conversion claims against private parties. Plaintiffs appealed. The appellate court held that: (1) doctrine of exhaustion of administrative remedies applies as matter of judicial discretion to common law claims; abrogating *Otoe–Missouria Tribe v. Kempthorne*, 2008 U.S. Dist. LEXIS 99548 (W.D. Okla. Dec. 10, 2008); *Tonkawa Tribe of Indians of Oklahoma v. Kempthorne*, 2009 U.S. Dist. LEXIS 21484 (W.D. Okla. Mar. 17, 2009); and *Seminole Nation v. Salazar*, 2009 U.S. Dist. LEXIS 27836 (E.D. Okla. Mar. 31, 2009); (2) district court did not abuse its discretion in requiring tribal members to first exhaust their administrative remedies, as prerequisite to pursuing claims against federal defendants in district court; (3) state law accounting claim asserted by Indian tribal members against private parties who also had interest in chat was not claim over which district court could exercise federal question jurisdiction; but (4) conversion claim necessarily presented a substantial question of federal law, regarding need for the Secretary to approve disposition of restricted Indian personalty, and was claim over which district court could exercise federal question jurisdiction. Affirmed in part, reversed in part, and remanded.

68. *Sue/Perior Concrete & Paving, Inc. v. Seneca Gaming Corporation, et al.*, No. 12–00491, 99 A.D. 3d 1203 (N.Y. App. Div. Oct. 5, 2012). Contractor brought action against corporation formed by Indian tribe to carry out its gambling operations, corporation’s wholly-owned subsidiary, past and present officers and/or directors of corporation and subsidiary, and member of tribal council who was officer of tribal-related entity, asserting claims for tortious interference with contract, tortious interference with prospective business advantage, concerted action, and prima facie tort. The Supreme Court granted motion to dismiss on ground of sovereign immunity as to corporation and subsidiary, but denied motion as to individual defendants. Individual defendants appealed. The Supreme Court, App. Div. held that individual defendants were entitled to sovereign immunity. Reversed.

69. *Farmer Oil And Gas Properties, LLC v. Southern Ute Indian Tribe*, No. 12–cv–00313, 2012 WL 4856723 (D. Colo. Oct. 12, 2012). Property owner brought action against Indian tribe to resolve ownership of coalbed methane (CBM) gas beneath parcel of land within tribe’s reservation. Tribe moved to dismiss. The court held that: (1) tribe did not waive its sovereign immunity when tribe filed suit claiming ownership of CBM gas by virtue of its ownership of coal under parcel; (2) settlement agreement between Indian tribe and mining company did not constitute waiver of tribe’s sovereign immunity; and (3) res judicata did not preclude tribe from asserting ownership over CBM gas. Motion granted.

70. *Northern Arapaho Tribe v. Harnsberger, et al.*, No. 09–8098, 697 F.3d 1272 (10th Cir. Oct. 18, 2012). Northern Arapaho Tribe (NAT) brought action against state and county officials seeking injunction against state’s imposition of certain vehicle and excise taxes on Indians living in purported Indian country. City intervened, and Eastern Shoshone Tribe (EST) and United States were joined as third-party defendants. The district court, 660 F. Supp. 2d 1264, dismissed EST and United States as parties, and dismissed complaint. NAT appealed. The appellate court held that: (1) EST was required party; (2) EST’s sovereign immunity prevented its joinder; (3) district court did not abuse its discretion in dismissing action for failure to join EST as indispensable party; and (4) dismissal was without prejudice. Affirmed in part, vacated in part, and remanded.

71. *People of the State of Michigan v. Collins, and People of the State of Michigan v. Mason*, Nos. 300644, 300645, 2012 WL 5233629 (Mich. Ct. App. Oct. 23, 2012). In these consolidated appeals, defendant Stormy Dean Collins was charged with delivery of a controlled substance, methylphenidate (Ritalin), MCL 333.7401(2)(b)(ii), and defendant Rodney Farrell Mason was charged with possession with intent to deliver a controlled substance, marijuana, MCL 333.7401(2)(d)(iii). The alleged offenses occurred inside an Indian casino, and neither defendant is of Indian heritage. Although the district court denied motions by defendants to have the felony charges dismissed for lack of territorial jurisdiction, the circuit court, following bindover, granted renewed motions for dismissal that challenged the court’s jurisdiction over the criminal proceedings. The circuit court ruled that Michigan state courts lack jurisdiction in regard to offenses committed by non-Indians that take place on Indian lands situated within the state’s boundaries. The circuit court concluded that, in such situations, federal courts have exclusive jurisdiction. The appellate court held that state courts in Michigan have jurisdiction relative to a criminal prosecution in which a non-Indian defendant committed a “victimless” offense on Indian lands or in Indian country and reversed and remanded for reinstatement of the charges against defendants.

72. *United States v. Tsosie*, No. CR–12–08147, 2012 WL 6163075 (D. Ariz. Dec. 11, 2012). Defendant Leander Tsosie filed a Motion to Dismiss the Indictment for lack of subject matter jurisdiction. The charges against Tsosie arose out of a car-pedestrian accident that occurred on the Navajo Indian Reservation. The pedestrian suffered severe injury and eventually died. The government alleged that Tsosie was the driver of the car. A grand jury indicted Tsosie under Arizona’s hit and run statute. *See* Ariz. Rev. Stat. §§ 28–661, 28–663. Section 28–661(A) provides that “[t]he driver of a vehicle involved in an accident resulting in injury to or death of a person shall . . . immediately stop the vehicle at the scene of the accident or as close to the accident scene as possible but shall immediately return to the accident scene [, and r]emain at the scene of the accident until the driver has fulfilled the requirements of § 28–663.” Section 28–663 requires that the driver provide information and render assistance to the injured person, and criminalizes failure to comply with its provisions. Tsosie asserted that discovery revealed that the pedestrian was an Indian, and the government did not dispute that claim. The Court found that it lacked subject matter jurisdiction over the indictment under the “Indian against Indian” exception to the Indian Country Crimes Act (ICCA), 18 U.S.C. § 1152, and granted the Motion to Dismiss the Indictment.

