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CASE LAW ON AMERICAN INDIANS

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TABLE OF CONTENTS

UNITED STATES SUPREME COURT.....	1
OTHER COURTS.....	2
A. ADMINISTRATIVE LAW	2
B. CHILD WELFARE LAW AND ICWA	6
C. CONTRACTING.....	9
D. EMPLOYMENT.....	17
E. ENVIRONMENTAL REGULATIONS	21
F. FISHERIES, WATER, FERC, BOR.....	25
G. GAMING.	30
H. JURISDICTION, FEDERAL	42
I. RELIGIOUS FREEDOM.....	49
J. SOVEREIGN IMMUNITY	50
K. SOVEREIGNTY, TRIBAL INHERENT	53
L. TAX.....	58
M. TRUST BREACH AND CLAIMS	60
N. MISCELLANEOUS	70

UNITED STATES SUPREME COURT

1. **Nebraska v. Parker**, No. 14-1406, 2016 U.S. LEXIS 2132 (U.S. Mar. 22, 2016). An 1882 Act opening Indian reservation land to settlement by non-Indians did not diminish the reservation to preclude application of the Indian tribe's liquor laws to non-tribal retailers in the opened land, since the language of the Act only opening the land for settlement did not establish a clear intent of Congress to diminish the reservation. Neither conflicting legislative history nor changed demographic history based on the tribe's absence from the opened land for a substantial period could overcome the conclusion that Congress did not intend to diminish the reservation. Judgment affirmed. Unanimous decision.

2. **Sturgeon v. Frost**, Docket No. 14-1209 (U.S. Mar. 22, 2016). **Issues:** Does Section 103(c) of the 1980 Alaska National Interest Lands Conservation Act prohibit the National Park Service from exercising regulatory control over state, native corporation and private Alaska land physically located within the boundaries of the National Park System? **Holdings:** The Ninth Circuit's interpretation of Section 103(c) is inconsistent with both the text and context of ANILCA. (a) The Ninth Circuit's interpretation of Section 103(c) violates "a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme," *Roberts v. Sea-Land Services, Inc.*, 566 U. S. ____, (2012). ANILCA repeatedly recognizes that Alaska is different, and ANILCA itself accordingly carves out numerous Alaska-specific exceptions to the Park Service's general authority over federally managed preservation areas. Those Alaska-specific provisions reflect the simple truth that Alaska is often the exception, not the rule. Yet the reading below would prevent the Park Service from recognizing Alaska's unique conditions. Under that reading, the Park Service could regulate "non-public" lands in Alaska only through rules applicable outside Alaska as well. The Court concludes that, whatever the reach of the Park Service's authority under ANILCA, Section 103(c) did not adopt such a "topsy-turvy" approach. Pp. 12–14. (b) Moreover, it is clear that Section 103(c) draws a distinction between "public" and "non-public" lands within the boundaries of conservation system units in Alaska. And yet, according to the court below, if the Park Service wanted to differentiate between that "public" and "non-public" land in an Alaska-specific way, it would have to regulate the "non-public" land pursuant to rules applicable outside Alaska, and the "public" land pursuant to Alaska-specific provisions. Assuming the Park Service has authority over "non-public" land in Alaska (an issue the Court does not decide), the Court concludes that this is an implausible reading of the statute. The Court therefore rejects the interpretation of Section 103(c) adopted by the court below. Pp. 14–15. (c) The Court does not reach the remainder of the parties' arguments. In particular, it does not decide whether the Nation River qualifies as "public land" for purposes of ANILCA. It also does not decide whether the Park Service has authority under Section 100751(b) to regulate Sturgeon's activities on the Nation River, even if the river is not "public" land, or whether—as Sturgeon argues—any such authority is limited by ANILCA. Finally, the Court does not consider whether the Park Service has authority under ANILCA over both "public" and "non-public" lands within the boundaries of conservation system units in Alaska, to the extent a regulation is written to apply specifically to both types of land. The Court leaves those arguments

to the lower courts for consideration as necessary. Pp. 15–16. 768 F. 3d 1066, vacated and remanded.

3. *Menominee Indian Tribe of Wisconsin v. U.S.*, Docket No. 14-510, 136 S. Ct. 750, 193 L. Ed. 2d 652, 2016 U.S. LEXIS 971, 84 U.S.L.W. 4081, 25 Fla. L. Weekly Fed. S 604 (U.S. 2016). Decided: Jan 25, 2016. Case below: *Menominee Indian Tribe of Wisconsin v. U.S.* 765 F.3d 1010. Holdings: Equitable tolling does not apply to the presentment of petitioner’s claims. (a) To be entitled to equitable tolling of a statute of limitations, a litigant must establish “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.” *Holland v. Florida*, 560 U. S. 631, 649. The Tribe argues that diligence and extraordinary circumstances should be considered together as factors in a unitary test, and it faults the Court of Appeals for declining to consider the Tribe’s diligence in connection with its finding that no extraordinary circumstances existed. But this Court has expressly characterized these two components as “elements,” not merely factors of indeterminate or commensurable weight, *Pace v. DiGuglielmo*, 544 U. S. 408, 418, and has treated them as such in practice, see *Lawrence v. Florida*, 549 U. S. 327, 336–337. The Tribe also objects to the Court of Appeals’ interpretation of the “extraordinary circumstances” prong as requiring the showing of an “external obstacle” to timely filing. This Court reaffirms that this prong is met only where the circumstances that caused a litigant’s delay are both extraordinary and beyond its control. None of the Tribe’s excuses satisfy the “extraordinary circumstances” prong of the test. The Tribe had unilateral authority to present its claims in a timely manner. Its claimed obstacles, namely, a mistaken reliance on a putative class action and a belief that presentment was futile, were not outside the Tribe’s control. And the significant risk and expense associated with presenting and litigating its claims are far from extraordinary. Finally, the special relationship between the United States and Indian tribes, as articulated in the ISDA, does not override clear statutory language. 764 F. 3d 51, affirmed. ALITO, J., delivered the opinion for a unanimous Court.

OTHER COURTS

A. ADMINISTRATIVE LAW

4. *Fort Sill Apache Tribe v. National Indian Gaming Commission*, No. 14–958, 2015 WL 2203497, ___ F. Supp. 3d ___ (D.D.C. May 12, 2015). Tribe brought action under Administrative Procedure Act to compel National Indian Gaming Commission (NIGC) to issue decision on tribe’s appeal of notice of violation issued by NISC’s chairman alleging that tribe had violated Indian Gaming Regulatory Act (IGRA) by gaming on Indian lands ineligible for gaming. NIGC moved to dismiss. The district court held that: (1) action fell within scope of Administrative Procedure Act’s (ADA) waiver of sovereign immunity; (2) court had subject matter jurisdiction over action; and (3) notice of violation was not final agency action. Motion granted in part and denied in part.

5. ***Patchak v. Jewell***, No. 08–1331, 2015 WL 3776490, ___ F. Supp. 3d ___ (D.D.C. Jun. 17, 2015). This case was before the Court on remand from the United States Court of Appeals for the District of Columbia and the Supreme Court of the United States. Plaintiff David Patchak challenged the Secretary of the Interior’s (Secretary) decision to take into trust two parcels of land in Allegan County, Michigan, on behalf of the Intervenor–Defendant Match–E–Be–Nash–She–Wish Band of Pottawatomi Indians (the “Tribe”) pursuant to the Indian Reorganization Act (IRA), 25 U.S.C. § 465. Since this case was remanded, two events have altered the legal landscape. First, on September 3, 2014, the Secretary issued an Amended Notice of Decision concerning the Tribe’s fee-to-trust application for two other parcels of land it sought to acquire. In so doing, the Secretary expressly considered, and confirmed, its authority under the IRA to take land into trust on behalf of the Tribe. Second, on September 26, 2014, President Obama signed into law the Gun Lake Trust Land Reaffirmation Act (Act). The Act declares as follows: “The land taken into trust by the United States for the benefit of the Match–E–Be–Nash–She–Wish Band of Pottawatomi Indians . . . is reaffirmed as trust land, and the actions of the Secretary of the Interior in taking that land into trust are ratified and confirmed. . . . Notwithstanding any other provision of law, an action (including an action pending in a Federal court as of the date of enactment of this Act) relating to the land . . . shall not be filed or maintained in a Federal court and shall be promptly dismissed.” This action is therefore dismissed.

6. ***Alto, et al. v. Jewell***, No. 11-cv-2276, 2015 U.S. Dist. LEXIS 133540 (S.D. Cal. Sept. 30, 2015). This action arose from the approval of a recommendation from the Enrollment Committee of the San Pasqual Band of Diegueño Mission Indians (“San Pasqual Band” or “Band”) to disenroll the named plaintiffs from the Band’s membership roll. Pending before the Court were the parties’ cross-motions for summary judgment. Plaintiffs filed a complaint seeking, among other things, judicial review of the Assistant Secretary’s 2011 Decision under the APA and the arbitrary-and-capricious standard. Shortly after the action began, the Court granted Plaintiffs’ motion for a preliminary injunction, restraining and enjoining Defendants from removing Plaintiffs from the San Pasqual Band’s membership roll and from taking any further action to implement the Assistant Secretary’s 2011 Decision for the duration of this lawsuit. The Court also enjoined the Assistant Secretary from issuing certain interim orders. In the First Amended Complaint (“FAC”), Plaintiffs asserted five claims to set aside the Assistant Secretary’s 2011 Decision: (1) declaratory relief based upon the doctrine of res judicata; (2) declaratory relief on the basis that Defendant Echo Hawk violated the enrolled Plaintiffs’ right to procedural due process; (3) declaratory relief and reversal of the 2011 Decision based upon the arbitrary-and-capricious standard; (4) “federal agency action unlawfully withheld and request for preliminary injunctive relief”; and (5) “declaratory and injunctive relief by all Plaintiffs against all Defendants[.]” After the Court granted the San Pasqual Band the limited right to intervene, the Band pursued an interlocutory appeal to the Ninth Circuit. The Ninth Circuit affirmed the Court’s determination that it had jurisdiction to review the Assistant Secretary’s disenrollment decision and that the San Pasqual Band is not an indispensable party. *Alto v. Black*, 738 F.3d 1111, 1131 (9th Cir. 2013). The Ninth Circuit also remanded to “allow the district court formally to clarify the original injunction to conform with the [Ninth Circuit’s] understanding of the injunction,” which was eventually resolved by the

parties. The court found that the record strongly suggests that the San Pasqual Band has engaged in a relentless battle to disenroll Marcus Alto, Sr. and his descendants from the very beginning. For the most part, that battle appeared to be one that Plaintiffs were winning all the way up to the Regional Director's November 2008 decision. Then suddenly, in a complete about face, the Assistant Secretary reversed the Regional Director's decision, found in favor of the Band, and followed the recommendation to disenroll Marcus Alto, Sr.'s descendants. However, the Court's role in this situation is "not to substitute its judgment for that of the agency," but rather to examine whether there is a "rational connection between the facts found and the choice made" by the agency. *Bonneville Power*, 477 F.3d at 687 (quoting *State Farm*, 463 U.S. at 43). The Assistant Secretary was tasked with the responsibility to review thousands of pages in the administrative record, some of which are over a hundred years old, and determining the membership status of the now-deceased Marcus Alto, Sr. Plaintiffs expended considerable effort to identify facts in the record either unmentioned, potentially ignored, or devalued, but as the Court has repeatedly stated, it "must defer to a reasonable agency action 'even if the administrative record contains evidence for and against its decision.'" *Modesto Irrigation*, 619 F.3d at 1036 (quoting *Trout Unlimited*, 559 F.3d at 958). The failure to address the substantial deference afforded to agency decisions, particularly for factual determinations, was a recurring flaw in Plaintiffs' reasoning. See *Arkansas*, 503 U.S. at 112; *Melkonian*, 320 F.3d at 1065. Under the standard prescribed by 5 U.S.C. § 706(2)(A), which is highly deferential to the agency, Plaintiffs failed to meet their burden to demonstrate that the Assistant Secretary's decision is in any way "arbitrary, capricious, an abuse or discretion, or otherwise not in accordance with law." See 5 U.S.C. § 706(2)(A); *San Luis & Delta-Mendota*, 747 F.3d at 601. Plaintiffs also failed to demonstrate that the Assistant Secretary's decision is not supported by "substantial evidence." See *Love Korean Church*, 549 F.3d at 754; *Bear Lake Watch*, 324 F.3d at 1076. Upon the Court's review of the 2011 Decision, the Court found that the Assistant Secretary articulated a rational relationship between his factual findings and conclusions. See *Fence Creek Cattle*, 602 F.3d at 1132. In light of the foregoing, the Court denied Plaintiffs' motion for summary judgment, and granted Defendants' cross-motion for summary judgment. Accordingly, the Court affirmed the Assistant Secretary's 2011 Decision "revers[ing] the decision made by the Pacific Regional Director on November 26, 2008" and concluding that "the enrollment of the Marcus Alto Sr.[] descendants was based on information subsequently determined to be inaccurate and, as a result, their names must be deleted from the Band's roll."

7. *Tohono O'odham Nation v. City of Glendale*, No. 11-16811, No. 11-16833, 2015 U.S. App. LEXIS 19407 (9th Cir. Nov. 6, 2015). This appeal involved a dispute concerning 135 acres of unincorporated land within Maricopa County, Arizona that was purchased by Plaintiff, the Tohono O'odham Nation (the Nation). The Nation filed suit against the City of Glendale and the State of Arizona (collectively, Defendants), challenging the constitutionality of H.B. 2534, a law passed by the Arizona legislature that allows a city or town within populous counties to annex certain surrounding, unincorporated lands. The Nation alleged that H.B. 2534 was enacted to block the federal government from taking the 135 acres it purchased into trust on behalf of the Nation—a process that would render the land part of the Nation's reservation pursuant to the Gila Bend Indian Reservation Lands Replacement Act, Pub. L. No. 99-503,

100 Stat. 1798 (1986) (the Act). The Nation asserted that H.B. 2534 is preempted by the Act, violates the Equal Protection and Due Process Clauses of the U.S. and Arizona Constitutions, and violates the Arizona Constitution's prohibition against special legislation. The parties filed cross summary judgment motions. The district court ruled in favor of the Nation as to the federal preemption claim, and ruled in favor of Defendants as to the remaining claims. The appellate court found that the district court properly concluded that H.B. 2534, Ariz. Rev. Stat. § 9-471.04 was preempted by the Gila Bend Indian Reservation Lands Replacement Act (Act). At the very moment the Tohono O'odham Nation filed an application with the Secretary of the Interior to take any of the Replacement Lands into trust, the city was permitted, pursuant to H.B. 2534, to annex the same land by either a majority vote of the governing body or by two-thirds vote of the governing body, in which case the annexation became immediately operative. The city had the authority, at the point when the Nation filed a trust application, to preemptively annex unincorporated land and effectively block the trust application, and this barred the Nation's effort to incorporate purchased land into tribal land. Judgment affirmed.

8. *Tuttle v. Jewell*, No. 13-365, 2016 U.S. Dist. LEXIS 31398 (D.D.C. Mar. 11, 2016). Plaintiff William Tuttle leased restricted Indian land in Riverside County, California, for a term of 50 years. The land is owned by the United States in trust for the Colorado River Indian Tribes. In 2010, the Bureau of Indian Affairs terminated the lease, finding that Mr. Tuttle had violated several of its provisions. The termination decision was affirmed by the Interior Board of Indian Appeals. The Bureau of Indian Affairs and the Interior Board of Indian Appeals are constituent agencies of the Department of Interior. Plaintiff sued the Secretary of the Interior, in her official capacity, complaining that the agency's decision to terminate was arbitrary and capricious, in violation of both the Indian Long-Term Leasing Act and the terms of the Lease itself. The Court concludes that the agency acted reasonably on the record before it and within its authority. The Secretary's motion for summary judgment will be granted.

9. *Bruette v. Jewell*, No. 15-2897, 2016 U.S. App. LEXIS 5827 (7th Cir. Mar. 30, 2016). Felix Bruette appeals from a dismissal of his suit for lack of jurisdiction. Bruette's complaint alleges that as a great-great-grandson of Gardner, he is entitled to his share of benefits that Congress promised to Gardner in the 1893 statute. The Department is disregarding that Act, the complaint continues, and is thereby breaching its fiduciary duties by not establishing an official list of tribe beneficiaries. At a hearing Bruette expanded these allegations. He explained that he represents descendants of those who signed the 1856 Treaty, but whom Congress excluded from its benefits under a law enacted 15 years later. Congress, Bruette continued, recognized that it had wrongly excluded many who signed the 1856 Treaty from receiving tribal benefits required by the Treaty. It therefore passed in 1893 an act to remedy that situation. But, Bruette concluded, the Department never completed the required tribal membership "roll" that would have treated Gardner's descendants as members of the tribe contemplated by the 1856 Treaty. Bruette sought an order requiring that the Department of the Interior follow an 1893 law involving the Stockbridge and Munsee Indians. At a hearing Bruette clarified his principal demand: He wants the Department

to recognize that descendants (including him) of Stephen Gardner, a signor of an 1856 Treaty between the Stockbridge and Munsee Indians and the United States, belong to the tribe recognized in the Treaty. The district court dismissed the suit based on several incurable defects. Because Bruette has not developed an argument to disturb the district court's decision, we dismiss his appeal.

B. CHILD WELFARE LAW AND ICWA

10. *J.N.T. v. Cullman County Dept. of Human Resources*, No. 2140171, 2015 WL 1958070, __ So. 3d __ (Ala. Civ. App. May 1, 2015). Department of Human Resources filed petition seeking to terminate the parental rights of mother and father. The Cullman Juvenile Court, No. JU-13-46.03, terminated parents' parental rights, and mother appealed. The appellate court held that juvenile court failed to comply with the notice requirements of the Indian Child Welfare Act when it conducted termination of parental rights hearing less than 10 days after the tribe received notice of termination action. Reversed and remanded.

11. *In re Natalie P.*, No. D067689, 2015 WL 4072120 (Cal. Ct. App. Jul. 6, 2015). Erika P. appealed following the jurisdictional and dispositional hearing in the juvenile dependency case of her daughter, Natalie P. Erika contended the juvenile court erred by finding the San Diego County Health and Human Services Agency (the Agency) substantially complied with the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 *et seq.*) and ICWA did not apply. The Agency conceded ICWA notice should have been sent to the Cherokee tribe, the ICWA-030 form was incomplete and contained typographical errors, and a reversal and a limited remand was necessary to effect and document proper ICWA notice. The appellate court reversed the judgment and remanded the case the juvenile court with directions to order the Agency to (1) conduct an ICWA inquiry; (2) provide ICWA notice to any tribes the inquiry identifies; and (3) file all required documentation with the court. If, after proper notice, a tribe claims Natalie is an Indian child, the court shall proceed in conformity with ICWA. If, on the other hand, no tribe makes such a claim, the court shall reinstate the judgment.

12. *In re Adoption of T.A.W.*, No. 47364-0-II, 2015 WL 4093335, __ P.3d __ (Wash. Ct. App. Jul. 7, 2015), review granted, No. 92127-0 (Jan. 14, 2016). Indian mother and her husband petitioned to terminate non-Indian biological father's parental rights to Indian son and to allow husband to adopt son. The Superior Court granted petition. Father appealed. The appellate court held that: (1) father could raise the "active efforts" requirement of Indian Child Welfare Act (ICWA) for the first time on appeal; (2) termination provisions of ICWA applied to non-Indian father; and (3) under Washington law, "active efforts" requirement applies to a parent who has had custody of an Indian child and has not expressly relinquished parental rights even if that parent at some point in time has abandoned the child. Reversed and remanded.

13. *D.B. v. M.H.*, No. E062459, 2015 Cal. App. Unpub. LEXIS 5581 (Cal. App. 4th Dist. Aug. 4, 2015). M.H., the mother of J., D. and E., and E.F., the father of E., appealed from an order terminating their parental rights to D. and E. The court rejected their contentions concerning the denial of their petitions to modify the order terminating reunification services and the court's finding that neither the beneficial parental relationship exception to the statutory preference for adoption nor the sibling relationship exception applied. However, the court agreed that conditional reversal was required in order for the Riverside County Department of Public Social Services to comply with its obligations under the Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. § 1901 *et seq.*). The judgment terminating parental rights as to E. and D. was reversed, and the case was remanded to the juvenile court with directions to order the Riverside County Department of Public Social Services to comply with the inquiry and notice requirements of ICWA. If, after proper notice, the juvenile court finds that either child is an Indian child as defined by ICWA, the court will proceed in conformity with all provisions of ICWA. If, on the other hand, the court finds after proper notice that either E. or D. is not an Indian child, the judgment terminating parental rights shall be reinstated as to that child. The judgment is otherwise affirmed.

14. *Jennifer L. v. State Department of Health and Social Services*, No. S – 15646, 357 P.3d 110 (Alaska Aug. 28, 2015). After Office of Children's Services (OCS) took three minor children into emergency custody, a standing master determined that no probable cause existed and recommended that children be returned to mother's custody. Following remand from the Supreme Court, 2014 WL 1888190, the Superior Court rejected recommendation and determined that probable cause existed. Mother appealed and Superior Court dismissed underlying case before State could file brief. The Supreme Court held that: (1) public interest exception to mootness doctrine applied, and (2) standing master's order that children should be returned to parents was not effective until judicially reviewed.