73. *United States ex rel. Howard and Weldy v. Shoshone Paiute Tribes, Duck Valley Indian Reservation*, No. 2:10–01890, 2012 WL 6725682 (D. Nev. Dec. 26, 2012). Before the Court were Defendant Shoshone Paiute Tribes, Duck Valley Indian Reservation’s (Defendant) Motion to Dismiss and Plaintiffs Howard and Weldy’s Counter Motion to Treat Defendant’s Motion as One For a More Definite Statement. Defendant asserted that the district court lacked jurisdiction because, as a federally-recognized Indian Tribe, it is immune from suit, and alternatively, that Plaintiffs’ complaint was not properly pled. This suit was a Medicare/Medicaid fraud case brought *qui tam* by Plaintiffs. Plaintiffs were former employees of the Owyhee Community Health Facility operated by Defendant. Plaintiffs alleged that Defendant was making false claims to the government in order to obtain increased Medicare and Medicaid payments in violation of the Federal Claims Act, (FCA) 31 U.S.C. § 3729(a)(1), (2), and (7). Plaintiffs brought suit on behalf of the United States government as authorized by the FCA. The Government elected not to intervene, and Plaintiffs continued to conduct the action on the Government’s behalf. The court granted Defendant’s Motion to Dismiss.

74. *United States v. Duane Dale Big Eagle*, No. 11–3754, 2013 WL 105650 (8th Cir. Jan. 10, 2013). Defendant was convicted in the District Court, 2011 WL 7462077, of conspiracy to commit bribery of an Indian tribal official, and aiding and abetting a bribery involving an agent of an Indian tribal government, and he appealed. The appellate court held that: (1) admission of uncharged crimes evidence was reviewable only for plain error; (2) admission of uncharged crimes evidence was not plain error; and (3) defendant waived right to challenge admission of evidence to extent prejudice would have been alleviated by curative instruction. Affirmed.

75. *United States v. Zepeda*, No. 10–10131, 2013 WL 216412 (9th Cir. Jan. 18, 2013). Defendant was convicted in the District Court of conspiracy to commit assault, assault with a deadly weapon, and use of a firearm during a crime of violence, and he appealed. The appellate court held that tribal enrollment certificate was insufficient to establish that defendant was an Indian for the purposes of federal jurisdiction under Major Crimes Act where the

government introduced no evidence that defendant's bloodline was derived from a federally recognized tribe. Reversed and remanded.

76. *Salt River Project Agricultural Improvement And Power District, et al. v. Lee, et al.*, No. CV-08-08028, 2013 WL 321884 (D. Ariz. Jan. 28, 2013). Pending before the Court were Plaintiff's Motion for Summary Judgment, Defendants' Cross Motion for Summary Judgment, and Defendants' Motion to Dismiss Parties. In 1969, Plaintiff Salt River Project Agricultural Improvement and Power District (SRP) and other energy utilities entered into a lease with the Navajo Nation to construct and operate an electrical power plant called the Navajo Generating Station (NGS), located near Page, Arizona, on the Navajo Reservation. The United States Secretary of the Interior granted SRP and the other utilities certain easements and rights-of-way (§ 323 Grant). The Secretary entered into the § 323 Grant to induce SRP and the others to proceed with the development of NGS. The 1969 Lease contains two clauses pertinent to this action. In section 16, "[t]he Tribe covenants that, other than as expressly set out in this Lease, it will not directly or indirectly regulate or attempt to regulate the Lessees in the construction, maintenance or operation of [NGS]" ("non-regulation clause"). In section 18, SRP agreed to give preference in employment to local Navajos. In October 1985 the Navajo Nation enacted the Navajo Preference in Employment Act (NPEA). The impetus for the NPEA was the Navajo Tribal Council's dissatisfaction with the lack of progress made over the years in employing and training Navajo people by companies doing business within the Navajo Nation. The NPEA is enforced throughout the Navajo reservation by the Office of Navajo Labor Relations (ONLR) and the Navajo Nation Labor Commission (NNLC). The NNLC conducts the hearings on NPEA complaints filed by the ONLR and issues written decisions following those proceedings. The court denied Defendants' Motion to Dismiss Parties; granted Plaintiffs' Motion for Summary Judgment, and denied Defendants' Cross Motion for Summary Judgment.

77. *Beaulieu v. Minnesota Dep't of Human Services*, No. A10-1350, 2013 WL 331554 (Minn. Jan. 30, 2013). Sex offender, indeterminately committed as a sexual psychopathic personality and a sexually dangerous person, filed petition for writ of habeas corpus, alleging that his appellate counsel had provided him with ineffective assistance by failing to file a timely notice of appeal from commitment order. The District Court summarily dismissed petition. Offender appealed. The appellate court, 798 N.W. 2d 542, affirmed. Offender filed petition for further review. The Supreme Court held that: (1) district court had subject matter jurisdiction to civilly commit offender, an enrolled member of the Leech Lake Band of Ojibwe; (2) doctrines of res judicata and collateral estoppel did not preclude State from presenting at civil commitment trial evidence of conduct alleged in earlier criminal cases that ended in acquittals; and (3) offender failed to preserve for review claim that his right to trial by jury was violated. Affirmed.

78. *Maxwell v. County of San Diego*, Nos. 10-56671, 10-56706, 2013 WL 542756 (9th Cir. Feb. 14, 2013). Shooting victim's family members filed § 1983 action alleging that sheriff's officers and tribal fire department and its paramedics unreasonably delayed in obtaining appropriate medical treatment for victim, resulting in her death, and that officers unreasonably seized family members and employed excessive force. The district court denied officers' motion for summary judgment and dismissed claims against tribal defendants. Parties filed cross-appeals. The appellate court held that: (1) officers who prevented victim's ambulance from leaving crime scene were not entitled to qualified immunity; (2) officers were not entitled

to qualified immunity with regard to unreasonable seizure claim; (3) summary judgment on qualified immunity grounds was not warranted with regard to excessive force claim; (4) summary judgment in supervisors' favor on qualified immunity grounds was not warranted; and (5) paramedics for tribal fire department did not enjoy tribal sovereign immunity. Affirmed in part, reversed in part, and remanded. Petitions for rehearing en banc denied.

79. *Allen, et al. v. Smith, et al.*, No. 12cv1668, 2013 WL 950735 (S.D. Cal. Mar. 11, 2013). Before the Court was the Amended Motion to Dismiss filed by Defendants Robert H. Smith, Leroy H. Miranda, Jr., Kilma S. Lattin, Theresa J. Nieto and Dion Perez (Defendants). Twenty-seven former members of the Pala Band of Mission Indians (Plaintiffs) filed a Complaint against Defendants, seeking monetary damages and declaratory and injunctive relief. Plaintiffs asserted the following claims for relief to remedy their disenrollment from the Pala Tribe: (1) conspiracy to interfere with civil rights, in violation of 42 U.S.C. § 1985(3); (2) deprivation of equal rights under the law, in violation of 42 U.S.C. § 1981; (3) conversion; (4) tortious interference with prospective economic advantage; (5) defamation; and (6) civil conspiracy. Defendants filed the Amended Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6) and 12(b)(7). The Court found that the relief sought in the Complaint would "require affirmative action by the sovereign," i.e. the Pala Tribe's re-enrollment of Plaintiffs. Such a remedy would operate against the Pala Tribe, impermissibly infringing upon its sovereign immunity. Based upon the factual allegations of the Complaint and the nature and effect of the relief sought, the Court concluded that Defendants acted in their official capacities and within the scope of their authority when they made the membership determinations at issue in this case. The Court concluded that Pala is a separate sovereign and enjoys immunity that extends to the Defendants named in this case. Congress has not authorized this action and Plaintiffs failed to adequately allege that the Tribe waived its immunity. The Complaint was dismissed on the basis of sovereign immunity.

80. *Dinger v. United States*, No. 12-4002, 2013 WL 1001444 (D. Kan. Mar. 13, 2013). Plaintiff Tammy Dinger brought suit under the Federal Tort Claims Act, alleging that her husband's death was the result of the negligent operation of a motor vehicle by a tribal employee who was allegedly working under a grant from the federal government at the time of the accident. The United States requested that the Court either dismiss the suit for lack of subject matter jurisdiction, or in the alternative, grant summary judgment in its favor. Mr. Dinger was driving his motorcycle on Kansas Highway 18 when Candace Wishkeno, a member of the Kickapoo Tribe, negligently drove her SUV into the pathway of Mr. Dinger's motorcycle. Mr. Dinger crashed into the SUV, suffering fatal injuries. At the time of the accident, Wishkeno was employed by the Tribe as the Kickapoo Child Care Services Program Coordinator and Native Employment Program Coordinator. Dinger alleged that Wishkeno's employment was pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA). Dinger alleged that, at the time of the accident, the Tribe had entered into self-determination contracts with the Secretary of the Interior to plan, conduct, and administer programs for the benefit of Indians pursuant to the ISDEAA and the Tribe allegedly had a liability insurance policy that was issued in accordance with the ISDEAA, and included a provision waiving the Tribe's right, as a federal entity, to sovereign immunity within the limits and coverage of the policy. Dinger asserted that Wishkeno and her SUV were covered by that insurance policy at the time of the accident. The Court concluded that Dinger failed to show that Wishkeno was employed under a self-determination contract as defined in the ISDEAA. Consequently, the pleadings do not

contain sufficient facts to establish that Wishkeno was a covered employee subject to liability under the FTCA. The Court granted the United States' Motion to Dismiss and dismissed Dinger's negligence claim against the United States for lack of subject matter jurisdiction.

81. *United States v. Alvarez*, No. 11–10244, 2013 WL 1092709 (9th Cir. Mar. 14, 2013). Defendant was convicted in the District Court of assault resulting in serious bodily injury on an Indian reservation. Defendant appealed. The appellate court held that: (1) Certificate of Indian Blood issued by Indian tribe was not admissible as self-authenticating document; (2) erroneous admission of Certificate was not harmless; (3) District Court's refusal to exclude references to polygraph evidence did not deprive defendant of his constitutional right to present complete defense; and (4) District Court did not commit clear error in applying seven-level enhancement for infliction of permanent or life threatening bodily injury. Reversed and remanded.

82. *Rodewald v. Kansas Department Of Revenue*, No. 105,098, 2013 WL 1173932, (Kansas Mar. 22, 2013). Driver, who was 18 years old and a Native American, petitioned for judicial review of suspension of his driver's license following his arrest for driving under the influence. The District Court entered summary judgment in favor of the Department of Revenue (DOR). Driver appealed. The Supreme Court held that: (1) driving under the influence and implied consent statutes did not include roadways in Native American reservation over which tribal police assumed jurisdiction to enforce tribal law, and (2) DOR's jurisdiction did not extend to roadways within Native American reservation. Reversed and remanded with directions.

83. *Timbisha Shoshone Tribe, et al. v. U.S. Department of the Interior, et al.*, No. 2:11-00995, E.D. Cal. Apr. 9, 2013). Joseph Kennedy, Angela Boland, Grace Goad, Erick Mason, Hillary Frank, Madeline Esteves and Pauline Esteves filed their Second Amended Complaint (SAC) in this action, seeking declaratory and injunctive relief against Defendant United States Department of the Interior (DOI) as a result of two DOI decisions issued by then DOI Assistant Secretary of Indian Affairs Larry Echo Hawk on March 1, 2011 (EHD I) and July 29, 2011 (EHD II) (collectively the "EHDs"). Before the Court was Defendants' Motion to Dismiss Plaintiffs' SAC. For the following reasons, the Court will grant Defendants' Motion to Dismiss for failure to join indispensable parties. The Court will not permit further leave to amend. The current lawsuit is the culmination of a long-standing dispute over the election and composition of the proper Tribal Council. While it is undisputed that in 2006 the Tribal Council consisted of Joe Kennedy, who was elected as Chairman, Ed Beaman, Madeline Esteves, Virginia Beck and Cleveland Casey (2006 Council), since then multiple factions have claimed to lead the Tribe. In May 2012, this Court granted Defendants' Motion to Dismiss with leave to amend, finding Plaintiffs failed to join indispensable parties. On May 29, 2012, Plaintiffs filed their SAC, realleging the five previous claims. Plaintiffs also added a sixth claim, alleging the DOI violated the Administrative Procedure Act (APA) by discriminating against the Kennedy Council when the DOI installed the Gholson Faction to conduct the 2011 election. Plaintiffs now ask this Court to declare "that the [EHDs] violated the APA because they were made in a manner that was arbitrary, capricious, and otherwise not in accordance with law, violated the Plaintiffs' constitutional right to due process of law, exceeded DOI's statutory authorities, and failed to comply with procedures required by law." In addition Plaintiffs added the Gholson council members as Defendants. Defendants responded by filing the present Motion to Dismiss

Plaintiffs' SAC in its entirety. Defendants' Motion to Dismiss was granted without leave to amend.

84. *State v. Youde*, No. 68058–7–I, 2013 WL 2157687 (Wash. Ct. App. May 20, 2013). (From the opinion.) “This case involves a prosecution for delivery of marijuana. The investigating agency was the police department of the Tulalip Tribes. The Tribes asserted sovereign immunity in response to a defense subpoena for information the Tribes deemed immaterial. Recognizing that a sovereign entity is not subject to compulsory process, the superior court quashed the subpoena. The court then granted the defendant’s motion to dismiss the prosecution. The State appeals the dismissal. We hold the court abused its discretion by dismissing the case without first determining whether the subpoenaed information was material. Because the record does not support a finding of materiality, we reverse the order of dismissal.”