15. *K.P. v. Michelle T.*, No. D067797, 2015 Cal. App. Unpub. LEXIS 8073 (Cal. App. 4th Dist. Nov. 10, 2015). Michelle T., a member of the Pala Band of Mission Indians, contended that the juvenile court violated the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1901 *et seq.* and § 66.26 of the Welfare and Institutions Code under by terminating her parental rights to her children, K.P. and Kristopher P. Throughout most of their dependency cases, K.P. and Kristopher were eligible for membership, or were enrolled, in the Pala Band of Mission Indians (Pala Band). At the children's first § 366.26 hearing, the Pala Band did not consent to the children's adoption and the juvenile court ordered a plan of guardianship. Several years later, when the children's cases proceeded to a second § 366.26 hearing, the juvenile court learned that the Pala Band of Mission Indians had disenrolled K.P. and Kristopher, and others, on the ground that they lacked the blood quantum necessary for membership. Michelle argued that in view of a pending appeal in the Ninth Circuit challenging the validity of the Pala Band's enrollment ordinance that resulted in the disenrollment of K.P. and Kristopher and the others, the juvenile court erred when it found that K.P. and Kristopher were not Indian children within the meaning of the ICWA and declined to apply ICWA's substantive and procedural protections at the children's second § 366.26 hearings. Michelle also argued that enrollment in a tribe is not required to be considered an Indian child, and that the

Pala Band did not provide written confirmation that enrollment is a prerequisite for Pala Band membership. The appellate court concluded that the juvenile court correctly ruled that the Indian tribe has the sole authority to determine its own membership and that the juvenile court must defer to the membership decisions of an Indian tribe. Under federal and state law, the Indian tribe's membership determination is conclusive. The record shows that enrollment is a prerequisite for Pala Band membership, and that the Pala Band determined that K.P. and Kristopher are not members of its tribe and that the juvenile court did not err when it determined that K.P. and Kristopher are not Indian children within the meaning of the ICWA and terminated parental rights without applying ICWA's heightened substantive and procedural protections. The appellate court affirmed.

16. *In re K.M.*, No. G051656, 2015 WL 7352048 (Cal. Ct. App. Nov. 20, 2015). In a dependency proceeding, the Superior Court, No. DP024561, terminated parental rights to child. Mother and father appealed. While the matter was still pending on appeal, the Superior Court issued a post-judgment order finding that the county child welfare agency complied with the Indian Child Welfare Act (ICWA). The appellate court held that juvenile court lacked jurisdiction to rule on the ICWA issue following its termination of parental rights.

17. *Gila River Indian Cmty. v. Dep't of Child Safety*, No. 1 CA-JV 15-0178, 2015 Ariz. App. LEXIS 294, 727 Ariz. Adv. Rep. 28 (Ariz. Ct. App. Dec. 8, 2015). The Gila River Indian Community (the Community) appealed the denial of its motion to change physical custody of a dependent Indian child in foster care. The Community challenged the juvenile court's determination that good cause exists to deviate from placement preferences set forth in the Indian Child Welfare Act (ICWA). The Community argued the juvenile court erred by refusing to move the child to an available ICWA-preferred placement. The Community further contended the good cause determination is not supported by sufficient evidence. The appellate court held that good cause to deviate from the Indian Child Welfare Act placement preferences must be established by clear and convincing evidence. While the trial court cited the child's bond with her foster family and expert opinions in ordering a deviation from the Act, remand was required because it was not apparent that the trial court applied the clear and convincing standard to its good cause determination that deviation from the Act's placement preferences was appropriate. Vacated and remanded.

18. *In re Amy J.*, No. A145782, 2016 Cal. App. Unpub. LEXIS 1243 (Cal. Ct. App. Feb. 18, 2016). Amy J., an Indian child and dependent of the Humboldt County juvenile court pursuant to Welfare and Institutions Code section 300, appeals from that court's order authorizing respondent Humboldt County Department of Health & Human Services (Department) to place her as requested by her Indian tribe with a Butte County family that was caring for, and in the process of adopting, her sister. Amy, one year old when the court issued its order, was bonded and thriving with Humboldt County foster parents who had cared for her since she was two days old and wanted to adopt her. Amy argues the order must be reversed for three reasons: (1) regardless of the court's characterization of it as a foster care placement order, it was in fact an order for her adoptive placement and, as such, violated the Indian Child Welfare Act (ICWA) adoptive

placement preferences; (2) even if construed as a foster care placement order, it should not have issued because there was no tribal resolution and because Amy showed good cause to deviate from the ICWA foster care placement preferences; and (3) the order violated Amy's constitutional liberty interest in her family relationship with her Humboldt County foster parents. We conclude the court's order was not for adoptive placement, but instead authorized a change in Amy's foster care placement, and that Amy does not establish the court erred in issuing it. Therefore, we affirm the order.

19. *State v. Joseph B. (In re Tavian B.)*, No. S-15-129, 292 Neb. 804, 2016 Neb. LEXIS 24 (Neb. Feb 19, 2016). Tavian B. was found to be a child who lacks proper parental care by reason of the fault or habits of his parents and to be in a situation dangerous to life or limb or injurious to his health or morals. See Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008). Approximately 16 months later, the State of Nebraska moved to terminate the parental rights of both parents. The father then filed a motion to transfer jurisdiction to the Oglala Sioux Tribal Juvenile Court (Tribal Court) pursuant to the federal Indian Child Welfare Act of 1978 (ICWA). See 25 U.S.C. § 1901 et seq. (2012). Prior to the juvenile court's ruling on the father's motion to transfer, the State withdrew its motion to terminate parental rights. The court found that good cause existed to deny the request to transfer jurisdiction to the tribal court, because the proceedings were in "an advanced stage." The father appeals the juvenile court's order overruling his motion to transfer. For the reasons stated below, we reverse the judgment of the juvenile court and remand the cause with directions.

20. *State v. Central Council of Tlingit and Haida Indian Tribes of Alaska*, No. S-14935, 2016 WL 1168202 (Alaska Mar. 25, 2016). Central Council of Tlingit and Haida Indian Tribes filed action against state, seeking declaratory judgment that its tribal court system had subject matter jurisdiction over child support matters and seeking an injunction requiring the state's child support enforcement agency to recognize tribal courts' child support orders. The Superior Court entered judgment in favor of the tribes. State appealed. The Supreme Court held that: (1) tribal courts have inherent, non-territorial subject matter jurisdiction to adjudicate parents' child support obligations, and (2) the power to set nonmember parents' child support obligations is within the retained powers of membership-based inherent tribal sovereignty. Affirmed.

C. CONTRACTING

21. *Colbert v. United States*, No. 14-12007 (11th Cir. May 7, 2015). The United States challenges subject matter jurisdiction, namely, the district court's partial summary judgment ruling that, under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346 et seq., and pursuant to the self-determination contract entered into between the United States Department of Interior, Bureau of Indian Affairs (BIA) and the Navajo Nation Tribe, 25 U.S.C. § 450f1, Navajo Nation Department of Justice (NNDJ) Attorney Kandis Martine was "deemed" an employee of the BIA and afforded the full protection and coverage of the FTCA. The district court determined that given Martine's role in connection with the Navajo Nation Child & Family Services Program (NCFSP),

and its efforts to oppose the adoption of a Navajo child by a non-Navajo family in Florida state court, Martine was entitled to protection under the FTCA. As a result, the district court dismissed Martine from the lawsuit and held that the United States was the proper party-defendant, 28 U.S.C. § 2679(d)(3). On appeal, the United States contends the district court erred in finding as a factual matter that Martine was “carrying out” work under the self-determination contract. The Court of Appeals held that the provision of FTCA coverage to Martine does not constitute an improper extension of the waiver of sovereign immunity. Section 314 of the Indian Self-Determination Act plainly extends the United States’ waiver of sovereign immunity to Indian tribes, tribal organizations, Indian contractors and their employees that are engaged in functions authorized under a self-determination contract. Because Martine’s work fell within the identifiable functions of the Navajo self-determination contract, the District Court’s application of the law to these facts comports with sovereign immunity principles. Affirmed.

22. *Yurok Tribe v. Department of the Interior*, No. 2014-1529, 2015 WL 2146614 (Fed. Cir. May 8, 2015). The Yurok Tribe petitioned for review of the Civilian Board of Contracting Appeals’ dismissal of its action for approval of a self-determination contract. 2014 WL 718420. The Tribe requested a contract for its Department of Public Safety and Tribal Court. The Office of Self-Governance responded timely directing the Tribe to the Bureau’s Office of Justice Services. It is undisputed that the Bureau did not decline the proposal within 90 days of receiving it. The Tribe appealed to both the Board of Contract Appeals and the Interior Board of Indian Appeals (IBIA) because of uncertainty whether the deemed contract had arisen by operation of law or the appeal presented a pre-award dispute. The IBIA action was stayed. The Board of Contract Appeals granted the government’s Motion to Dismiss. The Federal Circuit could not affirm on either of the Board’s grounds for dismissal, but found that other grounds to affirm dismissal because the case presents a pre-award dispute. 25 U.S.C. § 450f(a)(2) provides that “the Secretary shall, within 90 days after receipt of the proposal, approve the proposal and award the contract.” Both the statute and the regulations distinguish between approval and award of the contract.

23. *People v. Riley*, No. E059103, 2015 WL 4448081 (Cal. Ct. App. Jul 21, 2015). Defendants were convicted in the Superior Court of three counts of commercial bribery arising out of insurance premiums charged to Native American casino. Defendants appealed. The appellate court held that: (1) defendant who had left casino job and had become chief financial officer for tribal government was not an employee of casino, as specified in indictment, at time of two alleged acts of commercial bribery; (2) evidence was sufficient to support conviction even if no specific gratuity could be tied to any specific instance of overcharging; and (3) evidence was sufficient to support finding that defendants acted with the specific intent to harm casino.

24. *Grand Canyon Skywalk Dev. LLC v. Cieslak*, Nos. 2:15-01189 and 2:13-00596, 2015 U.S. Dist. LEXIS 107457 (D. Nev. Aug. 13, 2015). This matter was before the Court on Gallagher & Kennedy, P.A. and The Hualapai Indian Tribe’s (hereinafter “Gallagher & Kennedy”) Motion to Quash Plaintiff’s Subpoena to Glen Hallman. This action arose out of a long-running dispute relating to the Grand Canyon Skywalk (“Skywalk”) in Case No. 2:13-cv-00596. Plaintiffs alleged that Defendants

David John Cieslak, Nicholas Peter Scutari and Scutari & Cieslak Public Relations, Inc. (hereinafter collectively referred to as “Scutari & Cieslak”), together with individual members of the Hualapai Tribal Council, conspired to conduct a public relations/news media campaign to falsely accuse the Plaintiffs of having breached their contracts with the Hualapai Tribe. The alleged purpose of the conspiracy was to gain support for the Tribal Council’s enactment of an eminent domain ordinance and the subsequent condemnation of Plaintiffs’ contractual rights. Plaintiffs allege that the Tribe hired Scutari & Cieslak to formulate the public relations campaign against Plaintiffs. As part of this campaign, Scutari & Cieslak, or Tribal officials following scripts prepared by Scutari & Cieslak, falsely stated that Plaintiffs breached their contract “to complete certain critical elements of the Skywalk — including water, sewer and electricity” when, in fact, it was the Tribe’s responsibility to provide these elements. Defendants also allegedly made other statements that impugned the honesty of Plaintiffs. Scutari & Cieslak alleged as an affirmative defense that they acted in good faith upon advice of counsel in making the allegedly defamatory statements. This Court previously denied Gallagher & Kennedy’s motion to quash a subpoena duces tecum served by Defendants Scutari & Cieslak which seeks documents relating to communications between Gallagher & Kennedy and Scutari & Cieslak. Gallagher & Kennedy filed an objection to that order, which is currently pending before the District Judge. The instant motion to quash involves a deposition subpoena that Plaintiffs served on Glen Hallman, an attorney who was formerly employed by Gallagher & Kennedy. Plaintiffs state that they seek only to question Mr. Hallman about his communications with Scutari & Cieslak. They do not seek to discover privileged communications between the Tribe and Mr. Hallman. Gallagher & Kennedy stated that as part of its representation of the Tribe, it recommended that the Tribe hire Scutari & Cieslak to manage media contacts in connection with the litigation. It also stated that Mr. Hallman was “an attorney assisting the Tribe in carrying out its fundamental sovereign and legislative powers, including the exercise of eminent domain and because this role was in the nature of an official function involving matters of internal governance, the Tribe’s immunity extends to him and the Court has no jurisdiction to compel compliance with the subpoena. Gallagher & Kennedy also argued that Mr. Hallman’s communications with Scutari & Cieslak are protected from disclosure by the Tribe’s attorney-client privilege and by the attorney work-product doctrine. The Court concluded that the doctrine of tribal sovereign immunity does not preclude the taking of the deposition of attorney Glen Hallman in regard to his communications with Scutari & Cieslak. The Court concluded, however, that confidential communications in which Mr. Hallman provided legal advice to Scutari & Cieslak regarding the statements that the latter subsequently made about Plaintiffs are within the scope of the Tribe’s attorney-client privilege. At the time such communications occurred, Scutari & Cieslak was the functional equivalent of a tribal employee and the legal advice appears to have been provided with respect to its actions on behalf of the Tribe or its officers. The factual record is insufficient to support a finding that the Tribe waived its attorney-client or work-product privileges by failing to assert them in a timely manner. Nor has this argument been clearly raised by Plaintiffs or Scutari & Cieslak. There is no indication that the parties wish to take Mr. Hallman’s deposition if they cannot inquire into the legal advice he allegedly gave Scutari & Cieslak with respect to the allegedly defamatory statements. This order, however, does

not preclude the taking of Mr. Hallman's deposition with respect to his knowledge of relevant, non-privileged information. Accordingly, IT IS HEREBY ORDERED that Gallagher & Kennedy, P.A. and The Hualapai Indian Tribe's Motion to Quash Plaintiff's Subpoena to Glen Hallman (#1) is granted in accordance with the foregoing provisions of this order. The granting of this motion is without prejudice to the filing of a motion by Plaintiffs or Scutari & Cieslak that the Hualapai Tribe waived its privileges by not asserting them in a timely manner.

25. *Douglas Indian Ass'n v. Cent. Council of Tlingit & Haida Indian Tribes*, No. 1:15-cv-00004, 2015 U.S. Dist. LEXIS 107844 (D. Alaska Aug. 17, 2015). Plaintiff, Douglas Indian Association, moved to remand this case to the Superior Court for the State of Alaska, First Judicial District. Plaintiff Douglas Indian Association ("DIA") and Defendant Central Council of Tlingit and Haida Indian Tribes of Alaska ("Central Council") are federally recognized Indian tribes located in Juneau, Alaska. Defendants Richard Peterson and William Ware are, respectively, the President and Tribal Transportation Manager of Central Council. As federally recognized tribes, DIA and Central Council were eligible to receive transportation grants (Tribal Transportation Funds) through the Indian Reservation Roads (IRR) Program from the United States government under 25 U.S.C. 458aa-458hh and 25 C.F.R. parts 170 and 1000 between 2005 and 2012. Multiple tribes are permitted to form consortia in order to collectively receive and administer the Tribal Transportation Funds. 25 U.S.C. 458aa; 25 C.F.R. 1000.14. In a letter dated July 20, 2005, Central Council solicited DIA's membership in a consortium of tribes formed by Central Council for the purpose of receiving and administering Tribal Transportation Funds. Central Council's letter specified expectations for the operation of the consortium, including how the Tribal Transportation Funds of the individual tribes would be handled. Central Council went on to form the Southeast Tribal Department of Transportation (SETDOT) in 2006 to administer the consortium funds and again sought DIA's membership in the consortium in a memorandum of agreement dated May 8, 2006. This memorandum from SETDOT further detailed the consortium's operations and management of tribal funds. DIA alleged that based on the promises and expectations in this SETDOT memorandum, they signed and joined the consortium on August 11, 2006. While SETDOT was dissolved in 2007, the consortium continued under the direct administration of Central Council. However after joining the consortium, DIA alleged that between 2005 and 2012 no transportation projects were undertaken or benefit from the funds afforded DIA despite repeated requests to SETDOT and Central Council. DIA withdrew from the consortium on January 12, 2012, at which time they requested Central Council to remit all Tribal Transportation Funds the consortium had received on behalf of DIA. DIA filed suit in the Superior Court for the State of Alaska, First Judicial District at Juneau on April 9, 2015, and Central Council filed a Notice of Removal to this Court on May 18, 2015, pursuant to 28 U.S.C. § 1441(a) and 28 U.S.C. § 1442(a). Docket 1 at 2-4. Central Council asserted that removal to federal court is supported on two bases. First, Central Council asserted that it was acting as an agent of the United States by carrying out the IRR Program for Alaska Natives and American Indians. Second, Central Council asserted that the matter is based on a federal question arising under the Indian Self-Determination and Education Assistance Act of 1975 ("ISDEAA"), Public Law 93-638. The Court did not find any substantial federal issue contested in this matter. DIA's

complaint alleged claims arising under state law which do not turn on a question of federal law. The Court also finds that removal and jurisdiction based on 28 U.S.C. § 1441 is unsupported. The court granted Plaintiff's Motion for Remand to Alaska Superior Court and denied Defendants' Motion to Dismiss as moot.

26. *Guidiville Rancheria of Cal. v. United States*, No. 12-cv-1326, 2015 U.S. Dist. LEXIS 109057 (N.D. Cal. Aug. 18, 2015). Defendant City of Richmond (City) filed a Motion for Attorneys' Fees and Costs, seeking an award of attorneys' fees in the amount of \$2,149,370.02 jointly and severally against Upstream Point Molate, LLC (Upstream) and the Guidiville Rancheria of California (Tribe). The City's claim for attorneys' fees is based on the contract Plaintiffs alleged in their complaint, the Land Disposition Agreement (LDA). The LDA underlies the claims between the parties and was the basis upon which Plaintiffs alleged entitlement to attorneys' fees in the complaint. The Tribe argued that: (1) seeking fees under the LDA does not constitute a waiver of its tribal sovereign immunity; and (2) even if the filing of the instant lawsuit constituted a waiver, the LDA still does not establish a basis for the City's fee request since it is neither a party to the LDA nor has it been determined to be a third party beneficiary of the LDA. To be sure, the LDA was an agreement between the City and Upstream. However, the allegations of the Third Amended Complaint convincingly state the Tribe's position that it is a third party beneficiary of the LDA, including the attorneys' fees provision. The Tribe "does not dispute that bringing the lawsuit against the City binds it to the Court's determination . . . that the [LDA] was not breached" and that, if the Tribe had prevailed in a claim for money damages, the City could make an offset claim against the Tribe for any monies the Tribe might have owed the City. The question is whether including a claim for attorneys' fees under Section 8.8 of the LDA and Civil Code § 1717 effected an express waiver for a reciprocal claim for attorneys' fees by the City if it were to prevail in the litigation. The Court found, based upon these provisions of the LDA, and upon the Tribe's affirmative assertion of rights under the attorneys' fees provision in the LDA specifically, that the motion for attorneys' fees is within the scope of waiver of immunity worked by the filing of the lawsuit herein. The prevailing party's right to attorneys' fees was the inevitable consequence of the Tribe's conduct. By asserting the claim for attorneys' fees under Section 8.8 of the LDA, the Tribe took the risk that it would not prevail on its claims under the agreement, and that liability for the prevailing party attorneys' fees would be the result. Therefore, the Tribe is jointly liable with Upstream for the award of reasonable attorneys' fees. Based upon the foregoing, the Court found that the City is entitled to attorneys' fees in the amount of \$1,927,317.50 as against Plaintiffs Upstream and Guidiville Rancheria.

27. *United States v. Aubrey*, No. 13-10510, 2015 WL 5201800 (9th Cir. Sept. 8, 2015). Defendant, a general contractor on a tribal construction project, was convicted of conversion or misapplication of property belonging to Indian tribal organization by the District Court and he appealed both his conviction and the sentence imposed. The appellate court held that: (1) as matter of first impression, tribal funds disbursed to general contractor on project to construct housing for members of tribe, even funds that were disbursed for completed construction work, continued to be "property belonging to any Indian tribal organization," as long as tribe maintained title to, possession of, or control over these funds; (2) evidence was sufficient to support

defendant's conviction; (3) forensic auditor who was called as witness to establish foundation for charts detailing the passage of funds through contractor's accounts did not have to be certified as expert; (4) district court did not abuse its discretion in admitting summary charts; and (5) defendant occupied "position of trust," as defined by the abuse-of-trust Sentencing Guideline. The appellate court affirmed the conviction and sentence.

28. *Grand Canyon Skywalk Dev. v. Steele*, No.: 2:13-cv-00596, 2015 U.S. Dist. LEXIS 160906 (D. Nev. Nov. 30, 2015). Scutari & Cieslak Public Relations, Inc. is a public-relations firm hired by the Hualapai Indian Tribe of the Hualapai Indian Reservation to promote the Grand Canyon Skywalk, a tourist attraction built on tribal land in the Grand Canyon. When the relationship between the Tribe and the project's developer began to fracture, Scutari & Cieslak launched a public-relations campaign that, the developer claims, was defamatory and designed to disparage the developer. After the developer sued Scutari & Cieslak and its principals (collectively S&C) for defamation and conspiracy, S&C filed third-party claims against the Tribe for indemnity and contribution. The Tribe moved to dismiss S&C's claims, arguing that the court lacks jurisdiction over the third-party claims because the Tribe has not waived its sovereign immunity from suit in federal court. The Court granted the Tribe's motion to dismiss and denied as moot S&C's motion to sever the third party claims and its two requests for oral argument.

29. *Walker River Paiute Tribe v. United States HUD*, No. 3:08-CV-0627, 2015 U.S. Dist. LEXIS 166979 (D. Nev. Dec. 14, 2015). Before the court is defendants the United States Department of Housing and Urban Development (HUD); Julian Castro, the Secretary of Housing and Urban Development; and Jemine A. Bryon's, General Deputy Assistant for Public and Indian Housing, (collectively defendants) motion for partial reconsideration of the court's December 15, 2014 order granting in-part and denying in-part plaintiff Walker River Paiute Tribe's (WRPT) motion for summary judgment and defendants' counter-motion for summary judgment. WRPT filed the underlying declaratory and injunctive relief action alleging that defendants improperly offset the amount of federal block grant funding WRPT received in fiscal year 2009 in violation of the Native American Housing Assistance and Self-Determination Act (NAHASDA). In particular WRPT challenged HUD's allocation of annual Indian Housing Block Grants (IHBG) pursuant to the funding allocation formula codified at 24 C.F.R. §§ 1000.304 - 1000.340. In early 2008, HUD conducted an audit of WRPT's Indian Housing Block Grant (IHBG) funding. In the audit, HUD determined that WRPT had been overfunded in fiscal year 2008 in the amount of \$110,444 due to an inflated Formula Current Assisted Stock (FCAS) calculation. HUD then reduced WRPT's grant for fiscal year 2009 by \$110,444 in order to recapture the overpaid funds. WRPT initiated the present action against HUD under the Administrative Procedures Act (APA), seeking a determination that HUD's promulgation and interpretation of 24 C.F.R. § 1000.318 was arbitrary and capricious. WRPT filed an amended complaint contending that the exclusion of dwelling units from the block grant formula pursuant to § 1000.318 was in violation of the specific pre-amendment statutory language of NAHASDA. In response to WRPT's amended complaint, both parties filed cross-motions for summary judgment. The court found that HUD's promulgation of 24 C.F.R.

§ 1000.318 was within NAHASDA's mandate, and as such, was an appropriate exercise of HUD's funding authority. However, the court also found that HUD's interpretation of § 1000.318 to exclude certain housing units from a tribe's FCAS calculation simply because the underlying leases had passed their initial 25 year term was an arbitrary and capricious interpretation of the regulation. Thereafter, defendants filed the present motion for reconsideration of the court's order. The Court denied defendants' motion for reconsideration.

30. *Arrow Midstream Holdings, LLC v. 3 Bears Constr., LLC*, No. 20150057, 2015 ND 302 (N.D. Dec. 29, 2015). Arrow Midstream Holdings, LLC and Arrow Pipeline, LLC (collectively Arrow) appealed, and Tesla Enterprises, LLC (Tesla) cross-appealed, from a judgment dismissing without prejudice for lack of jurisdiction its action against 3 Bears Construction, LLC (3 Bears) and Tesla for breach of contract and a declaration that Tesla's pipeline construction lien is invalid. In 2013, Arrow, a Delaware limited liability company, hired 3 Bears, a North Dakota limited liability company, to be the general contractor for the construction of a pipeline located on a right-of-way easement acquired by Arrow from the Bureau of Indian Affairs over Indian trust land on the Fort Berthold Indian Reservation. The easement was "for the purpose of installing oil, gas and water lines" and described the right-of-way as "11,882.77 feet in length and 13.520 acres in area (34.206 acres during construction), more or less, . . . and shall be buried a sufficient depth below the surface of the land so as not to interfere with cultivation." 3 Bears, which has its principal place of business in New Town, entered into a subcontract with Tesla, an Alaska limited liability company, to supply materials and labor for the construction. 3 Bears is owned by two members of the Three Affiliated Tribes (Tribe) and is certified under the Tribal Employment Rights Ordinance (TERO). 3 Bears claims Arrow was a covered employer who was required to comply with TERO rules. After the pipeline was completed, a dispute arose between 3 Bears and Tesla concerning amounts Tesla claimed it was owed by 3 Bears for work Tesla performed. In mid-2014, Tesla sent Arrow a notice of right to file a pipeline lien under N.D.C.C. ch. 35 24. Tesla recorded the pipeline lien against Arrow in the Dunn County recorder's office in June 2014. In July 2014, Arrow commenced this action in state district court challenging the validity of the pipeline lien, seeking indemnification, and claiming 3 Bears breached the parties' contract. In August 2014, 3 Bears moved to dismiss for lack of subject matter jurisdiction. In November 2014, 3 Bears filed a complaint against Tesla and Arrow in Fort Berthold Tribal Court. 3 Bears sought a declaration that the pipeline lien was invalid, alleged Arrow had breached the master service contract, and requested an award of damages. In December 2014, the state district court agreed with 3 Bears' argument that it lacked subject matter jurisdiction over the lawsuit. The court concluded "exercising jurisdiction over this action under the circumstances presented here would infringe upon Tribal sovereignty." The court further concluded, "at the very least, Arrow and Tesla, as a matter of comity, should be required to exhaust their tribal court remedies before this Court exercises jurisdiction." The court dismissed the action "without prejudice to allow any of the parties to re-open the case without payment of another filing fee should it become necessary for purposes of enforcing the Tribal Court action or for any other reason." The appellate court held that appellate jurisdiction existed where a dismissal order and judgment effectively foreclosed litigation of a pipeline lien's validity and breach of contract; the first Montana

exception did not apply where the general contractor was an LLC formed under state law, not a member of the tribe, and thus, there was no consensual relationship between nonmembers and the tribe or its members; the district court erred in ruling that the tribal court had jurisdiction under the second Montana exception where the right-of-way pipeline easement was the equivalent of non-Indian fee land, the Tribe had not intervened in the action, and the case involved the validity of a pipeline construction lien filed under state law resulting from a contractual payment dispute between non-tribal members; state court jurisdiction was not foreclosed by incompatible federal law. Judgment reversed; case remanded.

31. *Meyer & Associates, Inc. v. Coushatta Tribe of Louisiana*, Nos. 14–1109, 14-1114, 2016 WL 385308 (La. Ct. App. Jan. 27, 2016). Engineering firm hired by Indian tribe in connection with capital improvement project at casino facility brought action against tribe for breach of contract when newly elected tribal council suspended project sanctioned by the former administration. The District Court, No. 2006-2683, denied tribe’s exceptions of lis pendens and lack of subject matter jurisdiction. Tribe filed writ application. The appellate court, 965 So. 2d 930, granted writ and ordered a stay to allow tribal court to decide whether tribe had waived its sovereign immunity. Granting certiorari, the Supreme Court, 992 So. 2d 446, reversed and remanded. On remand, tribe answered and filed reconventional demand, asserting breach of contract, breach of fiduciary duties, fraud and failure to provide an accounting. The district court entered a number of judgments having the ultimate effect of awarding firm \$10,998,250.00 in contractual damages, \$5,585,573.00 in attorney fees, and \$57,662.34 in court costs. Parties appealed. The appellate court held that: (1) trial court improperly granted relief not prayed for when it found that tribe violated fiduciary duties it owed to firm; (2) firm failed to present sufficient evidence to demonstrate the absence of factual support for one or more elements essential to tribe’s fraud and misrepresentation claims; and (3) fact questions precluded summary judgment in favor of firm on breach of contract claim. Reversed and remanded.

32. *Maniilaq Ass’n v. Burwell*, No. 15-152, 2016 U.S. Dist. LEXIS 36605 (D.D.C. Mar. 22, 2016). For more than twenty years, the Secretary of Health and Human Services has allocated \$30,921 a year in federal funds toward renting health clinic space in the Native American village of Kivalina, Alaska. Maniilaq Association, a regional health corporation that now owns and operates the clinic in Kivalina, believes that amount is insufficient to assure adequate healthcare in that community. In an attempt to remedy the Kivalina clinic’s chronic underfunding, Maniilaq submitted a lease proposal based on section 105(l) of the Indian Self-Determination and Education Assistance Act. That section, Maniilaq argues, requires the Secretary to rent its Kivalina clinic space and pay it compensation, based on the clinic’s operating costs, of \$249,842 a year. But the Secretary declined Maniilaq’s proposal, arguing that it must pay Maniilaq no more than the \$30,921 it has provided previously. Maniilaq sued. The Court will grant summary judgment for Maniilaq, and direct the parties to enter into discussions regarding Maniilaq’s Kivalina lease proposal consistent with this opinion.

33. *Navajo Nation v. DOI*, No. 14-cv-1909, 2016 U.S. Dist. LEXIS 42242 (D.D.C. Mar. 30, 2016). Plaintiff Navajo Nation (the “Nation”) alleges that the Bureau of Indian Affairs (“BIA”), an agency within the United States Department of the Interior (“DOI”), violated the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 *et seq.* (the “ISDEAA”), by failing to disperse calendar year (“CY”) 2014 funding to the Nation according to the Nation’s proposed CY 2014 annual funding agreement (the “Proposal”). Specifically, the Nation contends that DOI Secretary Sally Jewell (the “Secretary”) failed to approve or decline the Proposal within the statutorily-mandated 90-day window for doing so and that, as a result, the Proposal must be deemed approved as a matter of law. The parties have each moved for summary judgment. Upon consideration of the parties’ motions and supporting briefs, and for the reasons set forth below, the Nation’s motion for summary judgment is hereby DENIED, and DOI’s cross-motion for summary judgment is hereby GRANTED.

D. EMPLOYMENT

34. *Boricchio v. Casino*, Nos. 14–818, 14–819, 14–820, 14–821, 14–822, 2015 WL 3648698 (E.D. Cal. Jun. 10, 2015). These separate but related cases involve an employment discrimination dispute between Plaintiffs and their former employer, the Defendant Chicken Ranch Casino (Casino). In each complaint, Plaintiffs alleged three causes of action for violation of 29 U.S.C. § 621 *et seq.* (Age Discrimination in Employment Act (ADEA)) against the Casino and the Chicken Ranch Rancheria of Me–Wuk Indians of California (Tribe), Lloyd Mathiesen (Mathiesen), and James Smith (Smith) (collectively “Defendants”). Defendants moved to dismiss each complaint under Rule 12(b)(1) for lack of subject matter jurisdiction, and alternatively under Rule 12(b)(6) for failure to state a claim. Each Plaintiff was employed at the Casino, but none of the Plaintiffs are members of the Tribe. Each Plaintiff is over the age of 50. The court found that Defendants established that they may invoke tribal immunity, and Plaintiffs failed to show either a waiver or abrogation of tribal sovereign immunity. Therefore, Defendants are entitled to tribal sovereign immunity. The Court found it is deprived of subject matter jurisdiction, and dismissed the case. The motions to dismiss were granted and the complaint of each Plaintiff was dismissed without leave to amend.

35. *Williams v. Poarch Band of Creek Indians*, No. 14–594, 2015 WL 4104611 (S.D. Ala. Jul. 8, 2015). This action was before the Court on Plaintiff’s Complaint and Defendant’s Motion to Dismiss. Plaintiff Williams is a former employee of the Poarch Band of Creek Indians (PBCI). Her Complaint asserted claims of “violations of civil rights (age discrimination) and year of service disparate treatment.” Defendant contended that absent congressional authorization or waiver, PBCI is entitled to tribal sovereign immunity. Defendant further contended that because the Age Discrimination Employment Act (ADEA) does not abrogate the doctrine of tribal sovereign immunity, PBCI maintains its immunity rendering the Court powerless to hear Plaintiff’s Complaint. Additionally, Defendant contended that not only is congressional authorization or waiver lacking, but the ADEA is silent with respect to allegations addressing congressional authorization of private lawsuits under the ADEA, which

silence must be construed in PBCI's favor. The Recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) was adopted as the opinion of the Court. The Court granted Defendant Poarch Band of Creek Indians' Motion to Dismiss for lack of subject matter jurisdiction and dismissed the Complaint.

36. *Coppe v. Sac & Fox Casino Healthcare Plan*, No. 2:14-cv-02598, 2015 U.S. Dist. LEXIS 150319 (D. Kan. Nov. 5, 2015). In her complaint Plaintiff claimed benefits under 29 U.S.C. § 1132(a)(1)(B) (part of the Employee Retirement Income Security Act of 1974) (hereinafter "ERISA"). Before the Court was Defendant's Motion to Dismiss. Pursuant to Fed. R. Civ. P. 12(b)(2), it asserted a defense that the Court lacks jurisdiction of the subject matter of this case, because Defendant has tribal sovereign immunity and can be sued only in its own tribal court. The motion also asserted that ERISA does not waive sovereign immunity as a defense for the claims of Plaintiff. Plaintiff argued that the Motion to Dismiss should be denied for three reasons: First, Congress has indicated that ERISA is applicable to the tribal plans at issue in this dispute. Second, Defendants waived tribal immunity contractually. Third, the Sac and Fox Nation is not the Defendant, only The Sac and Fox Casino Healthcare Plan, which does not have the defense of sovereign immunity. The Court found that because of the unequivocal Congressional abrogation of sovereign immunity under 29 U.S.C. § 1002(32) and the Plan's clear contractual waiver of sovereign immunity, it has jurisdiction over the subject matter of the action. The Defendant's Motion to Dismiss was denied.

37. *Sanders v. Anoatubby*, No. 15-6116, 2015 U.S. App. LEXIS 20268 (10th Cir. Nov. 23, 2015). Sanders, a citizen of the Chickasaw Nation (Nation), was employed as a Housing Specialist in the Nation's Division of Housing (Division). While so employed, her supervisors and other employees allegedly treated her unfairly, called her names, made derogatory comments about her personal life, and failed to follow tribal policies and procedures with respect to her employment. She also claimed to have been wrongfully discharged because, contrary to tribal policy, she was not provided a statement of reasons for her termination. Sanders also filed applications for housing assistance with the Division. Her applications indicated that her daughter and grandchildren would be living with her in the home, but they were processed as if she was the lone applicant, thereby relegating her to the lowest priority. Sanders claimed the reason was retaliation for her having filed a grievance against the Executive Director and one of her supervisors. Sanders' complaint against the Division, Tribal Governor Bill Anoatubby, and various tribal officers was for (1) Wrongful Termination, Abuse of Authority, Non-Compliance of Several Chickasaw Policies and Procedures, Hostile Work Environment, Homeowner's Application Discrimination, Non-Compliance of NAHASDA (Native American Housing Assistance and Self-Determination Act of 1996). Defendants moved to dismiss under Fed. R. Civ. P. 12(b)(1) arguing, the Division and the individual defendants were entitled to tribal sovereign immunity. The appellate court held that (1) Title VII of the Civil Rights Act of 1964 did not abrogate tribal sovereign immunity so as to allow a former employee to bring discrimination claims against tribal housing officials; 42 U.S.C.S. § 2000e(b) specifically exempted Indian tribes from the Title VII definition of "employer." (2) Title VI of the Civil Rights Act of 1964 did not permit the employee to bring housing discrimination claims, as 25 U.S.C.S. § 4131(b)(6)

exempted tribes and their housing divisions from the reach of Title VI. (3) The Ex Parte Young doctrine was inapplicable because the employee did not allege an ongoing violation of federal law and did not seek injunctive or declaratory relief. Judgment affirmed.

38. *Nawls v. Shakopee Mdewakanton Sioux Cmty. Gaming Enters.-Mystic Lake Casino*, No. 15-2769, 2016 U.S. Dist. LEXIS 17902 (D. Minn. Feb. 12, 2016). On February 11, 2016, the undersigned United States District Judge heard oral argument on Defendant Shakopee Mdewakanton Sioux Community Gaming Enterprise's ("Gaming Enterprise") Motion to Dismiss for Lack of Jurisdiction. Plaintiffs Annette and Adrian Nawls (the "Nawls") oppose the Motion. The Nawls assert claims under Title VII against the Gaming Enterprise. "It is well-settled that the plaintiff bears the burden of establishing subject matter jurisdiction." *Nucor Corp v. Neb. Pub. Power Dist.*, 891 F.2d 1343, 1346 (8th Cir. 1989). Here, the Nawls have failed to satisfy this burden for two reasons. First, Title VII does not apply to Indian tribes, nor their gaming operations. Second, the Gaming Enterprise is immune from suit in federal court. Accordingly, the Complaint must be dismissed. Indian tribes, such as the Shakopee Mdewakanton Sioux Community, are excluded from Title VII's definition of the term "employer." 42 U.S.C. § 2000e(b). In *Ferguson v. SMSC Gaming Enterprise*, the court addressed the very question presented here—whether a Title VII claim can be brought against the Gaming Enterprise. 475 F. Supp. 2d 929, 931 (D. Minn. 2007). The court concluded that a Title VII claim could not be asserted against the Gaming Enterprise because "Title VII claims cannot be brought against Indian tribes or their agencies or businesses." *Id.* at 931. Indeed, the Eighth Circuit has recognized that the Gaming Enterprise's predecessor, Little Six Inc., is exempt from Title VII. *Charland v. Little Six, Inc.*, 198 F.3d 249 (8th Cir. 1999). The Nawls' Title VII claims therefore cannot be asserted against the Gaming Enterprise and no federal question is presented to this Court. Additionally, the Gaming Enterprise is immune from suit under the doctrine of sovereign immunity. "[T]ribal sovereign immunity is a threshold jurisdictional question." *Amerind Risk Mgmt. Corp. v. Malaterre*, 633 F.3d 680, 684 (8th Cir. 2011). The Shakopee Mdewakanton Sioux Community is a federally recognized Indian tribe and possesses sovereign immunity from suit. *Smith v. Babbitt*, 100 F.3d 556 (8th Cir. 1996). The Gaming Enterprise is "a branch of the sovereign tribal government." *Prescott v. Little Six, Inc.*, 387 F.3d 753, 757 (8th Cir. 2004). As such, because the Gaming Enterprise has not waived its right to immunity, it is immune from suit. See *Charland*, 198 F.3d 249; see also *Ferguson*, 475 F. Supp. 2d at 931. Finally, the Court notes that Mr. Nawls' Title VII claims fail for the additional reason that they were not filed within the statutory 90-day timeline. See 42 U.S.C. § 2000e-5(f)(1). Accordingly, Mr. Nawls' claims are time barred. *Williams v. Thomson Corp.*, 383 F.3d 789, 790 (8th Cir. 2004). For all these reasons, the Gaming Enterprise's Motion to Dismiss is granted and the Nawls' Complaint is dismissed.

39. *Longo v. Seminole Indian Casino-Immokalee*, No. 15-12460, 2016 WL 722526 (11th Cir. Feb. 24, 2016). Former employee of tribe-owned casino brought action against casino, alleging claims under Title VII and Florida Civil Rights Act. In October 2008, Defendant hired Plaintiff to serve as a security guard at its casino. Plaintiff enjoyed success in this position until January 2013, when a patron of the casino

started to sexually harass, stalk, and physically touch him on a continual basis. Because these actions created a hostile work environment, Plaintiff sought to remedy this situation by reporting the incidents to Defendant. But Defendant failed to take any corrective action. Instead, Defendant terminated Plaintiff's employment one month later, stating that Plaintiff "was 'discourteous to team members.'" Casino moved to dismiss. The district court, 110 F. Supp. 3d 1252, granted motion. Former employee appealed. The appellate court of Appeals held that: (1) in a matter of first impression, Seminole Tribe of Florida, which owned and operated casino, was federally recognized Indian tribe, and thus it was entitled to sovereign immunity, and (2) sanctions and double costs were not warranted against former employee for frivolous appeal. Affirmed.

40. *Anderson v. Coushatta Casino Resort*, No. 2:15-01203, 2016 U.S. Dist. LEXIS 49416 W.D. La. Apr. 12, 2016). Before the court is a "Motion for Dismissal of Defendant, the Coushatta Tribe of Louisiana" wherein the movant seeks to have the instant matter dismissed (1) for lack of subject matter jurisdiction under the doctrine of sovereign immunity, (2) as time-barred and (3) because plaintiff does not set forth any factual bases or allegations for wrongful or illegal termination under federal or state law. Plaintiff, Larry Anderson, worked in the Terrace Restaurant at the Coushatta Casino Resort in Kinder, Louisiana. In his complaint, Mr. Anderson alleges he was terminated on December 18, 2012 for insubordination and failure to comply with a supervisor's request. Plaintiff seeks compensatory damages, attorney fees and court costs. Plaintiff has not provided this court with any authority for the Tribe's waiver of this sovereign immunity which would allow him to bring his claims in this court. The court finds that it lacks subject matter jurisdiction over this suit and therefore will grant the defendant's motion because the defendant has not waived its sovereign immunity.