85. *Tassone v. Foxwoods Resort Casino, et al.*, No. 12–2436, 2013 WL 2396019 (2nd Cir. June 4, 2013). Not selected for publication in the Federal Reporter. Appellant Tassone appealed from the judgment of the district court granting Appellees’ motion to dismiss for lack of jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(1). Appellant’s complaint asserted violations of Connecticut General Statutes § 53–396, tortious breach of duty, premises liability, intentional infliction of emotional distress, breach of contract, and violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq. The appellate court concluded that the district court properly held that it lacked subject matter jurisdiction due to Defendants’ sovereign immunity. Tassone did not identify any express abrogation nor waiver of Defendants’ sovereign immunity with respect to individual citizens. The appellate court affirmed the judgment of the district court.

86. *Magnan v. Trammell, et al.*, No. 11–7072, 719 F.3d 1159 (10th Cir. June 14, 2013). Petitioner, who pleaded guilty in Oklahoma state court to three counts of murder in the first degree and one count of shooting with intent to kill and was sentenced to death, sought writ of habeas corpus. The district court denied the petition, and petitioner appealed. The appellate court held that Secretary of Interior’s approval of conveyance of surface interests in Indian land, as required by 1945 Act to extinguish the restrictions placed on the tract, were not met, and therefore, tract of land where crimes occurred constituted “Indian country,” and thus was not subject to jurisdiction of State of Oklahoma. Reversed and remanded.

87. *M.J. ex rel. Beebe v. U.S.*, No. 11–35625, 2013 WL 3285288 (9th Cir. Jul. 1, 2013). Minor, represented by her mother and next friend, filed action against police officer and municipality, seeking over \$100,000 in damages from officer and municipality for injuries minor sustained as result of officer’s negligent driving of four-wheeler. United States Attorney for the District of Alaska “certified” that officer was deemed to be federal employee for purposes of lawsuit. The district court granted summary judgment for municipality. Minor appealed. The appellate court held that: (1) police officer was immune from tort liability by application of municipality’s sovereign immunity as Indian tribe and (2) municipality could not be held vicariously liable on “non-delegable duty” theory for negligent conduct of immune independent contractor. Affirmed.

88. *United States v. Loera*, No. 3:13, 2013 WL 3298169 (D. Ariz. July 1, 2013). Defendant was charged with misdemeanor offense of assault by striking, beating, or wounding an Indian on tribal land, and he moved to dismiss on ground that he was “Indian” not subject to such a prosecution in federal court. The district court held that: (1) while defendant barely satisfied “Indian blood” prong of test for Indian status, he did not satisfy “tribal or government recognition” prong, and thus did not qualify as “Indian,” and (2) term “Indian,” as used in statute authorizing federal courts to exercise jurisdiction over prosecutions arising out of crimes committed by non-Indians against Indians in Indian country, was used in narrow sense, as referring to enrolled members of Indian tribe. Motion denied.

89. *United States v. Livingston*, No. 11–10520, 2013 WL 4007541 (9th Cir. Aug. 7, 2013). Defendant was charged with mail fraud and theft by an officer or employee of a gaming establishment on Indian lands. The district court, 2011 WL 347136, denied defendant’s motion to dismiss the indictment and he was convicted on both counts. Defendant appealed. The appellate court held that: (1) federal jurisdiction does not depend on proof that the gaming establishment at issue is located on Indian lands; (2) indictment sufficiently alleged theft by an officer or employee of a gaming establishment on Indian lands; (3) indictment sufficiently alleged mail fraud; and (4) evidence that defendant purchased golf bag and football helmet with funds from establishment was relevant. Affirmed.

90. *State of Idaho, et al. v. Native Wholesale Supply Co.*, No. 38780, 2013 WL 4107633 (Idaho Aug. 15, 2013). State brought action against out-of-state Indian wholesaler for operating as a cigarette wholesalers without a permit and for selling cigarettes that were unlawful for sale in Idaho. The District Court enjoined wholesaler from selling wholesale cigarettes without a wholesale permit and assessed civil penalties. Wholesaler appealed. The Supreme Court held that: (1) wholesaler was not required to obtain wholesaler permit; (2) State had subject matter jurisdiction to prevent non-compliant cigarettes from being imported; (3) Indian Commerce Clause did not preclude regulation; (4) trial court had personal jurisdiction over wholesaler pursuant to long-arm statute; and (5) exercise of personal jurisdiction comported with due process. Affirmed in part, reversed in part, and remanded.

K. SOVEREIGNTY, TRIBAL INHERENT

91. *Schaghticoke Indian Tribe v. Rost*, No. 33374, 2012 WL 3930614 (Conn. App. Ct. Sept. 18, 2012). Indian tribe brought summary process eviction action to remove defendant from reservation land. The Superior Court entered judgment in favor of tribe. Defendant appealed. The Appellate Court held that: (1) trial court had subject matter jurisdiction to adjudicate action, and (2) trial court did not improperly resolve any issues of tribal leadership. Affirmed.

92. *Wilbur v. Makah Tribal Court*, No. 12-5484, 2012 WL 4795667 (W.D. Wash. Oct. 9, 2012). This matter comes was before the Court on Respondent Makah Tribal Court’s (Tribal Court) motion to dismiss. Petitioner James G. Wilbur (Wilbur) filed a petition for writ of habeas corpus. The Tribal Court filed a motion to dismiss Wilbur’s petition for failure to exhaust tribal remedies and for failure to state a claim upon which relief can be granted under

Fed.R.Civ.P. 12(b)(6). Wilbur is a member of the Makah Tribe. The Tribal Court found Wilbur guilty of assault in the second degree, pursuant to Makah Law and Order Code 5.1.02 and in violation of the Domestic Violence Code § 11.1.04(e) and sentenced Wilbur to six months in jail and banishment from the reservation for one year after he completed his jail sentence. Wilbur filed a notice of appeal with the Tribal Court. Wilbur failed to exhaust his Tribal remedies. The case is dismissed on the basis that Wilbur failed to perfect his appeal. Because the Court dismissed the case based on failure to exhaust tribal remedies, it did not need to address the Tribal Court's argument that it is entitled to a Fed.R.Civ.P. 12(b)(6) dismissal based on Wilbur's failure to state a claim upon which relief could be granted. The Court granted the Tribal Court's motion to dismiss.

93. *Valenzuela v. Silversmith*, No. 11–2212, 2012 WL 5507249 (10th Cir. Nov. 14, 2012). Member of Indian tribe petitioned for writ of habeas corpus, seeking relief from tribal court convictions and his sentence. The district court dismissed petition. Petitioner appealed. The appellate court held that: (1) member was required to exhaust his tribal court remedies before filing his petition for writ of habeas corpus in federal court; (2) member had tribal court remedies that he had to exhaust; and (3) failure of member to file habeas petition in tribal court could not be excused from requirement to exhaust. Affirmed.