41. *Paskenta Band of Nomlaki Indians v. Crosby*, No. 2:15-cv-00538, 2016 U.S. Dist. LEXIS 53145 (E.D. Cal. Apr. 20, 2016). Defendants seek dismissal of claims alleged in Plaintiffs Paskenta Band of Nomlaki Indians and Paskenta Enterprises Corporation's (collectively "Plaintiffs") Second Amended Complaint ("SAC") under Federal Rule of Civil Procedure ("Rule") 12(b)(6). For the reasons set forth below, the dismissal motions are GRANTED in part and DENIED in part. The Paskenta Band of Nomlaki Indians ("the Tribe") employed Ines Crosby, John Crosby, Leslie Lohse and Larry Lohse (collectively, the "Employee Defendants") in executive positions for more than a decade. Plaintiffs contend that the Employee Defendants used their positions to embezzle millions of dollars from the Tribe and its principal business entity, the Paskenta Enterprises Corporation ("PEC"). According to Plaintiffs, the Employee Defendants stole these funds from Plaintiffs' bank accounts at Umpqua Bank and Cornerstone Bank by withdrawing large sums for their personal use. Plaintiffs further allege that the Employee Defendants caused the Tribe to invest in two unauthorized retirement plans for the Employee Defendants' personal benefit: a defined benefit plan ("Tribal Pension Plan") and a 401(k) ("Tribal 401(k)") (collectively "Tribal Retirement Plans"). The Employee Defendants allegedly kept their activities hidden from Plaintiffs through *inter alia*, harassment, intimidation, and cyber-attacks on the Tribe's computers. Plaintiffs go on to assert that the Umpqua Defendants, Cornerstone Defendants, and APC knowingly assisted the Employee Defendants in aspects of their scheme. They

contend that the Umpqua Defendants and the Cornerstone Defendants controlled banks where Plaintiffs maintained accounts, and, despite knowing the Employee Defendants were withdrawing money from these accounts for their personal benefit, permitted the Employee Defendants to continue making withdrawals and failed to notify Plaintiffs of the Employee Defendants' actions. APC, as the third-party administrator for the Tribal Retirement Plans, assisted the Employee Defendants in setting up and administering the unauthorized Tribal Retirement Plans. Cornerstone Defendants' Motion to Dismiss is GRANTED with leave to amend as to Plaintiffs' common law negligence claim; DENIED as to Plaintiffs' breach of contract and aiding and abetting claim; and GRANTED with prejudice as to Plaintiffs' restitution claim. APC's Motion to Dismiss is GRANTED with leave to amend as to Plaintiffs' common law negligence claim, aiding and abetting claim, and punitive damages prayer and GRANTED with prejudice as to Plaintiffs' restitution claim. Umpqua Defendants' Motion to Dismiss is GRANTED with leave to amend as to Plaintiffs' common law negligence, breach of contract, and aiding and abetting claim and GRANTED with prejudice as to Plaintiffs' restitution claim. Plaintiffs are granted thirty (30) days leave from the date on which this order is filed to file a Third Amended Complaint addressing the deficiencies in the aforementioned dismissed claims that were granted with leave to amend.

E. ENVIRONMENTAL REGULATIONS

42. *Pit River Tribe v. Bureau of Land Management*, No. 13–16961, 2015 WL 4393982 (9th Cir. Jul. 20, 2015). Indian tribe and environmental organizations brought actions alleging that Bureau of Land Management's (BLM) continuation of geothermal leases violated Geothermal Steam Act, National Environmental Policy Act, National Historic Preservation Act, and federal government's fiduciary trust obligation to Indian tribes. After cases were consolidated, the district court entered judgment on pleadings in BLM's favor, and plaintiffs appealed. The appellate court held that: (1) tribe had standing to bring private cause of action under Geothermal Steam Act, and (2) fact issues remained as to whether BLM used improper legal standard in continuing leases.

43. *Organized Village of Kake, et al. v. U.S. Dept. of Agriculture, et al.*, No. 11–35517, 2015 WL 4547088, ___ F.3d ___ (9th Cir. Jul. 29, 2015). Village and others brought action against Department of Agriculture, alleging that exemption of national forest from roadless rule violated the National Environmental Policy Act and the Administrative Procedure Act, and the state of Alaska intervened as a defendant. The district court, 776 F. Supp. 2d 960, granted summary judgment to village. Alaska appealed. The appellate court, 746 F.3d 970, reversed and remanded. On rehearing en banc, the appellate court held that: (1) Alaska demonstrated that it would suffer an injury in fact if roadless rule was implemented; (2) Department did not provide substantial justification or a reasoned explanation for its change in policy; and (3) roadless rule would remain in effect. Affirmed.

44. *Cascadia Wildlands v. Bureau of Indian Affairs*, No. 14–35553, 2015 WL 5306321 (9th Cir. Sept. 11, 2015). Environmental organizations brought action against Bureau of Indian Affairs (BIA) challenging approval of timber sale in national forest under the National Environmental Policy Act (NEPA) and the Coquille Restoration Act (CRA), which Indian Tribe intervened in as a defendant. The District Court, 2014 WL 2872008, granted summary judgment to BIA and tribe. Environmental organizations appealed. The appellate court held that: (1) it was permissible for BIA to aggregate past and reasonably foreseeable future actions to create baseline from which to consider incremental impact of project, and (2) objective listed in forest management plan, to protect an endangered species, was not a standard or guideline that BIA was required to comply with pursuant to CRA, and thus BIA did not violate CRA by failing to ensure project was consistent with recovery plan for endangered species.

45. *Citizens for a Better Way. et al. v. United States Dept. of the Interior, et al.*, No. 2:12-cv-3021, 2015 U.S. Dist. LEXIS 128745 (E.D. Cal. Sept. 23, 2015). This matter was before the Court pursuant to Plaintiffs’ Motions for Summary Judgment and Defendants’ Motions for Summary Judgment. This case involved the interrelated actions that Defendants took in connection with a proposed gaming facility and hotel fee-to-trust acquisition project. The Bureau of Indian Affairs (“BIA”) reviews and approves tribal applications pursuant to the Indian Reorganization Act (“IRA”). In 2002, Defendant Enterprise submitted an application to the BIA requesting that the Department of the Interior (“DOI”) accept trust title to a piece of land in Yuba County. Defendant Enterprise planned to build a gaming facility, hotel, and parking facilities on the land in Yuba County (“Yuba Site”). The proposed trust acquisition was analyzed in an Environmental Impact Statement (“EIS”) prepared under the direction and supervision of the BIA. The Draft EIS was issued for public review and comments on March 21, 2008. After the comment period, a public hearing, and consideration and incorporation of comments received, the BIA issued the Final EIS (“FEIS”) on August 6, 2010. The BIA issued a Record of Decision (“ROD”) in November 2012 finding that a gaming establishment on the Yuba Site would be in the best interest of Enterprise and its members and would not be detrimental to the surrounding community. Plaintiffs alleged that BIA violated the National Environmental Protection Act (“NEPA”) by: (1) narrowing the purpose of the proposed action in order to dismiss viable alternatives; (2) failing to take a “hard look” at UAIC’s socioeconomic interests and other interests; and (3) violated NEPA’s conflict-of-interest provisions by giving undue weight to one of Enterprise’s consultants; by not considering an adequate number of alternatives; and contended that the agency failed to take a “hard look” at the environmental impacts of the proposed casino. Plaintiffs argued that Defendants violated the Indian Gaming Regulatory Act (“IGRA”) which generally prohibits gaming on lands acquired in trust after 1988, unless it fits an exception under 25 U.S.C. § 2719(a) and (b) or the Secretarial Determination Exception. However, the Assistant Secretary of Indian Affairs determined that gaming on the proposed Yuba site would be in the best interest of the Tribe and its citizens and would not be detrimental to the surrounding community. In addition, the Governor concurred with this determination. Plaintiffs alleged that the Clean Air Act was violated since the Secretary failed to conduct a conformity determination. Plaintiffs argued that Defendants failed to accurately identify and describe the parcel of land to be taken into trust, alleging that Defendants used two land

descriptions interchangeably. Plaintiffs argued that by failing to comply with NEPA and the IGRA, Defendants' actions violated the Administrative Procedure Act ("APA"). The Court was not convinced that Defendants violated NEPA or the IGRA and did not find that Defendants acted arbitrarily or capriciously. Therefore, the Court found that Defendants did not violate the APA. The Court granted Defendants' and Intervenor Defendants' Motions for Summary Judgment. The Court denied Plaintiffs' Motions for Summary Judgment.

46. *Wyoming v. United States DOI*, No. 2:15-CV-043-SWS (Lead Case); Case No. 2:15-CV-041, 2015 U.S. Dist. LEXIS 135044 (D. Wyo. Sept. 30, 2015). This matter was before the Court on the motions for preliminary injunction filed by the various Petitioners and Intervenor-Petitioners: Wyoming and Colorado's Motion for Preliminary Injunction, in which the State of Utah has joined; and Motion for Preliminary Injunction filed by the Ute Indian Tribe. On March 26, 2015, the Bureau of Land Management ("BLM") issued the final version of its regulations applying to hydraulic fracturing on federal and Indian lands. 80 Fed. Reg. 16,128-16,222 (Mar. 26, 2015) ("Fracking Rule"). The Fracking Rule's focus is on three aspects of oil and gas development, wellbore construction, chemical disclosures, and water management, each of which is subject to comprehensive regulations under existing federal and state law. The rule was scheduled to take effect on June 24, 2015. In May of 2012, the BLM issued proposed rules "to regulate hydraulic fracturing on public land and Indian land." 77 Fed. Reg. 27,691 (May 11, 2012). The stated focus of the rules was to: (i) provide disclosure to the public of chemicals used in hydraulic fracturing; (ii) strengthen regulations related to well-bore integrity; and (iii) address issues related to water produced during oil and gas operations. The BLM ultimately published its final rule regulating hydraulic fracturing on federal and Indian lands on March 26, 2015. The BLM determined the Fracking Rule fulfills the goals of the initial proposed rules: "[t]o ensure that wells are properly constructed to protect water supplies, to make certain that the fluids that flow back to the surface as a result of hydraulic fracturing operations are managed in an environmentally responsible way, and to provide public disclosure of the chemicals used in hydraulic fracturing fluids." The Industry Petitioners and the States of Wyoming and Colorado filed separate Petitions for Review of Final Agency Action seeking judicial review of the Fracking Rule pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq. The States of North Dakota and Utah, and the Ute Indian Tribe of the Uintah and Ouray Reservation, later intervened in the States' action, and the Court granted the parties' motion to consolidate the two separate actions. Petitioners and Intervenor-Petitioners request a preliminary injunction enjoining the BLM from applying the Fracking Rule pending the resolution of this litigation. Petitioners contend the Fracking Rule should be set aside because it is arbitrary, not in accordance with law, and in excess of the BLM's statutory jurisdiction and authority. The Ute Indian Tribe additionally contends the Fracking Rule is contrary to the Federal trust obligation to Indian tribes. The Court also finds merit in the Ute Indian Tribe's argument that the BLM failed to consult with the Tribe on a government-to-government basis in accordance with its own policies and procedures. The BLM contends it engaged in extensive tribal consultation when promulgating the Fracking Rule by holding four regional tribal consultation meetings ("information sessions") and distributing copies of a draft rule to affected tribes for comment in January 2012, and offering to meet

individually with tribes after those regional meetings. In June 2012, after publication of the proposed rule on May 11, 2012, and again after publication of the supplemental proposed rule in May of 2013, the BLM held additional regional consultation meetings and individual consultations with tribal representatives. In March 2014, the BLM invited tribes to another meeting in Lakewood, Colorado and offered to meet with individual tribes thereafter. The BLM's efforts, however, reflect little more than that offered to the public in general. The DOI policies and procedures require extra, meaningful efforts to involve tribes in the decision-making process. The record reflects the BLM spent more than a year developing the proposed rule before initiating any consultation with Indian tribes. The BLM had already drafted a proposed rule by the time the agency initiated consultation with Indian tribes in January of 2012. Although the BLM asserts comments from affected tribes were considered in developing the final rule, the preamble cites only two changes resulting from tribal consultations: a clarification that tribal and state variances are separate from variances for a specific operator, and a requirement that operators certify to the BLM that operations on Indian lands comply with applicable tribal laws. Several tribal organizations attempted to assert their sovereignty by encouraging an "opt out" provision for Indian tribes or allowing the tribes to exercise regulatory authority over hydraulic fracturing. However, despite acknowledging "the importance of tribal sovereignty and self-determination," the BLM summarily dismissed these legitimate tribal concerns, simply citing its consistency in applying uniform regulations governing mineral resource development on Indian and federal lands and disavowing any authority to delegate regulatory responsibilities to the tribes. This failure to comply with departmental policies and procedures is arbitrary and capricious action. Before the Court can defer to the BLM's methods of regulating fracking, this Court must conclude Congress has delegated that authority to it. It does not appear Congress has done so directly or inferentially. In fact, in a comprehensive legislative enactment addressing domestic energy development, including oil and natural gas, Congress expressly amended the Safe Drinking Water Act (SDWA) to remove from the EPA the authority to regulate any non-diesel fracking on federal or state lands. It is hard to analytically conclude or infer that having expressly removed the regulatory authority from the EPA, Congress intended to vest it in the BLM, particularly where the BLM had not previously been regulating the practice. Moreover, since the enactment of the Energy Policy Act of 2005, several bills have been unsuccessfully introduced in Congress to restore the EPA's regulatory authority under the SDWA over all hydraulic fracturing. Given these circumstances and the ongoing congressional debate, it cannot be concluded that because Congress has not expressly forbidden the BLM's regulation of hydraulic fracturing on federal lands, the agency may now assert it. For the reasons discussed above, it is hereby ORDERED that the Motion for Preliminary Injunction of Petitioners Independent Petroleum Association of America and Western Energy Alliance, Wyoming and Colorado's Motion for Preliminary Injunction, North Dakota's Motion for Preliminary Injunction, and the Motion for Preliminary Injunction filed by Ute Indian Tribe are GRANTED, and the BLM is preliminarily enjoined from enforcing the final rule related to hydraulic fracturing on federal and Indian lands, 80 Fed. Reg. 16,128 (Mar. 26, 2015); it is further ORDERED that Petitioners are not required to post a bond or security.

47. *Alaska Oil and Gas Ass'n v. Jewell*, Nos. 13–35619, 13–35666, 13–35662, 13-35667, 13-35669, 2016 WL 766855 (9th Cir. Feb. 29, 2016). State of Alaska, oil and gas trade associations, and Alaska Native corporations and villages brought actions against Fish and Wildlife Service (FWS), seeking invalidation of final rule in which FWS designated critical habitat for polar bears under Endangered Species Act (ESA). Environmental groups intervened. The District Court, 916 F. Supp. 2d 974, granted summary judgment to plaintiffs on some of their claims, and vacated the final rule. FWS and environmental groups appealed, and plaintiffs cross-appealed. The appellate court held that: (1) FWS was not required to identify where each component part of each primary constituent element (PCE) was located within each habitat by using scientific data establishing current use by existing polar bears; (2) five-mile increment measurement inland from the coast, to define the area of designation, was not arbitrary and capricious; (3) inclusion of area that was primarily an industrial staging area for oil and gas operations was not arbitrary and capricious; (4) as a matter of first impression for the circuit, compliance with procedural requirements for providing written justification to State was judicially reviewable; and (5) FWS complied with procedural requirements for written justification. Affirmed in part, reversed in part, and remanded.

48. *Alaska Dept. of Natural Resources v. U.S.*, No. 14–35051, 2016 WL 946917 (9th Cir. Mar. 14, 2016). State of Alaska brought action against landowners, who were Alaska natives, to quiet title to rights-of-way for four public trails that crossed their land, and seeking a declaratory judgment and a claim seeking to condemn for public use whatever portions of the rights-of-way the State did not already own. The district court dismissed for lack of subject matter jurisdiction. State appealed. The appellate court held that: (1) [1] federal court lacked subject matter jurisdiction over action to quiet title to rights-of-way, and (2) federal court had jurisdiction over state's condemnation action. Affirmed in part, vacated in part, and remanded.

F. FISHERIES, WATER, FERC, BOR

49. *U.S. v. Washington*, No. C70–9213, Subproceeding No. 89–3–09, 2015 WL 3451316 (W.D. Wash. May 29, 2015). Pursuant to Section 9 of the Shellfish Implementation Plan (SIP), the Squaxin Island Tribe filed a request for dispute resolution regarding the Tribe's right to take shellfish and alleged interference with that right by Russell Norris d/b/a Russ' Shellfish. The court found that Russell Norris violated the notice requirement of Section 6.3 of the SIP as well as applicable Harvest Plans. He is not, however, liable as a matter of law, for the actions or inactions of Great Northwest. The Squaxin Island Tribe is entitled to an equitable remedy which will establish the pounds of Manila clams it is entitled, in the future, to recover from Russ Norris.

50. *U.S. v. Washington*, No. 70–9213, 2015 WL 3504872 (W.D. Wash. Jun. 3, 2015). This matter was before the Court on Cross–Motions for Summary Judgment by the Suquamish Indian Tribe (the “Suquamish”) and the Upper Skagit Indian Tribe (Upper Skagit), as well as the Upper Skagit’s Motion to Strike Exhibits. The Upper Skagit initiated this subproceeding by filing a Request for Determination (RFD) on January 16, 2015, seeking a determination that the usual and accustomed fishing grounds (U&A) for the Suquamish Tribe do not include Samish Bay, Chuckanut Bay, and a portion of Padilla Bay (Disputed Areas), where the Upper Skagit has its own Court-approved U&A. The Court found and ordered as follows: (1) The Suquamish Indian Tribe’s Motion for Summary Judgment was denied. (2) The Upper Skagit Indian Tribe’s Motion for Summary Judgment was granted. (3) The Upper Skagit’s Motion to Strike Exhibits was denied. (4) As the Suquamish Indian Tribe’s usual and accustomed fishing grounds and stations do not include the Disputed Areas at issue here (Samish Bay, Chuckanut Bay, and the northern portion of Padilla Bay), the Suquamish Indian Tribe was permanently enjoined from issuing regulations for and/or fishing in the waters of the Disputed Areas.

51. *U.S. v. Washington*, No. C70–9213, 2015 WL 4405591 (W.D. Wash. Jul. 17, 2015). (From the Order) This matter comes before the Court after remand from the Ninth Circuit Court of Appeals and upon the Jamestown S’Klallam Tribe’s, Port Gamble S’Klallam Tribe’s and Lower Elwha Klallam Indian Tribe’s (collectively S’Klallam), and Lummi Nation’s (the Lummi) motions for summary judgment. The S’Klallam request that the Court grant summary judgment on the issues presented in their Request for Determination (RFD) filed November 8, 2011. The RFD asks the Court to find that the actions of the Lummi in fishing in the “case area” is not in conformity with Final Decision I. The matter having now been fully briefed, the Court now grants S’Klallam’s motions for summary judgment and denies Lummi’s motion for summary judgment.

52. *Tulalip Tribes v. Suquamish Indian Tribe*, No. 13–35773, 2015 WL 4509235 (9th Cir. Jul. 27, 2015). Tulalip Indian Tribes filed request for determination that the inland marine waters east of Admiralty Inlet but west of Whidbey Island, as well as Saratoga Passage, Penn Cove, Holmes Harbor, Possession Sound, Port Susan, Tulalip Bay, and Port Gardner, were not within Suquamish Indian Tribe’s “usual and accustomed fishing grounds,” as established by treaty between United States and Indian tribes in Western Washington under which tribes reserved the right to fish at all usual and accustomed grounds. The district court, 2015 WL 3504872, 2013 WL 3897783, granted Tulalip’s summary judgment motion in part. Tulalip appealed. The appellate court held that: (1) Suquamish Indian Tribe’s treaty right of taking fish at “usual and accustomed fishing grounds and stations” was not intended to exclude waters east of Whidbey Island, and (2) Suquamish Indian Tribe’s treaty right was not intended to exclude waters west of Whidbey Island. Affirmed.

53. *Flathead Irrigation Dist. v. Jewell*, No. 14-88, 2015 U.S. Dist. LEXIS 109728 (D. Mont. Aug. 19, 2015). Plaintiffs Flathead Irrigation District (FID) and Flathead Joint Board of Control (FJBC), filed an action seeking declaratory and injunctive relief against Defendants, collectively “the United States,” for claims arising

out of the United States' recent and historical actions with respect to the Flathead Irrigation Project. The United States moved to dismiss all of the claims. After briefing on the United States' motion to dismiss was completed, Plaintiffs' moved the Court for leave to file their Second Amended Complaint. The Court granted the motion to dismiss and denied the motion for leave to file the Second Amended Complaint.