94. *Evans, et al. v. Shoshone–Bannock Land Use Policy Commission, et al.*, No. 4:12–417, 2012 WL 6651194 (D. Idaho Dec. 20, 2012). Before the Court were two motions to dismiss filed by the defendants (collectively referred to as the Shoshone–Bannock Land Use Policy Commission (LUPC)), and a motion for preliminary injunction filed by plaintiffs. The Shoshone–Bannock Tribes reside on the Fort Hall Indian Reservation that encompasses about 870 square miles. Plaintiff David M. Evans, not a member of the Tribes, owns land in fee simple within the boundaries of the Fort Hall Reservation. Evans constructed a single family residence on his property during 2012, and obtained a building permit from Power County authorizing the construction. Evans did not apply for or obtain a Tribal building permit. In June of 2012, the LUPC filed suit against Evans and the builders of his home in the Tribal Court. LUPC alleged that Evans and the builders had violated the Tribal zoning laws by failing to obtain a Tribal building permit for the home. Evans and the builders responded by filing this action against the LUPC and various individual tribal members of the LUPC and the Fort Hall Business Council. The Tribal Court stayed its action pending resolution by this Court of the motions at issue here. LUPC has filed in this Court a motion to dismiss, claiming that plaintiffs failed to exhaust their Tribal Court remedies and that the Tribal Court should, in the first instance, determine its own jurisdiction. LUPC filed two separate motions, one on behalf of the LUPC and the individual LUPC defendants, and the second on behalf of the individual Business Council defendants. The plaintiffs filed a motion for injunctive relief in this Court to enjoin the defendants from attempting to enforce Tribal ordinances against them. This motion contains many of the same challenges to Tribal Court jurisdiction that were made in the plaintiffs' response to LUPC's motions to dismiss. The Court found that the plaintiffs must exhaust their Tribal Court remedies. The Court granted the motions to dismiss, and dismissed the action without prejudice to the rights of plaintiffs to re-file after exhaustion of Tribal Court remedies.

95. *Plains Commerce Bank v. Long Family Land and Cattle Co., Inc., et al.*, No. 12-3021 (D.S.D. Dec. 28, 2012). (From the Order) This case is a continuation of a dispute that culminated in a decision of the Supreme Court of the *United States in Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008). Approximately four years after the Supreme Court released its opinion in *Plains Commerce Bank*, Defendants Long Family Land and Cattle Company, Inc., Ronnie Long, and Lila Long resumed litigation by filing an action in the Cheyenne River Sioux Tribal Court against Plaintiffs Plains Commerce Bank, Jerome Hageman, and Randy Robinson. Plaintiffs responded by starting this federal court action to seek to enjoin the Tribal Court action. This case and the Plaintiffs' Motion for Summary Judgment present a legal issue: whether this Court should decide now or defer in the first instance to the Tribal Court to determine the effect of the Supreme Court's decision in *Plains Commerce Bank* on the underlying Tribal Court judgment. For the reasons explained in this Opinion and Order, this Court defers decision at this time to the Tribal Court based on the doctrine of tribal court exhaustion and comity interests. Therefore, this Court denies Plaintiffs' Motion for Summary Judgment and declines to grant the relief requested in Plaintiffs' Complaint.

96. *McGuire, et al. v. Aberle*, No. 26205, 2013 WL 175031 (S.D. Jan. 16, 2013). In 1967, Raymond and Margaret Becker's eight children each inherited an undivided one-eighth interest in patented fee land located within the exterior boundaries of the Cheyenne River Sioux Indian Reservation. None of the Beckers are Indians. In 2006, one of the Becker children sold her undivided one-eighth interest to Patrick and Carletta Aberle. Patrick is a member of the Cheyenne River Sioux Tribe. Sometime after Patrick and Carletta acquired their interests, a dispute arose between the Aberles and the Becker children who still retained an interest in the property. The Becker children commenced this action in circuit court, seeking a sale of the entire property. The Aberles counterclaimed for partition. Patrick also moved to dismiss for lack of subject matter jurisdiction, arguing that because he was a member of the Tribe, and because he had become an owner of an undivided one-sixteenth interest in property on the Reservation, the circuit court possessed no subject matter jurisdiction to adjudicate the dispute between the parties. The Aberles contended the Cheyenne River Sioux Tribal Court had jurisdiction. The court denied the motion to dismiss, determining that the "ownership of fifteen-sixteenths of the property has continually been in the possession of [non-Indians,]" and therefore, state jurisdiction did not infringe upon tribal sovereignty. After a trial, the circuit court ordered a sale of the entire property. The Aberles appealed, contesting both South Dakota courts' subject matter jurisdiction and the order of sale. The jurisdiction question must be resolved before addressing the merits. The appellate court remanded the matter to the circuit court to reconsider the jurisdiction question after further development of a factual record and consideration of the land alienation cases. The factual record should include: identification of the Act of Congress under which the land was alienated; when the land was patented; to whom it was patented; the subsequent history of title showing the extent of Indian and Tribal ownership; and the circumstances under which Patrick transferred his ownership interest to his son and subsequently reacquired that interest.

97. *In re Barth, et al.*, Bankruptcy Nos. 09-36006, 10-34267, 10-38674; Adversary Nos. 11-03233, 11-03234, 11-03235, 2013 WL 503652 (D. Minn. Feb. 11, 2013). Chapter 7 trustee sought to compel turnover of monthly per capita payments that debtors would receive, in their capacity as members of Indian tribe. The Bankruptcy Court held that, to determine

whether, on date that their Chapter 7 petition was filed, the bankrupt members of Indian tribe had any legal or equitable interest in the monthly per capita payments that they would receive in future as their share of revenue from gaming at Indian casino, such that these future per capita payments were included in property of the estate, bankruptcy court had to look not to Minnesota state law, but to tribal law. Summary judgment for defendants.