54. *In re the General Adjudication Of All Rights To Use Water In The Big Horn River System*, No. S-14-0257, 2015 WL 5439947 (Wyo. Sept. 16, 2015). In action involving ongoing general adjudication of water rights in river system, landowner filed objections to special master's report and recommendation, which recommended partial reinstatement of cattle company's expired permit, which conveyed water through ditch that ran through landowner's property. The District Court adopted special master's report and recommendation and entered its final order in general adjudication. Landowner appealed. The Supreme Court held that: (1) special master did not improperly place burden of proof on landowner, and (2) evidence was sufficient to support findings required to reinstate permit.

55. *Penobscot Nation v. Mills*, No. 1:12-cv-254, 2015 U.S. Dist. LEXIS 169342 (D. Me. Dec. 16, 2015). Before the Court were three motions for summary judgment: (1) the State Defendants' Motion for Summary Judgment, or in the Alternative, for Dismissal for Failure to Join Indispensable Parties; (2) the United States' Motion for Summary Judgment; and (3) the Motion for Summary Judgment by Plaintiff Penobscot Nation. Plaintiff Penobscot Nation, which is a federally recognized American Indian tribe in Maine, filed this action seeking to resolve ongoing disputes between the tribe and the State of Maine regarding a section of the Penobscot River. The Court allowed the United States to intervene as a plaintiff on its own behalf and as a trustee for the Penobscot Nation. The Penobscot Nation asserted that it was prompted to file this case in response to the August 8, 2012 Opinion issued by then-Maine Attorney General William J. Schneider regarding the respective regulatory jurisdiction of the . . . Penobscot Nation and the State of Maine relating to hunting and fishing on the main stem of the Penobscot River." The Penobscot Nation and the United States (together, Plaintiffs) maintain that the 2012 Attorney General Opinion reflected a misinterpretation of the law governing the boundaries of their reservation and their rights to engage in sustenance fishing. Thus, Plaintiffs sought a declaratory judgment clarifying both those boundaries and tribal fishing rights within the Penobscot River. The Court held that: (1) The plain language of the Maine Implementing Act (MIA) and the Maine Indian Claims Settlement Act (MICSA) is not ambiguous and does not suggest that any of the waters of the Main Stem section of the Penobscot River are included within the boundaries of the Penobscot Indian Reservation; (2) The Penobscot Indian Reservation as defined in MIA, Me. Rev. Stat. Ann. tit. 30, § 6203(8), and the MICSA, 25 U.S.C.S. § 1722(i), includes the islands of the Main Stem, but not the waters of the Main Stem; (3) The language of Me. Rev. Stat. Ann. tit. 30, § 6207(4) is ambiguous; (4) Interpreting § 6207(4) to reflect the expressed legislative will and in accordance with the special tribal canons of statutory construction, sustenance fishing rights provided in § 6207(4) allow the Penobscot Nation to take fish for individual sustenance in the entirety of the Main Stem section. The Court ordered that declaratory judgment enter as follows: (1) in favor of the State Defendants to the extent that the Court hereby declares that the

Penobscot Indian Reservation as defined in MIA, 30 M.R.S.A. § 6203(8), and MICSA, 25 U.S.C. § 1722(i), includes the islands of the Main Stem, but not the waters of the Main Stem; and (2) in favor of the Penobscot Nation and the United States to the extent that the Court hereby declares that the sustenance fishing rights provided in section 30 M.R.S.A. § 6207(4) allows the Penobscot Nation to take fish for individual sustenance in the entirety of the Main Stem section of the Penobscot River.

56. *New Mexico v. Trujillo*, No. 15–2047, 2016 WL 683831 (10th Cir. Feb. 19, 2016). New Mexico filed suit regarding water rights. The District Court entered order that adjudicated individual’s water rights based on special master’s summary judgment order. Individual property owner appealed. The appellate court held that: (1) district court’s certification of order as final appealable judgment did not clearly articulate “finality” or “no just reason for delay,” and therefore order fell short of proper certification; (2) order addressing individual’s water rights could not be considered final, as required to be certified as final appealable order; (3) danger of injustice did not outweigh inconvenience and costs of piecemeal review, and thus order could not be reviewed under pragmatic finality doctrine; (4) order describing individual’s water rights expressly granted State’s request for injunction, and thus Court of Appeals could exercise jurisdiction to review it; and (5) individual inadequately presented argument on appeal that she was entitled to irrigate her land, and thus Court of Appeals declined to address it. Affirmed.

57. *Turunen v. Creagh*, No. 2:13-CV-106, 2016 U.S. Dist. LEXIS 43158 (W.D. Mich. Mar. 31, 2016). Plaintiff, Brenda Turunen, is a member of the Keweenaw Bay Indian Community (KBIC), a federally recognized Indian tribe in Michigan’s Upper Peninsula that is the successor-in-interest to the L’Anse and Ontonagon bands of the Lake Superior Chippewa Indians. In 1842, the Lake Superior Chippewa Indians signed a treaty with the United States of America, 7 Stat. 591 (the 1842 Treaty), in which the Indian signatories ceded large portions of the western Upper Peninsula of Michigan, but reserved “the right of hunting on the ceded territory, with the other usual privileges of occupancy.” 7 Stat. 591. Plaintiff owns property that is within the “ceded territory” at issue in the 1842 Treaty. Plaintiff asserts that the “the usual privileges of occupancy” reserved by the KBIC on the ceded territory included commercial farming and animal husbandry. Based on that interpretation of the 1842 Treaty, Plaintiff seeks a declaration that she may—as a member of the KBIC—raise animals free from state regulation on her property within the ceded territory. Plaintiff’s claim rests on the twin propositions that the KBIC retained certain rights in the 1842 Treaty, and that she may exercise such rights based on her membership in the KBIC. Although the Court must determine the scope of the rights retained by the KBIC to resolve Plaintiff’s claim, the KBIC is not a party to this action. Thus, the Court previously sought briefing from the parties regarding whether the KBIC should be joined pursuant to Federal Rule of Civil Procedure 19, and whether the case should be dismissed if the KBIC could not be joined. After the parties responded, the Court—at Plaintiff’s urging—ordered Plaintiff to notify the KBIC of the pending action and the opportunity to intervene. The KBIC followed up to that notification with a letter to the Court stating that it would not intervene in the action, and further urging that the action be dismissed under Rule 19. The Court concludes that the KBIC is a required party to this action and that joinder of the KBIC is

not feasible. The Court further finds that the first three factors under Rule 19(b) weigh in favor of dismissal. Although the fourth factor weighs against dismissal, such factor is not dispositive, particularly in light of the interests presented by the KBIC's invocation of its sovereign immunity. Accordingly, the Court concludes this action should be dismissed pursuant to Rule 19.

58. *Ninilchik Traditional Council v. Towarak*, No. 3:15-cv-00205, 2016 U.S. Dist. LEXIS 51370 (D. Alaska Apr. 17, 2016). Defendants Tim Towarak (Chairman of the Federal Subsistence Board), Sally Jewell (Secretary of Interior), and Tom Vilsack (Secretary of Agriculture) (Defendants) moved to dismiss the complaint of plaintiff Ninilchik Traditional Council (NTC) pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6). NTC's two-count complaint, filed in October 2015, alleges that Defendants' actions violate Section 804 of ANILCA and the Administrative Procedure Act in relation to three events: (1) the Board's 2002 delegation of authority to the in-season manager; (2) Jeffry Anderson's (during all relevant times, the in-season fishery manager) 2015 subsistence fishery closure; and (3) Defendants' implementation of the Kenai river gillnet fishery regulation. The plaintiff is NTC, the governing body of Ninilchik Village, a federally-recognized Indian tribe whose members have a customary and traditional use of all fish in the Kasilof and Kenai River drainages. Although Ninilchik Village members share "in an annual subsistence allocation of salmon from three federal fisheries on the Kenai River," they allege that they have "been unable to harvest this subsistence salmon allocation" due to "restrictive federal subsistence regulations limiting methods and means of harvest, and restrictive and arbitrary federal in-season subsistence management actions." In March 2014, NTC submitted two proposed regulations that would authorize residents of Ninilchik to operate two community subsistence gillnets: one in the Kenai River and the other in the Kasilof River. The Southcentral Regional Advisory Council, which is a regional advisory council established under Section 805 of ANILCA to provide opinions and recommendations to the Board on subsistence matters, considered NTC's two gillnet fishery proposals and recommended that the Board adopt both. The Board voted to adopt NTC's proposals and, after a five-month notice and comment period, promulgated final regulations authorizing the two gillnet fisheries. On May 27, 2015, NTC submitted to Anderson an operational plan for the Kenai and Kasilof gillnet fisheries. Before deciding either submission, Anderson issued an emergency special action closing the federal subsistence fishery from June 18 until August 15 for early-run Chinook salmon in all federal public waters in the Kenai River downstream of Skilak Lake. On July 13, "less than a month before the closure of the 2015 federal subsistence fishing season," Anderson approved NTC's operational plan for the Kasilof River gillnet and issued a permit to NTC. But Anderson still did not act on NTC's request for a Kenai River gillnet permit. In a July 16 letter explained that he did not anticipate approving a Kenai River permit for the 2015 fishing season "because of the urgent need to protect early-run Chinook [s]almon." In late July NTC wrote two letters to the Board seeking relief. The Board convened on July 28 and considered NTC's requests. After hearing testimony, the Board voted not to grant NTC any of the relief it had requested. Defendants' motion to dismiss is GRANTED IN PART AND DENIED IN PART as follows: Defendants' motion to dismiss NTC's claim that the Board violated 50 C.F.R. § 100.10(d)(6) by not establishing "frameworks" to guide the delegation of its authority is DENIED;

Defendants' motion to dismiss NTC's claim that the in-season manager's failure to decide its Kenai gillnet permit application based on the merits of the operational plan violates 50 C.F.R. § 100.27(e)(10)(iv)(J) is DENIED; in all other respects, Defendants' motion is GRANTED.

G. GAMING.

59. *City of Duluth v. Fond Du Lac Band of Lake Superior Chippewa*, No. 13-3408, 2015 WL 2151774 (8th Cir. May 8, 2015). 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 entered summary judgment barring tribe from challenging agreement's validity, 708 F. Supp. 2d 890, entered order compelling tribe to arbitrate amount of rent to be paid to city for extension term, 2011 WL 1832786, and granted in part and denied in part tribe's motion for relief, 830 F. Supp. 2d 712. Tribe appealed. The appellate court, 702 F.3d 1147, affirmed in part, reversed in part, and remanded. On remand, tribe moved for relief from judgment. The district court, 977 F. Supp. 2d 944, denied motion. Tribe appealed. The appellate court held that district court was required to consider intent of Congress in Indian Gaming Regulatory Act (IGRA) to ensure that primary beneficiaries of Indian gaming operations were to be tribes.

60. *Cayuga Nation v. Tanner*, No. 5:14-CV-1317, 2015 WL 2381301 (N.D.N.Y. May 19, 2015). On October 28, 2014, plaintiffs Cayuga Nation and John Does 1-20 (plaintiffs) filed this action against defendants Howard Tanner, Code Enforcement Officer for the Village of Union Springs, New York (Village) and the Village itself (collectively "defendants"). Also on that date, plaintiffs filed a motion for preliminary injunction and requested a temporary restraining order. Generally, plaintiffs claim the federal Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (IGRA), preempts the Village's efforts to enforce local anti-gaming laws. In 2004, the Cayuga Nation opened Lakeside Entertainment on land it claims to be within the limits of its reservation. The facility closed in October 2005. Three Cayuga Nation members began orchestrating the reopening of the facility in 2010. They obtained an architect's report stating that the use of Lakeside Entertainment for Class II gaming complied with state and local zoning, land use, and building codes. Defendants argued that the complaint must be dismissed because: (1) Plaintiffs lack standing to bring this action; and (2) the action is barred by the doctrine of res judicata. As a threshold issue of subject matter jurisdiction, plaintiffs must establish standing under Article III of the Constitution. They fail to meet this burden. Whether the Nation 2006 Council—which is the recognized leadership entity of the Cayuga Nation—properly authorized this lawsuit is an issue that necessarily requires the interpretation and application of internal Nation law. Therefore, this Court lacks subject matter jurisdiction. Therefore, it is ordered that (1) defendants' cross-motion to dismiss is granted; (2) plaintiffs' motion for a preliminary injunction is denied

as moot; (3) the complaint is dismissed in its entirety; and (4) the temporary restraining order is vacated.

61. *Cosentino v. Fuller*, No. G050923, 2015 WL 3413542, ___ Cal. Rptr. 3d ___ (Cal. Ct. App. May 28, 2015). Former table games dealer at Indian tribal casino brought action against five members of the tribe's gaming commission for intentional and negligent interference with prospective economic advantage, intentional interference with the right to pursue a lawful occupation, a civil rights violation under state law, and intentional and negligent infliction of emotional distress, alleging the members revoked his gaming license in retaliation for his work as confidential informant for the California Department of Justice. The superior court granted members' motion to quash service of summons and dismiss the complaint. Dealer appealed. The appellate court held that: (1) tribal sovereign immunity did not support members' motion to quash service of process, and (2) members could not raise affirmative defense by motion to quash service of process. Reversed.

62. *Big Lagoon Rancheria v. California*, Nos. 10-17803, 10-17878, 2015 WL 3499884, ___ F.3d ___ (9th Cir. Jun. 4, 2015). Indian tribe brought action alleging that state violated the Indian Gaming Regulatory Act (IGRA) by failing to negotiate in good faith for a casino on tribal trust land. The district court granted summary judgment for tribe, 759 F. Supp. 2d 1149, but, subsequently, granted state's motion for stay pending appeal, 2012 WL 298464. Both parties appealed. The appellate court, 741 F.3d 1032, reversed and remanded. On remand, the district court denied state's motion for continuance to conduct additional discovery. Parties cross-appealed. The appellate court held that: (1) state's claim that tribe lacked standing to bring the action was a prohibited collateral attack on administrative proceedings; (2) any claim under Administrative Procedure Act (APA) challenging administrative decision was governed by six-year statute of limitations; (3) District Court was within its discretion in denying state's motion for continuance to conduct additional discovery; and (4) tribe's cross-appeal was moot. Affirmed.

63. *Idaho v. Coeur D'Alene Tribe*, No. 14-35753, 2015 WL 4461055 (9th Cir. Jul. 22, 2015). State brought action to prevent Indian tribe from offering poker at its casino. The district court, 49 F. Supp. 3d 751, denied tribe's motion to dismiss and granted state's motion for preliminary injunction. Tribe appealed. The appellate court held that: (1) tribe's sovereign immunity was abrogated by Indian Gaming Regulatory Act; (2) compact between state and tribe did not require that dispute be submitted to arbitration; and (3) preliminary injunction was warranted.

64. *Alabama v. PCI Gaming Auth.*, 2015 U.S. App. LEXIS 15692 (11th Cir. Ala. Sept. 3, 2015). Alabama sued under state and federal law to enjoin gaming at casinos owned by the Poarch Band of Creek Indians (the "Tribe") and located on Indian lands within the state's borders. As the Tribe itself is unquestionably immune from suit, Alabama instead named as defendants PCI Gaming Authority ("PCI"), an entity wholly owned by the Tribe that operates the casinos, and tribal officials in their official capacity. Alabama claimed that the gaming at the casinos constitutes a public nuisance under Alabama law and should be enjoined. It put forth two novel theories to explain why its

state law applies to the Tribe's casinos. First, Alabama asserted that the Secretary of the Interior lacked authority to take land into trust for the Tribe; therefore, the Tribe's casinos are not located on Indian lands, and Alabama may regulate the gaming there. Second, Alabama contended that by incorporating state laws governing gambling into federal law, 18 U.S.C. § 1166 creates a right of action for a state to sue in federal court to enforce its laws on Indian lands. The district court rejected these arguments and dismissed the action on the grounds that the defendants were entitled to tribal immunity on nearly all of Alabama's claims and Alabama failed to state a claim for relief. The appellate court upheld the judgment of the district court finding that the Tribe was entitled to sovereign immunity as to all of Alabama's claims as the Indian Gaming Regulatory Act, 18 U.S.C.S. § 1166, gives states no right of action to sue. The appellate court held that Congress did not intend to create an implied right of action in § 1166. The court also held that the individual defendants were entitled to sovereign immunity as to Alabama's state law claim. Judgment affirmed.

65. *Citizens Against Casino Gambling v. Jonodev Osceola Chauduri*, Nos. 11-5171, 11-5466, 13-2339, 13-2777, 2015 U.S. App. LEXIS 16439 (2d Cir. Sept. 15, 2015). The plaintiffs-appellants ("plaintiffs") are organizations and individuals that oppose the operation of a casino in Buffalo, New York, by the Seneca Nation of Indians. They brought three successive lawsuits in the United States District Court for the Western District of New York against the National Indian Gaming Commission ("NIGC"), its Chairman, the U.S. Department of the Interior ("DOI"), and the Secretary of the Interior. In the three actions, the plaintiffs argued that the NIGC did not act in accordance with federal law in approving an ordinance and subsequent amendments to that ordinance that permitted the Seneca Nation to operate a class III gaming facility, a casino, on land owned by the Seneca Nation in Buffalo ("the Buffalo Parcel"). In the third lawsuit ("*CACGEC III*"), which addressed the NIGC's approval of the most recent version of the ordinance, the district court denied the plaintiffs' motion for summary judgment and entered judgment dismissing the case. The appellate court held that the district court correctly dismissed the plaintiffs' complaint in *CACGEC III* because the DOI and the NIGC's determination that the Buffalo Parcel is eligible for class III gaming under the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701-2721, was not arbitrary or capricious, an abuse of discretion, or in violation of law. The court further held that Congress intended the Buffalo Parcel to be subject to tribal jurisdiction, as required for the land to be eligible for gaming under IGRA. Finally, the court held that IGRA Section 20's prohibition of gaming on trust lands acquired after IGRA's enactment in 1988, 25 U.S.C. § 2719(a), does not apply to the Buffalo Parcel. Because the gaming ordinances at issue in the first two lawsuits ("*CACGEC I*" and "*CACGEC II*") have been superseded by the most recent amended ordinance, the appeals of *CACGEC I* and *CACGEC II* are moot. Accordingly, the court affirmed the judgment of the district court in *CACGEC III* and dismissed the appeals of *CACGEC I* and *CACGEC II*.

66. *Tohono O'odham Nation v. Ducey, et al.*, No. CV-15-01135, 2015 U.S. Dist. LEXIS 124979 (D. Ariz. Sept. 16, 2015). The Tohono O'odham Nation filed this action against Arizona Governor Douglas Ducey, Arizona Attorney General Mark Brnovich, and Arizona Department of Gaming (ADG) Director Daniel Bergin. It alleged

that Ducey and Brnovich directed Bergin to deny certifications for the West Valley Resort and that Defendants violated the Supremacy Clause because IGRA preempts state regulation of gaming on Indian lands. It further alleged that Defendants are violating IGRA by illegally regulating Class II gaming. The Nation asked the Court to enjoin Defendants from refusing to grant the Class III certifications and from regulating Class II gaming. Plaintiff Tohono O'odham Nation (the "Nation") is constructing a casino on land purchased in 2003 near Glendale, Arizona. In May 2013, the Court ruled that the 2002 Gaming Compact between the State of Arizona and the Nation did not prohibit construction of another casino in the Phoenix metropolitan area, and the Nation elected to begin construction of the casino even though that ruling is on appeal. As construction progressed, the State and its officials refused to certify vendors and employees to work at the casino. In response, the Nation brought this action for declaratory and injunctive relief to prohibit the State from continuing to bar the casino's progress. Before the Court was the Nation's motion for preliminary injunction, Defendants Douglas Ducey and Mark Brnovich's joint motion to dismiss, and Defendant Daniel Bergin's motion to dismiss. The Nation began construction of the West Valley Resort in December 2014. The building currently under construction will serve as an interim facility until construction of the entire resort takes place in the future. On February 2, 2015, Defendant Bergin expressed concern to the Nation that the casino was "not authorized, and, as a consequence, . . . ADG would not have the authority to participate in any certification or approval processes relating to the opening or operation of the casino." On April 10, 2015, Bergin informed the Nation that "ADG lacks statutory authority to approve [the Nation's] Glendale casino notwithstanding [the Court's earlier decision]." Bergin expressed a belief that the Nation committed fraud during the formation of the Compact and that the fraud "nullif[ied] any right that [the Nation] would otherwise have under the compact to build the Glendale casino." He referenced A.R.S. § 5-602(C), which "requires ADG to execute the State's duties under tribal-state compacts 'in a manner that is consistent with this state's desire to have extensive, thorough and fair regulation of Indian gaming permitted under the tribal-state compacts.'" (Quoting § 5-602(C)). Bergin stated that "the record created in [the prior litigation] includes credible and largely unrefuted evidence that [the Nation] engaged in deceptive behavior and made significant misrepresentations during the compact negotiations[.]" He concluded that ADG would "exceed its authority if it were to proceed with any certification or approval processes relating to the opening or operation" of the casino, and noted that the casino does not qualify as "Indian gaming permitted under the Tribal-State compact." Defendants Ducey and Brnovich argued that the Nation's claims should be dismissed for several reasons: (1) sovereign immunity bars suit against them in their official capacities, (2) the Nation's claims are a disguised and improper mandamus action, (3) the Nation's claims are non-justiciable, and (4) the Nation fails to state a claim for relief. Defendant Bergin argued that the claims should be dismissed for similar reasons: (1) sovereign immunity bars the Nation's claims against him because IGRA provides an alternative enforcement mechanism, (2) the Nation's claim regarding Class II gaming is not ripe, (3) the Nation's complaint fails to state a claim for relief, and (4) the Nation's requested relief would violate the Tenth Amendment. The court found that the Nation has failed to show that it is likely to succeed on the merits of count one or likely to suffer irreparable harm. The Nation is

not entitled to preliminary injunctive relief, and the Court need not address the remaining requirements for a preliminary injunction.