98. *Window Rock Unified School District, et al., v. Reeves, et al.*, No. 12-08059, 2013 WL 1149706 (D. Ariz. Mar. 19, 2013). Before the Court were motions which relate to whether the Navajo Nation has the regulatory and adjudicative authority to review personnel decisions made by the plaintiff school districts. Plaintiffs Window Rock Unified School District and Pinon Unified School District are both Arizona political subdivisions. Pursuant to their mandates under Arizona constitutional and statutory law to educate all Arizona children, they operate public schools within that portion of the Navajo Reservation located within the State of Arizona on tribal land leased from the Navajo Nation. The defendants are seven current or former employees of the plaintiffs (employee defendants) and seven current or former members of the Navajo Nation Labor Commission (NNLC defendants). At the time the action was commenced, the employee defendants had complaints pending before the Navajo Nation Labor Commission (NNLC), a tribal administrative tribunal, wherein they alleged that the school districts had violated their employment-related rights under the Navajo Preference in Employment Act (NPEA). The school districts, the defendants in the NNLC cases, filed motions with the NNLC seeking the dismissal of the complaints for lack of jurisdiction, contending that the NNLC had no regulatory or adjudicatory authority over personnel decisions made by Arizona public school districts located on the Navajo Reservation as a result of a ruling in *Red Mesa Unified School District v. Yellowhair*, 2010 WL 3855183 (D. Ariz. September 28, 2010). The NNLC ruled that it could resolve the tribal jurisdiction issue only through an evidentiary hearing held after the parties had engaged in appropriate jurisdiction-related discovery. This action was commenced before the NNLC could hold its evidentiary hearing. In their complaint for declaratory and injunctive relief, the plaintiff school districts, who are indisputably non-Indians, alleged that the NNLC and the Navajo tribal courts lack jurisdiction over public school districts' employment decisions and practices conducted on the Navajo Reservation. The plaintiffs sought to have the Court prohibit the employee defendants from prosecuting their claims against the plaintiffs in either the NNLC, the Navajo Nation Supreme Court, or any other Navajo forum, and prohibit the NNLC defendants from continuing to adjudicate the claims of the employee defendants, as well as prohibit them from adjudicating any employment claims between the plaintiffs and their employees. The Court concluded as a matter of law that the Navajo Nation has no regulatory or adjudicative jurisdiction over the plaintiff school district's employment-related decisions underlying this action. Since tribal jurisdiction is lacking, the Court agreed that the NNLC defendants should be barred from any further adjudication of its claims. The Court denied the Navajo Nation Labor Commission Defendants' Motion to Dismiss for Failure to Exhaust Tribal Remedies and granted Plaintiffs' Cross-Motion for Summary Judgment.

99. *Poulson, et al. v. Tribal Court For The Ute Indian Tribe Of The Uintah And Ouray Reservation, et al.*, No. 2:12-497, 2013 WL 1367045 (D. Utah, Apr. 4, 2013). Petitioners Edson Gardner and Lynda Kozlowicz filed a paper captioned as a "Complaint Notice of Removal of Action, by Writ of Habeas Corpus from Ute Tribal Court." The Ute Indian Tribe's Executive Director, with the approval of the tribal Business Committee, gave notice to Mr. Gardner and Ms. Kozlowicz that they were suspended from practice as lay advocates before

the Ute Tribal Court for a period of ninety days, indicating that “[y]ou may be reinstated to practice as lay advocates on June 19,2013.” The court found that the temporary suspension of one’s license to practice as a tribal court advocate is simply not the “custody” required to sustain habeas corpus proceedings. Such conditions and restrictions must significantly restrain one’s liberty in order to invoke § 1303 habeas jurisdiction. The court denied the petitioners’ request for lack of jurisdiction under 25 U.S.C. § 1303.

100. *Grand Canyon Skywalk Development, LLC v. ‘Sa’ Nyu Wa, Inc.*, No. 12 15634, 2013 WL 1777060 (9th Cir. Apr. 26, 2013). Grand Canyon Skywalk Development (GCSD) entered into a contract with a tribally chartered corporation of the Hualapai Indian Tribe to build and operate a glass bottomed viewing platform suspended over the rim of the Grand Canyon. After a dispute arose, GCSD sued in Tribal Court to compel arbitration. While arbitration proceeded, the Hualapai Tribal Council exercised eminent domain and condemned GCSD’s intangible property rights in the contract. GCSD sued in federal court seeking a declaration that the Tribe lacked authority to condemn its property rights. The District Court denied injunctive relief and required GCSD to exhaust Tribal Court remedies before proceeding in federal court. The Court of Appeals noted four recognized exceptions to the requirement of exhaustion of tribal court remedies where: (1) an assertion of tribal jurisdiction is motivated by a desire to harass or is conducted in bad faith; (2) the action is patently violative of express jurisdictional prohibitions; (3) exhaustion would be futile because of the lack of an opportunity to challenge jurisdiction; or (4) it is plain that no federal grant provides for tribal governance of non-members’ conduct on fee land. The “bad faith” exception refers to actions of the Tribal Court, not of the parties. No such bad faith exists here. This action concerns tribal property, not non Indian fee land, an important distinction discussed in *Waterwheel v. LaRance*, 642 F.3d 802 (9th Cir. 2011). Affirmed.

101. *The Tulalip Tribes v. 2008 White Ford Econoline, et al.*, No. 2012–0404, 2013 WL 2397948 (Tulalip C.A. May 30, 2013). Vehicle owner filed pro se appeal of order of the Tribal Court, which ordered forfeiture of van to Tribes under civil forfeiture provisions. The appellate court held that: (1) owner was not entrapped by police into meeting on reservation, and (2) excessive fines clause of Indian Civil Rights Act (ICRA) applied to civil forfeiture proceedings. Remanded.

102. *State of Washington v. Clark*, No. 87376–3, 2013 WL 3864298 (Wash. July 25, 2013). Defendant, an enrolled member of confederated tribes, was convicted in the Superior Court of first-degree theft. He appealed, challenging a denial of his motion to suppress evidence that was seized from his residence on tribal trust land. The appellate court, 167 Wash. App. 667, 274 P.3d 1058, affirmed. Defendant petitioned for review, which the Supreme Court granted. The Supreme Court held that: (1) the state had jurisdiction over the alleged theft, which occurred on fee land within the borders of a reservation, and (2) the state did not infringe the sovereignty of the tribes by issuing and executing a warrant to search defendant’s residence. Affirmed.

103. *Dish Network Service L.L.C. v. Laducer, et al.*, No. 12–2871, 2013 WL 3970245 (8th Cir. Aug. 5, 2013). Satellite-television-service provider brought action to enjoin tribal court from conducting trial on abuse-of-process claim brought by enrolled member of Turtle Mountain Band of the Chippewa Indians. Provider moved for preliminary injunction. The district court,

2012 WL 2782585, denied motion. Provider appealed. The appellate court held that: (1) provider would not suffer irreparable harm in absence of preliminary injunction, and (2) provider failed to demonstrate likelihood of success on merits of its claim that tribal court lacked jurisdiction. Affirmed.