67. *County of Amador v. United States Dept. of the Interior, et al.*, No. 2:12-01710, 2015 U.S. Dist. LEXIS 133482 (E.D. Cal. Sept. 29, 2015). The matter was before the Court on Cross Motions for Summary Judgment filed by Plaintiff County of Amador (“Plaintiff”); Defendants the United States Department of the Interior (the “Department”), S.M.R. Jewell, and Kevin Washburn; and the Lone Band of Miwok Indians (“Defendant Intervenors”). This lawsuit presented a challenge to the Record of Decision (“ROD”), issued on May 24, 2012, by Donald Laverdure, Acting Assistant Secretary of Indian Affairs, Department of the Interior, concerning the acquisition of the Plymouth Parcels property in trust for the Lone Band of Miwok Indians, in anticipation of the construction of a gaming-resort complex. Plaintiff challenged: the Department’s determination to take the Plymouth Parcels into trust; the determination that the Lone Band is a “recognized Indian tribe now under Federal jurisdiction,” 25 U.S.C. § 479; and the determination that the trust acquisition constitutes the “restoration of lands for an Indian tribe that is restored to Federal recognition,” 25 U.S.C. § 2719(b)(1)(B), such that the property is gaming-eligible. Defendants and Defendant Intervenors responded that the ROD is procedurally and substantively valid. The complaint contained four causes of action. Claims one and two sought declaratory and injunctive relief under the Indian Reorganization Act that the Department’s determination – that the Lone Band was “under federal jurisdiction” in June 1934 – constitutes an abuse of discretion and is arbitrary, capricious, and contrary to law. Claims three and four sought declaratory and injunctive relief under the Indian Gaming Regulatory Act that the Department’s “Indians Lands” determination – including that the “restored lands for a restored tribe provision” is met – constitutes an abuse of discretion and is arbitrary, capricious, and contrary to law. The court found that the ROD demonstrates consideration was given to the applicable statutory and regulatory framework, and to the Lone Band’s relationship with the federal government throughout the 20th century, in reaching the determination that the restored lands provision is met. The Court did not find the Department’s conclusion – that the acquisition constitutes the “restoration of lands for an Indian tribe that is restored to Federal recognition,” 25 U.S.C. § 2719(b)(1)(B)(iii) – was arbitrary, capricious, unlawful, or an abuse of discretion. The court denied Plaintiff’s Motion for Summary Judgment and granted both Defendants’ Motion for Summary Judgment and Defendant Intervenors’ Motion for Summary Judgment.

68. *No Casino in Plymouth v. Jewell*, No. 2:12-cv-01748, 2015 U.S. Dist. LEXIS 134375 (E.D. Cal. Sept. 30, 2015). The matter was before the Court on cross motions for summary judgment brought by Plaintiffs No Casino in Plymouth and Citizens Equal Rights Alliance’s (“Plaintiffs”); Federal Defendants John Rydzik, the U.S. Department of Interior, Amy Dutschke, Tracie Stevens, Kevin Washburn, the National Indian Gaming Commission, Paula Hart, and Sally Jewell (“Defendants”); and Defendant Intervenors the Lone Band of Miwok Indians (“Defendant Intervenors”). This lawsuit presents a challenge to the Record of Decision (“ROD”), issued by Donald Laverdure, Acting Assistant Secretary of Indian Affairs, concerning the acquisition of the Plymouth Parcels property in trust for the Lone Band of Miwok Indians, in anticipation of the construction of a gaming-resort complex. Claim 1 in the First Amended Complaint

("FAC") alleges that the Secretary of the Interior lacks the authority to take land into trust for the lone Band because it was not a "recognized tribe now under Federal jurisdiction" in 1934 when the IRA was enacted. 25 U.S.C. § 479. Claim 2 in the FAC alleges that the Department failed to comply with its regulations, 25 C.F.R. §§ 151.10, 151.11, and 151.13, when it reviewed and approved the ROD. Claim 4 states that: Lands taken in trust acquired after October 17, 1988, are not gaming eligible, 25 U.S.C. § 2719, unless an enumerated exception applies. Here, the exception relied upon by the Department is § 2719(b)(1)(B)(iii): "the restoration of lands for an Indian tribe that is restored to Federal recognition." Plaintiffs argue simply that this exception is not applicable in this case. The Court has considered this issue in its Order on the cross motions for summary judgment, Case No. 1710 — particularly the "restored tribe" part of section 2719(b)(1)(B)(iii) — and incorporates by reference its analysis from that Order. Claim 5 in the FAC alleges that the Department failed to comply with NEPA when it reviewed and approved the fee-to-trust transfer and the casino project. Specifically, Plaintiffs allege the Department did not adequately consider the traffic, water quality, and air quality of the proposed project. These negative impacts include: increases in traffic congestion and safety concerns on rural road in the area, increases in air pollution, increases in water pollution, the overuse of limited water resources, and potential increase in crime. Plaintiff also alleges the Final Environmental Impact Statement ("EIS") wrongfully assumed that non-Indian interests did not require equal consideration against the interests of the lone Band when considering the environmental impacts of the proposed project. The Court found: With respect to the First Amended Complaint, Claim 1, Plaintiffs' Motion for Summary Judgment is DENIED; Defendants' Motion for Summary Judgment is GRANTED; and Defendant Intervenor's Motion for Summary Judgment is GRANTED. With respect to the First Amended Complaint, Claims 2 through 5, Defendants' Motion for Summary Judgment is GRANTED; and Defendant Intervenor's Motion for Summary Judgment is GRANTED.

69. *San Pasqual Band of Mission Indians v. State*, No. B254870, 2015 WL 6438536 (Cal. Ct. App. Oct. 5, 2015). Tribe brought action against the state and Gambling Control Commission seeking damages for breach of Indian Gaming Regulatory Act compact. The Superior Court granted summary judgment for state and Commission. Tribe appealed. The appellate court ruled that compact barred tribe from recovering damages as a remedy for breach. Affirmed.

70. *Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation v. California*, Nos. 14–56104, 14–56105, 2015 WL 6445610 (9th Cir. Oct. 26, 2015). Indian tribe brought suit against California, asserting claims of mistake and misrepresentation regarding amendment to tribal-state gaming compact entered under Indian Gaming Regulatory Act (IGRA), and seeking injunctive relief. Indian tribe moved for summary judgment. The District Court granted motion on misrepresentation claim. Tribe moved to vacate to request further relief, which was denied. California appealed, and tribe cross-appealed. The appellate court held that: (1) California misrepresented to tribe that no further licenses were available; (2) amendment was voidable and appropriate remedy was rescission and restitution; (3) California was not entitled to setoff for profits tribe gained from operating machines it would not have had absent amendment; (4) California's misrepresentation was innocent not fraudulent;

(5) California waived sovereign immunity; and (6) language of IGRA precluded bad faith claim against California.

71. *Massachusetts v. Wampanoag Tribe of Gay Head (Aquinnah)*, No. 13-13286, 2015 U.S. Dist. LEXIS 153935 (D. Mass. Nov. 13, 2015). Prior History: *Massachusetts v. Wampanoag Tribe of Gay Head (Aquinnah)*, 36 F. Supp. 3d 229, 2014 U.S. Dist. LEXIS 89460 (D. Mass., 2014). This lawsuit involves a dispute over gaming on Indian lands on Martha's Vineyard. The Wampanoag Tribe of Gay Head (Aquinnah) and related entities have taken steps to commence commercial gaming operations on tribal lands in the town of Aquinnah. The Tribe does not have a state gaming license. The Commonwealth of Massachusetts contends that operating gaming facilities without such a license would violate a 1983 agreement, approved by Congress in 1987, that subjects the lands in question to state civil and criminal jurisdiction (and specifically to state laws regulating gaming). Count 1 of the complaint alleges breach of contract, and Count 2 seeks a declaratory judgment. The Commonwealth, the Town of Aquinnah, the Aquinnah/Gay Head Community Association (AGHCA), and the Tribe have all moved for summary judgment. This case presents two fairly narrow issues. The first is whether a statute passed by Congress in 1988 (the Indian Gaming Regulatory Act, or IGRA) applies to the lands in question, which in turn raises the questions whether the Tribe exercises "jurisdiction" and "governmental power" over the lands. The second is whether IGRA repealed, by implication, the statute passed by Congress in 1987 (the act that approved the 1983 agreement). If the 1988 law (IGRA) controls, the Tribe can build a gaming facility in Aquinnah. If the 1987 law controls, it cannot. The complaint asserted a claim for breach of contract and requested a declaratory judgment that the Settlement Agreement allowed the Commonwealth to prohibit the Tribe from conducting gaming on the Settlement Lands. The Tribe removed the action to this Court on grounds of federal-question and supplemental jurisdiction. The Commonwealth moved to remand the action to state court, which the Court denied. Both the AGHCA and the Town filed motions to intervene. The Court granted those motions. The Tribe moved to dismiss the AGHCA complaint on the grounds of sovereign immunity and failure to state a claim upon which relief can be granted. The Tribe separately moved to dismiss all three complaints, with leave to amend, for failure to join the United States, which it asserted was a required party under Fed. R. Civ. P. 19. The Tribe filed an amended answer to the Commonwealth's complaint which included counterclaims against the Commonwealth and claims against three third-party defendants, all of whom are government officials of the Commonwealth sued in their official capacity. The Court denied the Tribe's motions to dismiss and granted the motion by the Commonwealth to dismiss the counterclaims against it. Remaining are the claims by the Commonwealth, the AGHCA, and the Town against the Tribe, and the Tribe's counterclaims against the government officials. The Commonwealth, the Town, the AGHCA, and the Tribe all moved for summary judgment. The Court found that the Tribe has not met its burden of demonstrating that it exercises sufficient "governmental power" over the Settlement Lands, and therefore IGRA does not apply and it is clear that IGRA did not repeal by implication the Massachusetts Settlement Act. Accordingly, the Tribe cannot build a gaming facility on the Settlement Lands without complying with the laws and regulations of the Commonwealth and the Town. The Court granted the motions for summary judgment of the Commonwealth of Massachusetts, the Town of

Aquinnah, and the Aquinnah/Gay Head Community Association, Inc. and denied the Tribe's motion for summary judgment.

72. *North Fork Rancheria of Mono Indians v. California*, No. 1:15-cv-00419, 2015 U.S. Dist. LEXIS 154729 (E.D. Cal. Nov. 13, 2015). Prior History: *N. Fork Rancheria of Mono Indians of Cal. v. California*, 2015 U.S. Dist. LEXIS 113424 (E.D. Cal. Aug. 26, 2015). Plaintiff North Fork Rancheria of Mono Indians of California ("North Fork" or "the Tribe") has brought suit against the State of California ("State" or "California") based on an alleged failure of the State to negotiate in good faith for the purpose of entering into a Tribal-State compact governing the conduct of class III gaming activities as required by the Indian Gaming Regulatory Act ("IGRA"). See 25 U.S.C. § 2710(d)(3)(A). The parties have filed competing motions for judgment on the pleadings. This case revolves around a Tribal-State compact which was approved by the Governor and ratified by the legislature before the issue was certified for referendum vote in the November 2014 election. The people of the State of California voted "No," overturning the legislative ratification of the Tribal-State compact. North Fork is a federally recognized Indian tribe, listed in the Federal Register. Prior to the initiation of the plan to build a gaming facility, the Tribe possessed only a 61.5 acre parcel in North Fork, California (which lies within the Sierra National Forest), held in trust by the United States for development of a community center, a youth center, and homes. In 2004, the Tribe put into action its plan to build a gaming facility by starting down the path to acquisition of land in Madera County. A lengthy environmental impact study ("EIS"), with opportunity provided for public notice and comment, was conducted and the results published on August 6, 2010. After reviewing the results of the EIS, the submissions of state and local officials and surrounding Indian tribes, and the likely economic impact on North Fork and the surrounding communities, the BIA recommended approval of (and requested the California Governor's concurrence with) the Tribe's bid for acquisition in trust of an approximately 305 acre plot of land in Madera County ("Madera parcel") for the benefit of North Fork pursuant to the Indian Reorganization Act ("IRA"), 25 U.S.C. § 465, in anticipation of North Fork's construction of a C class III gaming facility as contemplated by IGRA. California's Governor, Edmund Brown, Jr., gave his concurrence with the BIA recommendation on August 30, 2012. On February 5, 2013, the federal government took the Madera parcel into trust for North Fork pursuant to the Indian Reorganization Act ("IRA"), 25 U.S.C. § 465, in anticipation of North Fork's construction of a class III gaming facility as contemplated by IGRA. After discussions with representatives of the then-Governor, Arnold Schwarzenegger, regarding framing of a Tribal-State compact, Governor Schwarzenegger and the Tribe executed a gaming compact ("2008 Compact"). However, because the acquisition of the Madera parcel was stalled due to the lengthy EIS process, the 2008 Tribal-State compact was never presented to the legislature. A second draft of the Tribal-State compact prepared by the Governor's office and the Tribe was presented to Governor Brown. On the same date that the Governor gave his concurrence to the BIA recommendation for taking the Madera parcel into trust, his office executed a Tribal-State compact with North Fork and forwarded that compact to the legislature for ratification. The California Assembly and Senate passed AB 277 and the Governor approved it and the bill was filed with the Secretary of State. At some time shortly thereafter, the California's Secretary of State forwarded the compact to the Secretary of the Interior for review and approval pursuant

to 25 U.S.C. § 2710(d)(8). The Assistant Secretary of the Interior, Bureau of Indian Affairs, issued notice that the compact between the State and North Fork was approved (to the extent that it was consistent with IGRA). On November 4, 2014, California voters rejected Indian Gaming Compacts Referendum, labeled Proposition 48, to ratify the North Fork Tribe compact. Based on that referendum vote, the State of California refuses to recognize the existence of a valid Tribal-State compact with North Fork. The validity of the referendum and compact is the subject of litigation now pending before the California Fifth District Court of Appeal. After the 2014 referendum, the State refused to enter into negotiations with North Fork regarding a new Tribal-State compact, concluding that any attempt at negotiation of a compact regarding the Madera parcel would be futile. On that basis, North Fork brings the instant action, contending that the State's failure to negotiate triggers the remedial provisions of IGRA. The Court concludes that the State failed to enter into negotiations with North Fork for the purpose of entering into a Tribal-State compact within the meaning of § 2710. Accordingly, the parties are hereby ordered to conclude a compact within 60 days of the date of this order.

73. *Flandreau Santee Sioux Tribe v. Gerlach*, No. 14-4171, 2015 U.S. Dist. LEXIS 169317 (D.S.D. Dec. 18, 2015). Secretary of the State of South Dakota Department of Revenue and Governor of South Dakota (collectively, Defendants or the State) moved the Court to dismiss the Flandreau Santee Sioux Tribe's (Plaintiff or the Tribe) complaint. Defendants asserted three principal arguments why the action should be dismissed. First, Defendants maintained that the Tribe's action is barred by the claim preclusive, or *res judicata*, effect of a South Dakota administrative hearing. Second, Defendants asked that the Court abstain from hearing the case pursuant to the doctrine of Younger abstention. Third, Defendants argued they should be granted judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). The Tribe operates Royal River Casino on the Flandreau Indian Reservation. Operating as a single business enterprise under the Royal River name, the Tribe owns and operates the Royal River Casino, the Royal River Bowling Center, and the First American Mart (collectively, Casino). As a unitary business, the entire enterprise is overseen by the Tribe's elected governing body, the Flandreau Santee Sioux Executive Committee. Revenue, including that from casino gaming activities, is calculated in the aggregate as "net revenues." Of that sum, 45% is disbursed to tribal members. Pursuant to the Indian Gaming Regulatory Act (IGRA), the Tribe and the State have in place a Tribal-State gaming compact (Compact), which controls the Tribe's gaming operations. The Compact contemplates neither explicitly nor impliedly the State's authority to apply its alcohol regulatory laws to the Tribe's "gaming facility," nor does it contemplate a State's authority to impose its use taxes on nonmember activity made at the Casino, nor does it contemplate the State's requirement that the Tribe collect and remit the use taxes from nonmember activities or purchases. Irrespective of residential or tribal status, the Tribe offers its patrons "goods and services," which include "bowling, shows and other live entertainment, lodging, food, beverages, package cigarettes, and other sundry items." It is undisputed that the Tribe sold these various goods and services to nonmembers at the Casino. The Tribe has not remitted the relevant use taxes on nonmember sales to the State. The State has issued the Tribe three alcohol licenses, one for each of the three Casino encompassed businesses. These licenses are conditioned on the Tribe's

remittance of the State use tax pursuant to S.D.C.L. § 35-2-24. In 2009 and 2010, the Tribe sought from the State a renewal of its three alcohol licenses. Based on S.D.C.L. § 35-2-24, both requests were denied by the State as the statute directs that licenses are not to be reissued until use taxes incurred by nonmembers have been remitted. The Tribe requested a hearing before the South Dakota Office of Hearing Examiners to review the State's alcohol license denial. At the hearing, the Hearing Examiner concluded that all nonmember purchases at the Casino are subject to the use tax scheme, that the Tribe failed to remit the use taxes, and, therefore, the Tribe was not entitled to alcohol license renewal. Prior to the Hearing Examiner's decision becoming final, the Tribe filed this action in federal court and simultaneously moved the Court for preliminary injunction enjoining state action pursuant to the Hearing Examiner's decision. The Tribe and State made the motion for preliminary injunction moot by entering into a stipulation whereby the State recognized the three alcohol licenses' continuing validity pending a decision on the merits in this case. The Tribe did not appeal the Hearing Examiner's decision to South Dakota state court. The Tribe alleged that the State lacks authority to impose its use tax scheme on reservation land against nonmember Casino patrons and that IGRA preempts the field of taxation thereby barring the State's imposition. The Tribe argued that all activity engaged in under the Royal River Casino name is "gaming activity" untaxable by the State by virtue of IGRA. Outside of IGRA, the Tribe maintains that the use tax and remittance requirements are preempted by the Indian Commerce Clause of the Federal Constitution, federal common law, and infringe on inherent tribal sovereignty; that the State's tax imposition is unlawfully discriminatory as applied to the Tribe; that, as a predicate to funds contained in an escrow account pursuant to a 1994 Deposit Agreement between the Tribe and State being disbursed to the Tribe, the State is without power to impose its taxation scheme on the Tribe's Casino; and that the alcohol licenses are conditioned on the S.D.C.L. § 35-2-24 tax remittance requirement is violative of 18 U.S.C. § 1161. The State moved the Court to dismiss the action in its entirety based on the separate doctrines of res judicata and Younger abstention. The Court ordered: (1) that the State's motion to dismiss the Complaint based on res judicata is denied; (2) that the State's motion to dismiss the Complaint pursuant to Younger abstention is denied; (3) that the State's motion for judgment on the pleadings as to Claims for Relief One, Two and Six is denied; (4) that the State's motion for judgment on the pleadings as to the Fourth Claim for Relief is denied; (5) that the State's motion for judgment on the pleadings as to the Fifth Claim for Relief is denied; and (6) that the State's motion for judgment on the pleadings as to the Eighth Claim for Relief is denied.

74. *Bettor Racing, Inc. v. Nat'l Indian Gaming Comm'n*, No. 15-1335, 2016 U.S. App. LEXIS 1456, 812 F.3d 648 (8th Cir. Jan. 29, 2016). The National Indian Gaming Commission (NIGC) permissibly interpreted the Indian Gaming Regulatory Act as not requiring scienter for a violation under 25 U.S.C.S. § 2713. Absent a scienter requirement, the undisputed facts established that a contractor violated the Act by operating a pari-mutuel betting business at a tribe's casino without an NIGC-approved contract, by modifying the contract without NIGC approval, and by holding the sole proprietary interest in the gaming operations. The \$5 million fine imposed on the contractor did not violate the Eighth Amendment. Among other factors, the fine was

less than the statutory maximum under § 2713(a)(1). Granting summary judgment without a hearing did not violate due process. Judgment affirmed.