L. TAX

104. *Miccosukee Tribe Of Indians Of Florida v. United States*, No. 11-14825, 698 F.3d 1326 (11th Cir. Oct. 15, 2012). Tribe petitioned to quash summons issued by Commissioner of Internal Revenue Service to third-party financial institutions to determine whether tribe had complied with federal withholding requirements on grounds of sovereign immunity, improper purpose, relevance, bad faith, and overbreadth. The district court, 730 F. Supp. 2d 1344, and 2011 WL 3300164, denied petitions, and 2011 WL 5508802, denied tribe's motion to stay pending appeal. Tribe appealed. The appellate court held that: (1) tribe could not rely on tribal sovereign immunity to quash summonses; (2) summonses were issued for proper purpose; and (3) tribe lacked standing to challenge third-party summonses as overbroad. Affirmed.

105. *Miller v. Wright*, No. 11-35850, 2012 WL 5477103 (9th Cir. Nov. 13, 2012). Native American cigarette retailer and his customers brought action against Indian tribe, tribal chairman, and head of tribe's tax department alleging that imposition of cigarette sales taxes by tribe on non-Native-Americans in Indian country pursuant to agreement between State of Washington and tribe was illegal. The district court, 2011 WL 4712245, dismissed action for lack of subject matter jurisdiction in light of tribe's sovereign immunity. Plaintiffs appealed. The appellate court held that: (1) tribe did not implicitly waive its sovereign immunity by entering into cigarette tax contract with State of Washington; (2) tribe did not implicitly waive its sovereign immunity by agreeing to dispute resolution procedures; (3) tribal immunity was not preempted by federal antitrust laws; (4) tribe's sovereign immunity extended to its officials; (5) *Ex Parte Young* barred complaint to extent that plaintiffs sought monetary relief; and (6) res judicata barred action. Affirmed.

106. *Williams v. Ketchikan Gateway Borough*, No. S-14513, 295 P.3d 374 (Alaska Feb. 15, 2013). Taxpayer, who received grant to rebuild his house from the Bureau of Indian Affairs Housing Improvement Program and subsequently executed deed of trust securing federal government's right to repayment under grant with property, appealed decision of the Superior Court affirming borough's ruling that house was not exempt from borough property taxation. The Supreme Court held that real property and improvements were not exempt from borough taxation. Affirmed.

107. *King Mountain Tobacco Company, Inc.; Confederated Tribes and Bands of the Yakama Nation, v. McKenna, Attorney General of the State of Washington*, No. 11-3018, 2013 WL 1403342 (E.D. Wash. Apr. 5, 2013). In the mid-1990s, Washington and several other states sued cigarette manufacturers, seeking to protect public health and recover costs and other damages incurred by the states due to smoking-related illnesses. In 1998, the litigation resulted in The Master Settlement Agreement (MSA) between 46 states and tobacco product

manufacturers (OPM). Pursuant to the MSA, the OPMs obtained release of specified past and future tobacco-related claims against them in exchange for an agreement to make substantial annual cash payments to the states in perpetuity to offset the burden that their cigarettes impose or will impose on the public health system. The MSA carves out three different groups of manufacturers: the OPM, Subsequent Participating Manufacturers, and Non-Participating Manufacturers (NPM). The Washington Legislature adopted a Qualifying Statute. See Wash. Rev. Code § 70.157.005. Washington's Statute requires all NPMs to make payments into qualified escrow accounts or join the MSA. The Qualifying Statute, therefore, requires tobacco product manufacturer Plaintiff King Mountain Tobacco, an NPM, to either join the MSA or deposit funds into escrow, based on the amount of their cigarette sales, that the State would obtain access to in the event of a future settlement or judgment against King Mountain. Plaintiff King Mountain engages in a multistate business growing tobacco and manufacturing cigarettes and roll-your-own tobacco. The business involves: (1) shipping King Mountain tobacco to Tennessee, where it is threshed, (2) shipping tobacco to North Carolina, where King Mountain tobacco is blended with North Carolina grown (Alliance One) tobacco, (3) transporting the blended tobacco on its trucks from North Carolina back to Washington, (4) advertising its cigarettes in multiple states through trade shows and the Internet, and (5) selling its cigarettes (through a distributor) to retail stores throughout Washington (and multiple other states) that ultimately sell cigarettes to consumers. The court found that the finished cigarettes and roll-your-own tobacco are not directly derived from trust land, King Mountain can prove no set of facts in support of the claim that Washington's escrow statutes are in conflict with the Treaty or federal law which would entitle Plaintiffs to relief. Escrow is required for all non-exempt sales subject to the State's cigarette taxes, regardless whether those sales occur on or off the reservation. Escrow is not required for tax exempt King Mountain sales of cigarettes purchased directly by enrolled members of federally recognized Indian tribes from an Indian tribal jurisdiction of the member's tribe for the member's own use. If there were any past sales that were exempt from state excise tax, but for which King Mountain has deposited money into escrow anyway, King Mountain failed to offer evidence in support of a refund claim and the court expresses no opinion concerning the same.

108. *City of New York v. Golden Feather Smoke Shop, Inc., et al.*, No. 08-03966, 2013 WL 3187049 (E.D. N.Y. June 20, 2013). Before the court were the parties' motions for summary judgment. The City of New York ("the City") initiated this action against the above-captioned defendants, individuals and businesses engaged in the sale of cigarettes from the Poospatuck Indian Reservation in Mastic, New York (the "Poospatuck Reservation" or the "Reservation"), where members of the Unkechaug Indian Nation reside. The City contended principally that defendants violated the Contraband Cigarette Trafficking Act ("CCTA"), 18 U.S.C. § 2341 *et seq.*, and the Cigarette Marketing Standards Act ("CMSA"), N.Y. Tax Law § 483 *et seq.*, by engaging in bulk re-sales of cigarettes on which State and City taxes had not been paid ("unstamped cigarettes") to the public, either directly or through trafficker intermediaries. The Court granted the City summary judgment as to defendants' liability under the CCTA and the CMSA. With respect to relief, the Court (1) granted the requested permanent injunction against defendants' "purchase, receipt, possession, sale, distribution, offer and advertisement of unstamped cigarettes-even to tribe members for personal use" and (2) awarded damages as against the Peace Pipe and TDM defendants.

109. *Mashantucket Pequot Tribe v. Town of Ledyard, et al.*, Nos. 12–1727, 12–1735, 2013 WL 3491285 (2nd Cir. July 15, 2013). Indian tribe brought action challenging town’s imposition state’s personal property tax on lessors of slot machines used by tribe at casino. State intervened. The district court, 2012 WL 1069342, entered summary judgment in tribe’s favor, and state and town appealed. The appellate court held that: (1) tribe had standing to bring action; (2) Tax Injunction Act (TIA) did not bar action; (3) district court did not abuse its discretion in declining to dismiss action under principles of comity; and (4) Indian Trader Statutes and Indian Gaming Regulatory Act (IGRA) did not preempt town’s imposition of tax. Reversed and remanded.