75. *Flandreau Santee Sioux Tribe v. Gerlach*, No. 14-4171, 2016 U.S. Dist. LEXIS 16682 (D.S.D. Feb. 11, 2016). Before the Court is the Flandreau Santee Sioux Tribe's (the Tribe) motion for judgment on the pleadings. In its motion, the Tribe asks the Court to declare that the Indian Gaming Regulatory Act (the IGRA) is broad enough in scope to cover sales of goods and services beyond that of just pure gameplay on a casino floor. In addition, the Tribe moves to dismiss the State's counterclaim related to a 1994 deposit agreement (the "Deposit Agreement") that the Tribe and State are parties to. The Deposit Agreement established an escrow account into which the Tribe was to pay a disputed tax amount pending the final resolution of a federal action pending in South Dakota District Court at the time. The Tribe's motion is granted.

76. *Estom Yumeka Maidu Tribe of the Enter. Rancheria of Cal. v. California*, No. 2:14-cv-01939, 2016 U.S. Dist. LEXIS 19330 (E.D. Cal. Feb. 16, 2016). The matter is before the Court on cross motions for judgment on the pleadings by Plaintiff the Estom Yumeka Maidu Tribe (hereinafter "Plaintiff") and Defendant the State of California (hereinafter "Defendant"). Under the federal Indian Gaming Regulatory Act ("IGRA"), an Indian tribe seeking to conduct casino-style gaming on Indian land must request that the state enter into good faith negotiations to conclude a gaming compact. 25 U.S.C. § 2710(d)(3). Under California law, the governor is tasked with negotiating a compact, and the legislature is tasked with ratifying it. Cal. Const., Art. IV, § 19(f). In this case, Plaintiff negotiated and signed a compact (the "Compact") with Governor Jerry Brown in 2012. However, the legislature essentially took no further action and did not hold a vote on ratification. The Compact eventually expired on its own terms in July 2014. Plaintiff's immediate remedy under the IGRA is to bring suit. After Plaintiff has introduced evidence that the state has not negotiated toward a compact in good faith, it is the state's burden to show it has negotiated in good faith. Otherwise, the state is subject to a court order compelling it to conclude a compact within 60 days, with additional remedies should the state continue to reject the compact. 25 U.S.C. § 2710(d)(7)(B). Defendant's position is that the legislature's inaction cannot form the basis for suit under the IGRA, because only the governor negotiated the instant Compact. Plaintiff's position is that the IGRA's negotiation mandate extends to activities by the legislature. Both parties have moved for judgment on the pleadings on the issue of whether Defendant has negotiated the instant Compact in good faith, and thus whether Plaintiff is entitled to relief under the IGRA. The Court has carefully considered the factual and legal issues presented in the parties' filings, and the arguments raised in the amicus brief submitted by the California legislature. The Court GRANTS Plaintiff's motion for judgment on the pleadings, and DENIES Defendant's motion.

77. *Amador Cnty. v. Jewell*, No. 05-00658, 2016 U.S. Dist. LEXIS 33791 (D.D.C. Mar. 16, 2016). At the center of this dispute is a proposed gaming operation on the Buena Vista Rancheria of the Me-Wuk Tribe located in Amador County, California. In 2000, pursuant to the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701-2721, the Secretary of the United States Department of the Interior (the "Secretary"), approved a gaming compact between the Me Wuk Tribe and the State of California.

The gaming compact was later amended in 2004 to provide for an expanded gaming operation. Although it had not challenged the 2000 gaming compact, Plaintiff, Amador County, challenges the Secretary's approval of the amended compact, claiming that the Buena Vista Rancheria does not qualify as "Indian land" – a requirement under the IGRA. Currently before the Court are cross-motions for summary judgment. The Secretary argues that her approval of the amended gaming compact must be upheld because it is in accordance with the IGRA. First, the Secretary contends that Amador County is barred from contesting the Rancheria's reservation status under the IGRA because the County stipulated to the Rancheria's status as such in a settlement judgment in an earlier lawsuit between the County and the Me-Wuk Tribe. Second, the Secretary argues that even if this Court were to determine that the stipulated judgment does not have preclusive effect in this lawsuit, her approval of the amended compact still must be upheld because Congress granted her the authority to determine what lands qualify as reservations for purposes of the IGRA. Amador County, on the other hand, requests that this Court declare that the Buena Vista Rancheria is not Indian land under the IGRA and set aside the Secretary's approval of the amended compact. The County contends that it did not, and indeed could not, stipulate to the Rancheria's reservation status. It further argues that even if it did stipulate to the Rancheria's reservation status, the stipulation does not have preclusive effect on the present litigation. Lastly, the County argues the term "reservation" as it is used in the IGRA is narrowly defined and the Buena Vista Rancheria does not fit within that narrow definition. Having reviewed the parties' submissions, the record of the case, and the relevant legal authority, the Court concludes that: (1) Amador County stipulated that it would treat the Buena Vista Rancheria as a reservation; (2) Amador County is barred from arguing in this litigation that the Rancheria is not a reservation; and, alternatively, (3) the Secretary is authorized to declare that the Rancheria is a reservation for purposes of the IGRA. Therefore, the Court will DENY Amador County's motion for summary judgment and GRANT the Secretary's cross-motion.

78. *Arizona v. Tohono O'odham Nation*, Nos. 13–16517, 13–16519, 13–16520, 2016 WL 1211834 (9th Cir. Mar. 29, 2016). State of Arizona and two Indian communities brought action, seeking to enjoin Indian tribe from constructing and operating major casino on unincorporated land within outer boundaries of city on grounds that proposed casino violated Gaming Compact between state and tribe. Following dismissal of claims in part, 2011 WL 2357833, parties filed cross-motions for summary judgment. The District Court, 944 F. Supp. 2d 748, granted tribe's motion. State appealed. The appellate court held that: (1) Indian Gaming Regulatory Act (IGRA) did not bar tribe from gaming on parcel; (2) it was within district court's discretion to determine that tribe was not judicially estopped from asserting that it had a right to conduct gaming on parcel under IGRA; (3) tribe was authorized under Gaming Compact with State of Arizona to conduct gaming on parcel; and (4) tribal sovereign immunity barred State of Arizona's claims against tribe for promissory estoppel, fraudulent inducement, and material misrepresentation. Affirmed.

79. *Tohono O'odham Nation v. Ducey*, No. CV-15-01135, 2016 U.S. Dist. LEXIS 42410 (D. Ariz. Mar. 30, 2016). In May 2013, this Court ruled that the Gaming Compact between the State of Arizona and the Tohono O'odham Nation did not prohibit

the Nation from building a new casino in the Phoenix metropolitan area. *Arizona v. Tohono O’Odham Nation*, 944 F. Supp. 2d 748 (D. Ariz. 2013) (“Tohono O’odham II”). Subsequently, the Nation began constructing a casino known as the West Valley Resort in Glendale, Arizona, a suburb of Phoenix. In April 2015, while construction was ongoing, the Director of the Arizona Department of Gaming (“ADG”), wrote a letter to the Nation reiterating the Department’s position that the Nation engaged in fraud during the formation of the Compact, and asserting authority to withhold certification from the Resort’s vendors and employees based on this conduct. In response, the Nation brought this lawsuit, claiming that federal law preempts any state-law authority ADG might have to withhold these certifications. The Director has asserted counterclaims against the Nation for promissory estoppel, fraudulent inducement, and material misrepresentation. The Director seeks a variety of relief, including (1) a declaration that “ADG is not obligated to certify or authorize the Nation’s proposed class III gaming facility on the Glendale property or any other Nation-owned or operated class III gaming facility in the Phoenix metropolitan area”; (2) a judgment that “the Nation is estopped from opening any class III gaming facilities in the Phoenix metropolitan area”; (3) a declaration or injunction that the Nation is prohibited from conducting class III gaming activities on the Glendale property; (4) a declaration that the Compact is voidable and unenforceable and subject to rescission; and (5) reformation of the compact. The Nation moves to dismiss these counterclaims. The court: (1) granted the Nation’s motion to dismiss with respect to the Director’s counterclaim for promissory estoppel; (2) struck the Director’s demands for reformation of the Compact and declaratory and injunctive relief with respect to casinos other than the West Valley Resort; (3) otherwise denied the Nation’s motion to dismiss.

H. JURISDICTION, FEDERAL

80. *National Labor Relations Board v. Little River Band of Ottawa Indians Tribal Government*, No. 14–2239, 2015 WL 3556005 (6th Cir. Jun, 9, 2015). The National Labor Relations Board, 361 NLRB No. 45, 200 L.R.R.M. 2005, 2014 WL 4626007, filed application for enforcement of order for Indian tribe to cease and desist from enforcing provisions of ordinance regulating employment and labor-organizing activities of its employees that conflicted with National Labor Relations Act (NLRA). The appellate court held that: (1) Board’s determination that NLRA’s definition of “employers” extended to Indian tribes was not entitled to Chevron deference, and (2) NLRA applied to tribe’s operation of casino. Application granted.

81. *State v. DePoe*, No. 44886–6, 2015 WL 3618745 (Wash. Ct. App. Jun 9, 2015). A jury returned guilty verdicts in Pierce County Superior Court against Dennis Darrel DePoe for felony driving under the influence of intoxicating liquor (DUI), making a false or misleading statement to a public servant, first degree driving with a suspended license, and operating a motor vehicle without an ignition interlock device, all based on conduct that occurred on land held in trust for the Puyallup Tribe of Indians. DePoe, an enrolled member of the federally recognized Sauk–Suiattle Indian Tribe, appealed from the convictions entered on the jury’s verdicts, arguing that: (1) the trial court lacked

jurisdiction over the charged crimes, (2) the State presented insufficient evidence to support a conviction on the DUI charge, (3) DePoe's attorney rendered ineffective assistance of counsel, and (4) the statute extending state jurisdiction over certain crimes in Indian country and the DUI statute are unconstitutional as applied to DePoe. The appellate court affirmed, holding that the trial court had jurisdiction over all the charged crimes and that DePoe's substantive arguments are not well founded.

82. *Howard ex rel. U.S. v. Shoshone-Paiute Tribes of the Duck Valley Indian Reservation*, No. 13-16118, 2015 WL 3652509 (9th Cir. June 15, 2015). Appellants Thomas Howard and Robert Weldy (Relators) appeal from the district court's dismissal of their False Claims Act (FCA) complaint against the Shoshone Paiute Tribes of the Duck Valley Indian Reservation (Tribe). We affirm. The district court correctly concluded that the Tribe, like a state, is a sovereign that does not fall within the definition of a "person" under the FCA. *Vermont Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 778–87 (2000) (applying the "longstanding interpretive presumption that 'person' does not include the sovereign," to be "disregarded only upon some affirmative showing of statutory intent to the contrary"). As the district court explained, "the same historical evidence and features of the FCA's statutory scheme that failed to rebut the presumption for the states in *Stevens*, here similarly fail to rebut the presumption for sovereign Indian tribes." Therefore, Relators have failed to state a claim under the FCA, and the action was properly dismissed for lack of subject matter jurisdiction. Nor did the district court abuse its discretion in denying Relators' Rule 59 motion to alter or amend the judgment. "A motion for reconsideration may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). In addition, the Tribe's charter has been a public document since 1936 and is not "newly discovered" evidence. See *Coastal Transfer Co. v. Toyota Motor Sales*, 833 F.2d 208, 212 (9th Cir. 1987). Affirmed.

83. *Ute Indian Tribe of the Uintah & Ouray Reservation v. Utah*, No. 14-4028, 2015 WL 3705904 (10th Cir. June 16, 2015). Indian tribe brought action alleging that state and local governments were unlawfully trying to displace tribal authority on tribal lands. State and counties filed counterclaims alleging that tribe infringed their sovereignty. The District Court denied tribe's motion for preliminary injunction to halt tribal member's prosecution for alleged traffic offenses on tribal land, tribe's claim of immunity from counterclaims, and county's claim of immunity from tribe's suit. The appellate court held that: (1) county's prosecution of tribal member constituted irreparable injury to tribal sovereignty; (2) Anti-Injunction Act did not bar federal court from issuing preliminary injunction; (3) Younger abstention was not warranted; (4) mutual assistance agreement between state and tribe did not waive tribe's sovereign immunity from suit in state court; (5) doctrine of equitable recoupment did not apply to permit state and county to assert counterclaims; and (6) county attorneys were not entitled to sovereign immunity. Affirmed in part, reversed in part, and remanded.

84. *Soaring Eagle Casino and Resort v. N.L.R.B.*, Nos. 14–2405, 14–2558, ___ F.3d ___, 2015 WL 3981378 (6th Cir. Jul. 1, 2015). Casino operated by Indian tribe on reservation land petitioned for review of National Labor Relations Board (NLRB) order, 2014 WL 5426873, finding that casino’s no-solicitation policy was unfair labor practice and ordering casino to cease and desist from maintaining no-solicitation rule and to reinstate employee discharged for violating that rule through union solicitation to her former position with back pay and benefits. NLRB cross-applied for enforcement of its order. The appellate court held that: (1) neither 1855 and 1864 treaties nor federal Indian law and policies prevented application of the National Labor Relations Act (NLRA) to tribal-owned casino operated on trust land within a reservation, and (2) casino fell within scope of the NLRA, and NLRB had jurisdiction to regulate casino’s employment practices. Petition denied and cross-application granted.

85. *U.S. v. Bryant*, No. 12–30177, 2015 WL 4068824 (9th Cir. Jul. 6, 2015). The conflict that presents itself again and again in this case is how to apply *Nichols v. United States*, 511 U.S. 738, 114 S. Ct. 1921, 128 L. Ed. 2d 745 (1994), to cases like *Bryant*, where the government seeks to use uncounseled tribal court misdemeanor convictions as an essential element of a felony prosecution under 18 U.S.C. § 117(a). The dissents from denial of rehearing en banc, along with two other circuits, urge a bright-line reading of *Nichols* that permits the use of these convictions as long as they do not violate the Sixth Amendment (which tribal court convictions, by definition, never do). We write to explain why *Bryant* does not apply this bright-line rule, while recognizing that only the Supreme Court can clarify the meaning and scope of its decision in *Nichols*.

86. *United States v. Zepeda*, No. 10–10131, 2015 WL 4080164 (9th Cir. Jul. 7, 2015). Defendant was convicted in the district court of conspiracy to commit assault with dangerous weapon and to commit assault resulting in serious bodily injury, assault resulting in serious bodily injury, assault with dangerous weapon, and use of firearm during crime of violence. Defendant appealed. The appellate court, 738 F.3d 201, reversed and remanded, but subsequently granted rehearing en banc. On rehearing en banc, the appellate court held that: (1) under the Indian Major Crimes Act (IMCA), government had to prove only that the defendant has some quantum of Indian blood, whether or not traceable to a federally recognized tribe, overruling *United States v. Maggi*, 598 F.3d 1073; (2) a defendant must have been an Indian at the time of the charged conduct under the Indian Major Crimes Act; (3) a tribe’s federally recognized status is a question of law to be determined by the trial judge; (4) evidence at trial was sufficient to support the finding that defendant was an Indian within the meaning of the IMCA at the time of his crimes; and (5) Defendant’s prison term of 90 years and three months was reasonable.

87. *United States v. Osage Wind, LLC*, No. 14-CV-704, 2015 U.S. Dist. LEXIS 132480 (N.D. Okla. Sept. 30, 2015). Before the Court were Defendants’ Motion to Dismiss or for Summary Judgment and Plaintiff’s Motion for Partial Summary Judgment as to Counts I and II of the Amended Complaint. Plaintiff, the United States of America filed this action on November 21, 2014. In the First Amended Complaint for Declaratory Judgment and Damages, Plaintiff alleged the Defendants’ construction

activities interfere with the Osage Nation's reserved mineral rights, and Defendants failed to obtain the necessary prior approvals before excavating the turbine foundations for the Project. Specifically, Plaintiff asserted that Defendants violated 25 C.F.R. § 211.48, which prohibits "exploration, drilling, or mining operations on Indian land" without obtaining permission from the Secretary of the Interior, and 25 C.F.R. § 214.7, which forbids "mining or work of any nature" on reserved Osage County land unless a mineral lease covering such land is approved by the Secretary. Plaintiff alleged "Defendants initiated excavation work and substantial disturbance and invasion of the mineral estate" without obtaining the required prior approvals or appropriate lease. The First Amended Complaint alleged five counts, all of which hinge on whether the Defendants violated 25 C.F.R. § 211 and/or 25 C.F.R. § 214. Count I sought a declaration regarding the applicability and violation of 25 C.F.R. § 211 as to Defendants' construction activities. Count II sought a declaration regarding the applicability and violation of 25 C.F.R. § 214 as to Defendants' construction activities. Plaintiff filed a Motion for Partial Summary Judgment as to Counts I and II of the Amended Complaint, along with a Motion for Expedited Consideration. Defendants filed a Motion to Dismiss or for Summary Judgment. Defendants filed a Notice of Supplemental Authority, which Plaintiff moved to strike as improperly filed. Defendants filed a Notice to the Court, advising construction of the Osage Wind Farm has been completed and the Wind Farm has commenced commercial operation. The Court concluded that Plaintiff's claims fail as a matter of law. Accordingly, the court granted Defendants' Motion for Summary Judgment and demoted Plaintiff's Motion for Partial Summary Judgment. Further, the Court denied Plaintiff's Motion for Expedited Consideration and Plaintiff's Motions to Strike.

88. *Hammond v. Jewell*, No. 1:15-00391, 2015 U.S. Dist. LEXIS 137141 (E.D. Cal. Oct. 7, 2015). Plaintiff alleges he was ousted from the leadership of the Picayune Rancheria of Chukchansi Indians Tribe in violation of tribal law and brought this suit against numerous federal defendants seeking reinstatement to the Tribal Council. Before the court was defendants' motion to dismiss for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1) and for failure to state a claim pursuant to Rule 12(b)(6). Plaintiff was elected to the Tribal Council of the Picayune Rancheria of Chukchansi Indians Tribe in December 2008. After initially suspending plaintiff from the Tribal Council for alleged violations of the tribal Ethics Ordinance, the Tribal Council permanently removed him on June 17, 2011 after a hearing. Following the December 3, 2011 election, three factions were embroiled in a power struggle over tribal leadership, resulting in legal disputes in the Tribal Court and even violence. Plaintiff was not a member of any of the factions and it does not appear that their leadership disputes were related to plaintiff's removal from the Tribal Council. Asserting conflicting claims of leadership, all three factions submitted contracts under the Indian Self-Determination and Education Assistance Act ("ISDEAA") to the Bureau of Indian Affairs ("BIA"). The BIA Superintendent returned the contract requests from all three factions and concluded it would recognize the results of the disputed December 1, 2012 election. All three factions appealed the Superintendent's decision and the BIA Regional Director affirmed the decision to return all three contract requests, but vacated the decision to recognize the results of the disputed election because the BIA did not have "the authority to determine which of the opposing factions[]" interpretation of the

Tribe's law is correct." The Regional Director determined that "recognition of a government is essential for the purpose of contracting under the ISDEAA and that the BIA "will conduct business, on an interim basis, with the last uncontested Tribal Council elected December 2010." The Regional Director did not identify plaintiff as a member of that Tribal Council because "[t]he record reflects that Nokomis Hernandez was appointed by the Tribal Council to replace Patrick Hammond, III." Two factions and plaintiff appealed that decision to the BIA Office of Hearings and Appeals and a two-judge panel concluded that exigent circumstances justified making the Regional Director's decision to recognize the 2010 Tribal Council "for government-to-government purposes" effective immediately. Although plaintiff had appealed "the Regional Director's acceptance of his subsequent removal from the Council and replacement," the panel did not address the merits of that dispute in its decision. The court found that a plaintiff cannot simply sue the federal government in an attempt to avoid tribal immunity with respect to intra-tribal affairs; and that the Tribal Council removed plaintiff from his leadership position and plaintiff's avenue to challenge that action remains with the Tribe. Since the court lacks jurisdiction to hear plaintiff's § 1983 and ICRA claims and plaintiff failed to allege a cognizable claim under the APA over which the court could exercise jurisdiction, the court granted defendants' motion to dismiss.

89. *Shingle Springs Band of Miwok Indians v. Caballero*, No. 13-15411, 2015 U.S. App. LEXIS 20094 (9th Cir. Nov. 19, 2015). Plaintiff-Appellee Shingle Springs Band of Miwok Indians (Tribe) alleged that Cesar Caballero infringed various trademarks related to the Tribe and a casino it owns and operates, the Red Hawk Casino, in violation of the Lanham Act, the California Business and Professions Code, and common law, and that Caballero cybersquatted on related domain names. The district court granted summary judgment to the Tribe on those claims and permanently enjoined Caballero from using the marks in any way. Caballero appealed the district court's judgment. The trademarks allegedly infringed by Caballero fall into two categories: (1) marks related to the Tribe and its Rancheria (the Tribal Marks); and (2) the "Red Hawk Casino Mark." The latter mark is registered with the United States Patent and Trademark Office; the Tribal Marks are not. This evidence fails to carry the Tribe's burden on summary judgment. There is insufficient evidence in the record to prove that Caballero offered "association services" within the meaning of the Lanham Act. Caballero's own vague and conclusory statements are insufficient to establish that Caballero or his tribe provided or offered any services. The only remaining factual support for the Tribe's allegations is a snapshot of Caballero's website depicting a contact email address for those with "Enrollment Questions," which, standing on its own, does not support the grant of summary judgment. Even if the "Enrollment Questions" heading on his website could be construed as constituting an offer of membership, what Caballero refers to as "association services," solicitation of members in and of itself is insufficient to constitute an offer of a service without evidence as to what those prospective members would be joining. As to the Red Hawk Casino Mark, the Tribe has failed to present any evidence that Caballero used the mark in connection with a good or service. On the present record, no reasonable jury could conclude that Caballero offered or provided any service in connection with his use of either the Tribal Marks or the Red Hawk Casino Mark. The Tribe also is not entitled to summary judgment on the cybersquatting claims. There is no evidence in the record, not even in Caballero's brief

exchange with the Tribe's counsel at his deposition, that Caballero intended to profit by using the domain names involving the Tribal Marks or the domain names involving the Red Hawk Casino Mark. The Tribe therefore has failed to provide sufficient evidence on this statutory element of its claims for cybersquatting. Reversed and remanded.