110. *Confederated Tribes of the Chehalis Reservation, et al. v. Thurston County Board of Equalization, et al.*, No. 10–35642, 2013 WL 3888429 (9th Cir. July 30, 2013). Tribe and lessee brought action against county, challenging assessment of property taxes on leased property. Cross-motions for summary judgment were filed. The district court, J., 2010 WL 1406524, awarded summary judgment to county, finding that state and local governments were not prohibited from taxing permanent improvements, like resort on leased property, that were owned by non-Indians, and 2010 WL 2595232, denied in part tribe’s motion to amend. Tribe and lessee appealed. The appellate court held that land and permanent improvements on land were exempt from state and local taxation. Reversed.

M. TRUST BREACH AND CLAIMS

111. *Segura v. Colombe, et al.*, No. 11–0926, 2012 WL 4715271 (D.N.M. Sept. 24, 2012). Arrestee brought action against board of county commissioners, alleging claims pursuant to § 1983 and the New Mexico Tort Claims Act (NMTCA) following arrest by tribal police officer who was appointed and commissioned as a county deputy sheriff. Board moved for summary judgment. The court held that: (1) officer was not a law enforcement officer under the NMTCA; (2) officer was an independent contractor; and (3) board did not have immediate supervisory responsibilities over officer. Motion granted in part and denied in part.

112. *Jackson, et al. v. United States*, No. 11–671, 2012 WL 5873669 (Fed. Cl. Nov. 20, 2012). Members of Indian tribe brought suit against the United States in the United States District Court for the District of Idaho, alleging negligence and breach of fiduciary duty. The District Court granted summary judgment against tribe members as to negligence claims, but transferred breach of fiduciary duty claims to Court of Federal Claims. Defendant moved for judgment on the pleadings. The Court of Federal Claims held that: (1) claims filed simultaneously were “pending” claims under statute limiting jurisdiction of the Court of Federal Claims, and (2) Court of Federal Claims lacked jurisdiction over transferred claims because they arose out of same operative facts as pending, nontransferred claims. Dismissed.

113. *The Northern Cheyenne Tribe, v. The Roman Catholic Church, et al.*, No. 12-0010, 2013 WL 433180 (Mont. Feb. 5, 2013). Indian tribe brought action against Catholic school located on reservation and against Catholic diocese, alleging numerous claims, including unjust enrichment, and seeking to impose constructive trust on funds raised by school using direct mail containing images of poverty among tribe members. The district court entered

summary judgment in favor of school and diocese, and tribe appealed. The Supreme Court held that: (1) tribe was not required to prove that school had committed a wrongful act in order to support unjust enrichment claim, and (2) trial court, in determining running of statute of limitations, was required to determine when tribe received notice that school had asserted an adverse interest as to funds. Affirmed in part, reversed in part, and remanded.

114. *Spirit Lake Tribe of Indians, et al. v. National Collegiate Athletic Ass'n.*, No. 12–2292, 715 F.3d 1089 (8th Cir. May 29, 2013). Indian tribe sued national association governing collegiate sports, alleging race discrimination under § 1981, and seeking to enjoin association from interfering with state university’s use of “Fighting Sioux” name, logo, and imagery. The district court granted summary judgment in favor of association. Tribe appealed. The appellate court held that: (1) tribe failed to show that association acted with discriminatory intent, and (2) under North Dakota law, contract to use name was not created by ceremony. Affirmed.

115. *Jicarilla Apache Nation v. United States*, No. 02-25L (Fed. Cl. June 4, 2013). This Indian trust case was before the court following an extensive trial in Washington, D.C. In this case, the Jicarilla Apache Nation (the Nation) sought an accounting and to recover for monetary losses and damages relating to the government’s alleged breach of fiduciary duties in mismanaging the Nation’s trust assets and other funds. Specifically, the Nation alleged that the United States: (1) failed to invest Jicarilla’s trust monies prudently so as to obtain an appropriate return; (2) made certain unauthorized disbursements of Jicarilla’s trust monies; (3) took too long to deposit funds received for Jicarilla into interest-bearing trust accounts; and (4) charged Jicarilla interest for covering overdrafts on Jicarilla’s trust accounts that were caused by the United States. The court found that Plaintiff demonstrated that, during the period from February 22, 1974, to September 30, 1992, defendant breached its fiduciary duties to the Nation by mismanaging the Nation’s trust assets and other funds; and that Plaintiff established all the traditional elements for recovery of damages on those breach claims. Based on the foregoing, the court found that, for the period in question, plaintiff is entitled to damages in the amount of \$21,017,491.99 – \$21,015,651.45 on its underinvestment claim and \$1,840.54 for its deposit lag claim. Plaintiff was entitled to recover nothing on its negative interest claim, which claim was dismissed for lack of jurisdiction.

116. *Goodeagle, et al. v. United States*, No. 12–431, 2013 WL 3724927 (Fed. Cl. July 16, 2013). Members of Indian tribe brought action against federal government, seeking to recover money damages arising from government’s alleged breach of fiduciary and trust obligations owed to tribe and its members. Government moved for partial dismissal of complaint. The Court of Federal Claims held that: (1) claims seeking to recover losses stemming from mismanagement of trust fund accrued when Department of Interior accepted tribe’s analysis as final accounting; (2) government was not entitled to more definite statement of members’ claim for mismanagement of trust fund; (3) Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) did not preempt members’ claim for mismanagement of natural resources; (4) claims for mismanagement of natural resources did not represent continuing trespass; (5) claims that government violated fiduciary duties by failing to protect members or to act in their best interest were untimely; and (6) members’ alternative takings claim was premature. Motion granted in part and denied in part.

117. *Quapaw Tribe of Oklahoma v. United States*, No. 12–529, 2013 WL 3724944 (Fed. Cl. July 16, 2013). Indian tribe brought claim against federal government, seeking money damages arising from government’s alleged breach of fiduciary and trust obligations owed to tribe. Government moved for partial dismissal of complaint. The Court of Federal Claims held that: (1) tribe satisfied notice pleading requirement for claim alleging breach of fiduciary duty through mismanagement of tribe’s trust accounts; (2) tribe failed to identify any provision of law violated by government’s deed of trust land to church; (3) tribe’s claims for losses due to mismanagement of trust funds accrued when Department of Interior accepted tribe’s analysis as final accounting; and (4) tribe’s claim that government mismanaged natural resources on trust land was untimely. Motion granted in part and denied in part.

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