90. *Miccosukee Tribe of Indians of Florida v. Cypress*, No. 14–12115, 2015 WL 9310571 (11th Cir. Dec. 23, 2015). Indian tribe brought action alleging that former tribal chairman, director of finance, chief financial officer, tribe's former attorneys, and investment firm violated Racketeer Influenced and Corrupt Organizations Act (RICO) and state law by embezzling tribal funds for their personal use, charging excessive fees, and managing tribe's funds in manner allowing suspicious financial transactions to occur. Investment firm moved to compel arbitration. The District Court, 2013 WL 2158422, granted motion. The remaining defendants moved to dismiss. The District Court, 975 F. Supp. 2d 1298, granted motion. Tribe appealed. The appellate court held that: 1) alleged fraud upon authority of former chairman of tribe was issue to be raised in arbitration; 2) intra-tribal dispute doctrine was not triggered, and federal question jurisdiction existed; and 3) tribe failed to state RICO or RICO conspiracy claim. Affirmed.

91. *U.S. v. Janis*, No. 14–3888, 2016 WL 191934 (8th Cir. Jan. 15, 2016). Following denial of his motion to dismiss indictment, 40 F. Supp. 3d 1133, and of his motion for reconsideration, 2014 WL 4384373, defendant was convicted in the District Court of assault of federal officer, and he appealed. The appellate court held that: (1) tribal public safety officer was "federal officer"; (2) district court abused its discretion when it instructed jury that victim was federal officer; and (3) erroneous instruction was harmless. Affirmed.

92. *Hayes v. Delbert Servs. Corp.*, No. 15-1170, No. 15-1217, 2016 U.S. App. LEXIS 1747, 811 F.3d 666 (4th Cir. Va. Feb. 2, 2016). James Hayes, the lead plaintiff-appellant in this case, received a payday loan from a lender called Western Sky Financial, LLC. Defendant-appellee Delbert Services Corporation later became the servicing agent for Hayes's loan. Because Delbert's debt collection practices allegedly violated federal law, Hayes initiated a putative class action against Delbert. Claiming that Hayes and his fellow plaintiffs agreed to arbitrate any disputes related to their loans, Delbert moved to compel arbitration under the Federal Arbitration Act ("FAA"), 9 U.S.C. § 4. The district court granted Delbert's motion. Our review of the record leads us to conclude that the arbitration agreement in this case is unenforceable. The agreement purportedly fashions a system of alternative dispute resolution while simultaneously rendering that system all but impotent through a categorical rejection of the requirements of state and federal law. The FAA does not protect the sort of arbitration agreement that unambiguously forbids an arbitrator from even applying the applicable law. The district court erred in ordering the parties to arbitration because the arbitration agreement in the case was unenforceable; the arbitration agreement fashioned a system of alternative dispute resolution while simultaneously rendering that system all but impotent through a categorical rejection of the requirements of state and federal law, and the FAA did not protect arbitration agreements that unambiguously

forbade an arbitrator from even applying the applicable law. We therefore reverse the district court's order compelling arbitration and remand for further proceedings.

93. *U.S. v. Harlan*, No. 15–1552, 815 F.3d 1100 (8th Cir. Feb. 16, 2016). Defendant was convicted in the District Court of domestic assault in Indian country by habitual offender. Defendant appealed. The appellate court held that: (1) defendant's prior tribal court simple-assault conviction could be used as predicate offense in subsequent federal prosecution for domestic assault in Indian country by habitual offender; (2) sufficient evidence supported conviction; and (3) defendant's sentence, which was at the bottom of the advisory Guidelines range, was substantively reasonable. Affirmed.

94. *Cherokee Nation v. Johnson & Johnson, Inc.*, No. 15-CV-280, 2016 U.S. Dist. LEXIS 46421 (E. D. Okla. Apr. 6, 2016). Plaintiff The Cherokee Nation (“Plaintiff”) originally filed this action in the District Court of Sequoyah County, Oklahoma, asserting claims against Defendants Johnson & Johnson, Inc. and Janssen Pharmaceuticals, Inc. (together, “Defendants”). Plaintiff asserted various state-law claims arising from Defendants’ alleged misbranding of Risperdal, an atypical antipsychotic drug. On July 27, 2015, Defendants removed the case to this Court. Defendants asserted this Court has jurisdiction over this action pursuant to both 28 U.S.C. §§ 1331 and 1332, because (1) Plaintiff’s state-law claims necessarily raise disputed and substantial federal questions and (2) the actual party-in-interest is not The Cherokee Nation but the Cherokee Nation Businesses and/or Cherokee Nation Healthcare Services, both of which are citizens of Oklahoma that generate diversity jurisdiction. On August 17, 2015, Plaintiff filed a Motion to Remand pursuant to 28 U.S.C. § 1447(c), contending this Court lacks subject matter jurisdiction over this action. Defendants opposed remand. On December 14, 2015, the Court determined that no federal-question jurisdiction existed over Plaintiff’s state-law claims. Defendants argue this Court has original jurisdiction over this action based on 28 U.S.C. § 1332, which provides, “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.” The defendant seeking removal must establish the existence of diversity jurisdiction by a preponderance of the evidence. Here, Plaintiff challenges the existence of complete diversity because The Cherokee Nation, as an Indian tribe, is a sovereign nation that has no “citizenship” for purposes of § 1332.1. However, Defendants argue Plaintiff is not itself responsible for operating healthcare services for tribal members. Rather, Plaintiff allegedly incorporates separate entities—Cherokee Nations Businesses and/or Cherokee Nation Healthcare Services—to provide these services, including the purchase of Risperdal. Defendants allege these corporate entities are the real party- or parties-in-interest, and they may generate diversity jurisdiction because they are citizens of Oklahoma. The Court concludes Defendants have not satisfied their burden to show by a preponderance of the evidence that a separate corporate entity, rather than The Cherokee Nation, is the real party-in-interest in this case. Plaintiff has submitted sufficient evidence to suggest the corporate entities were not responsible for purchasing the Risperdal at issue. As the real party-in-interest, The Cherokee Nation has no citizenship for diversity purposes and cannot generate diversity jurisdiction. Accordingly, this Court lacks subject matter jurisdiction

under 28 U.S.C. § 1332(a)(1). Plaintiff's Motion for Remand is GRANTED. Plaintiff's second request for fees and costs pursuant to 28 U.S.C. § 1447(c) is DENIED.

95. *State v. Hill*, No. A147778, 2016 Ore. App. LEXIS 483, 277 Ore. App. 751 (Or. Ct. App Apr. 20, 2016). Defendant was convicted of second-degree disorderly conduct, ORS 166.025, and fourth-degree assault, ORS 163.160, as a result of an incident at a casino owned and operated by the Confederated Tribes of the Umatilla Indian Reservation. In the trial court, defendant moved for dismissal of the case, arguing that the trial court lacked subject matter jurisdiction. On appeal, he again asserts that the court lacked subject matter jurisdiction, but he offers a new rationale for his position: because the incident occurred in Indian country (1) the state bore the burden, but failed, to present evidence regarding his non-Indian status, which was necessary for the court to determine its subject matter jurisdiction, and (2) even though he did not alert the court that his non-Indian status was required for the court's jurisdiction, the court was required to dismiss the case. The state responds that, properly understood, defendant's challenge is to personal jurisdiction over him and not the court's subject matter jurisdiction over the crimes charged and that, therefore, his current jurisdictional argument cannot be considered because it is unpreserved. Contrary to the state's position, we conclude that defendant raises a challenge to the court's subject matter jurisdiction as circumscribed under federal law and that defendant correctly asserts that his non-Indian status was the determining factor in whether the trial court had jurisdiction over the charged crimes. However, although the record is silent regarding defendant's non-Indian status, we reject defendant's contention that the proper disposition is an outright reversal. Rather, we decide, as a matter of first impression in Oregon, that the better course is to vacate the judgment and remand to permit defendant an opportunity to provide the trial court with evidence sufficient to permit a conclusion that he is Indian. In this case, given the arguments made to the trial court, the issue of subject matter jurisdiction was not fully litigated. Defendant neither asserted that the trial court lacked subject matter jurisdiction because of his Indian status nor submitted evidence of that status to the trial court. Therefore, we remand for the trial court to permit defendant to attempt to meet his burden of production concerning his status as an Indian; and, if he does so, the court must conduct proceedings to determine defendant's status as an Indian, during which the state will bear the burden of proof. Depending on the nature of the disputed evidence, the court may decide to conduct an evidentiary hearing. If, on remand, the trial court concludes that it has jurisdiction, then it should reinstate the judgment. Vacated and remanded.

I. RELIGIOUS FREEDOM

96. *Trapp v. Roden*, No. 11863, 2015 WL 7356318 (Mass. Nov. 23, 2015). Inmates, who were adherents of Native American religious practices, brought action against Department of Correction challenging closure of purification lodge at correctional center. Following bench trial, the Superior Court, 2012 WL 6629681, entered judgment. Department appealed. On transfer, the Supreme Judicial Court held that: (1) closure violated the Religious Land Use and Institutionalized Persons Act of

2000; (2) Department failed to meet its burden of proof that closure decision was motivated by an actual compelling health interest; and (3) closure violated settlement agreement which resolved inmate's prior lawsuit against Department.

97. *Navajo Nation v. U.S. Dept. of Interior*, Nos. 13–16517, 13–16519, 13–16520, 2016 WL 1359869 (9th Cir. Apr. 6, 2016). Tribe filed suit against United States Department of the Interior, National Park Service, and government officials, seeking immediate return of human remains and associated funerary objects taken from its reservation during inventory of remains and objects pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA). The District Court, 2013 WL 530302, dismissed action as barred by sovereign immunity. Tribe appealed. The appellate court held that: (1) decision to apply NAGPRA to inventory remains from sacred site on reservation constituted final agency action, and (2) tribe's claims were ripe for review. Reversed and remanded.

98. *Oklevueha Native Am. Church of Haw., Inc. v. Lynch*, No. 14-15143, 2016 U.S. App. LEXIS 6275 (9th Cir. Apr. 6, 2016). The government was properly granted summary judgment on plaintiffs' claim under the Religious Freedom Restoration Act, 42 U.S.C.S. § 2000bb et seq., because even if plaintiffs' use of cannabis constituted an exercise of religion, no rational trier of fact could conclude on the record that a prohibition of cannabis use imposed a substantial burden under 42 U.S.C.S. § 2000bb-1(a) as nothing in the record demonstrated that a prohibition on cannabis forced plaintiffs to choose between obedience to their religion and criminal sanction, such that they were being coerced to act contrary to their religious beliefs. The government was properly granted summary judgment on plaintiffs' claim under the American Indian Religious Freedom Act, 42 U.S.C.S. § 1996, because the Act did not create a cause of action or any judicially enforceable individual rights. Judgment affirmed.

J. SOVEREIGN IMMUNITY

99. *Blue Lake Rancheria v. Lanier*, No. 2:11–cv–01124, 2015 WL 2340359, ___ F. Supp. 3d ___ (E.D. Cal. May 13, 2015). Blue Lake Rancheria (Plaintiff) alleged that the California Employment Development Department (EDD) violated its tribal sovereign immunity by attaching liens on tribal assets. Plaintiff moved for summary judgment. Plaintiff is a federally-recognized tribe. For several years, a division of the Tribe's federally-chartered corporation called Mainstay Business Solutions (Mainstay) operated a "temporary staffing and employee leasing business." In 2003, Mainstay elected to participate in a joint federal-state unemployment insurance program. Mainstay became a "reimbursable employer." As such, the state would pay former employees and Mainstay would later reimburse the state for those costs. In 2008, a dispute arose as to the amount Mainstay owed in reimbursement. When the parties were unable to resolve their dispute, EDD attached liens to the Tribe's property under California Government Code § 7171 in several counties. EDD also issued subpoenas to Plaintiff's banks seeking information about the Tribe's assets. The Tribe filed suit

against officers of EDD seeking to enjoin their collection actions and cancel the liens, and for a declaratory judgment that Defendants' actions violated Plaintiff's sovereign immunity. The Tribe now brings this motion for summary judgment to dispose of all its claims. Defendants opposed the motion and, in the alternative, requested that the Court defer adjudication until later in discovery, which is set to close in November. The Court denied Defendants' request to defer adjudication and granted Plaintiff's motion for summary judgment.

100. *In re Greektown Holdings, LLC*, No. 14–14103, 2015 WL 3632202 (E.D. Mich. Jun. 9, 2015). This matter was before the Court on Appellants Sault St. Marie Tribe of Chippewa Indians and Kewadin Casinos Gaming Authority's (Appellants or collectively "the Tribe") appeal of United States Bankruptcy Judge Walter J. Shapero's August 13, 2014 Opinion and Order denying Appellants' motion to dismiss based on sovereign immunity. The Tribe challenged the Bankruptcy Court's ruling in the underlying Adversary Proceeding that Congress intended to abrogate tribal sovereign immunity from suit in section 106(a) of the Bankruptcy Code when it abrogated the sovereign immunity of "governmental unit[s]," and further defined a "governmental unit" in § 101(27) of the Bankruptcy Code to include "other . . . domestic government[s]." The Tribe appealed the Bankruptcy Court's Order denying its motion to dismiss based on sovereign immunity, arguing that the failure of the Legislature to clearly and unequivocally manifest an intent to abrogate tribal sovereign immunity when describing the entities whose sovereign immunity was abrogated under the Bankruptcy Code requires dismissal of the claims against it in the Bankruptcy Court Adversary Proceeding. The Litigation Trustee responded that the Legislature need not invoke the magic words "Indian tribes" when intending to remove the cloak of sovereign immunity that otherwise shields Indian tribes from suits against them and argues that the Legislature clearly and equivocally intended just that when it included the catchall phrase "or other . . . domestic government" in § 101(27) of the Bankruptcy Code when defining the term "governmental unit." The Court reversed the decision of the Bankruptcy Court, found that Congress did not clearly and unequivocally express an intent to abrogate the sovereign immunity of Indian tribes in § 106(a) of the Bankruptcy Code, and remanded the matter to the Bankruptcy Court for further proceedings on the issue of whether the Tribe waived its sovereign immunity from suit in the underlying bankruptcy proceedings.

101. *Pistor v. Garcia*, No. 12–17095, 2015 WL 3953448 (9th Cir. Jun. 30, 2015). "Advantage gamblers" brought § 1983 action against tribal police chief, tribal gaming office inspector, and general manager of casino, which was owned and operated by tribe on tribal land, for detaining gamblers and seizing their property in violation of gamblers' Fourth and Fourteenth Amendment rights. The district court, 2012 WL 3848453, denied defendants' motion to dismiss. Gamblers appealed. The appellate court held that tribal police chief, tribal gaming office inspector, and general manager of casino were not entitled to invoke the tribe's sovereign immunity from liability in their individual capacities.

102. *South Fork Livestock Partnership v. U.S.*, No. 3:15–CV–0066, 2015 WL 4232687 (D. Nev. Jul. 13, 2015). Before the court was defendants the Te–Moak Tribe of Western Shoshone Indians of Nevada (Tribe), the South Fork Band (South Fork), Davis Gonzalez, Alice Tybo, and Virgil Townsend’s (collectively “tribal defendants”) motion to dismiss for lack of subject matter jurisdiction. This is a civil rights action involving the use of federal grazing permits on federal land. Plaintiff SF Livestock is a partnership made up of several tribal members who were granted federal grazing permits for various areas located in the State of Nevada. SF Livestock alleged that tribal defendants prevented it from exercising its rights under the federal grazing permits by restricting their access to the land designated in the federal grazing permits. In its complaint, SF Livestock alleged four causes of action including: (1) civil rights violation under 42 U.S.C. § 1983 and *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971); (2) property rights violations; (3) access to water violations; and (4) injunctive and monetary relief. In response, tribal defendants filed a motion to dismiss for lack of subject matter jurisdiction. Tribal defendants argued that they should be dismissed as defendants because neither defendant Te–Moak Tribe nor defendant South Fork had waived their sovereign immunity from suit. The court noted that there is no congressional act authorizing a suit against a tribe for alleged violations of federal grazing permits. Further, the court finds that there was no express waiver of sovereign immunity by either defendant Te–Moak Tribe or defendant South Fork for the present action. In general, the umbrella of tribal sovereign immunity from suit also extends to tribal officials. The court granted defendants’ motion to dismiss; dismissed as defendants Te–Moak Tribe of Western Shoshone Indians of Nevada and the South Fork Band; and dismissed without prejudice defendants Davis Gonzalez, Alice Tybo, and Virgil Townsend.

103. *Harvey v. Ute Indian Tribe of the Uintah & Ouray Reservation*, No. 14-4089, 2015 U.S. App. LEXIS 14234 (10th Cir. Aug. 13, 2015). In April 2013, plaintiffs filed a complaint in Utah state court seeking declaratory and injunctive relief as to the authority of the Ute Indian Tribe of the Uintah and Ouray Reservation (Tribe) over non-Indian businesses operating on certain categories of land. It also alleged that Dino Cesspooch, Jackie LaRose, and Sheila Wopsock, individuals affiliated with the Ute Tribal Employment Rights Office, had harassed and extorted plaintiffs in violation of state law. Defendants filed a motion to dismiss in state court asserting that the state court lacked subject matter jurisdiction in the absence of a valid waiver of tribal sovereign immunity, that the Tribe and its officers are immune from suit but are necessary and indispensable parties, and that plaintiffs failed to exhaust administrative remedies in tribal court. The Tribe filed a notice of removal in the U.S. District Court for the District of Utah. Plaintiffs filed a motion to remand, arguing that the initial defendants waived their right to removal—or to consent to removal—by litigating in state court, that removal was untimely, that the defendants had not unanimously consented to removal, and that the federal court lacked subject matter jurisdiction. The district court granted the motion to remand. It concluded that because the initial defendants’ conduct manifested an intent to litigate in state court, they waived their right to removal and their right to consent to removal. On appeal, the court held that the district court order remanding because of lack of unanimity is not reviewable under 28 U.S.C.S. § 1447(d). The order specifically stated that the unanimity requirement could not be met because

some defendants waived their right to consent to removal. Because § 1447(d) precludes review of the remand order issued by the district court, the appeal was dismissed.

104. *Public Serv. Co. of N.M. v. Approximately 15.49 Acres of Land in McKinley Cnty.*, No. 15 CV 501, 2015 U.S. Dist. LEXIS 174900 (D.N.M. Dec. 1, 2015). The Public Service Company of New Mexico (PNM) filed a complaint for condemnation seeking a perpetual easement for electrical transmission lines. PNM brought this action to condemn a perpetual easement over five parcels of land owned by members of the Navajo Nation (Nation): (1) Allotment 1160, (2) Allotment 1204, (3) Allotment 1340, (4) Allotment 1392, and (5) Allotment 1877 (the Five Allotments). The Nation owns an undivided 13.6 % interest in Allotment 1160 and an undivided .14 % interest in Allotment 1392 (the Two Allotments). In its Motion to Dismiss the Nation argued that the Court lacks subject matter jurisdiction and asked the Court to dismiss it as a defendant because, as a sovereign nation, it is immune from suit. In addition, the Nation asked the Court to dismiss the Two Allotments because under Fed. R. Civ. P. 19, the Nation is an indispensable party that cannot be joined. The United States agreed that the Nation and the Two Allotments should be dismissed from the action. The Court dismissed without prejudice Plaintiff's claims against the Navajo Nation and against Allotment Numbers 1160 and 1392.

K. SOVEREIGNTY, TRIBAL INHERENT

105. *Belcourt Public School District v. Davis*, Nos. 14–1541, 14–1542, 14–1543, 14–1545, 14–1548, 2015 WL 2330293 (8th Cir. May 15, 2015). School district and its employees brought action seeking a declaration that Indian tribal court lacked jurisdiction over tribe members' claims against district and employees for defamation, excessive use of force, and various employment related-claims. District moved for default judgment against one tribe member. The district court, 997 F. Supp. 2d 1017, denied motion and held that tribal court had jurisdiction. District and employees appealed. The appellate court held that: (1) even if district could agree to expand tribal court jurisdiction under North Dakota law, agreement between district and tribe was not a "consensual relationship" within meaning of exception to general rule that a tribe may not regulate activities of nonmembers, and thus tribal court lacked jurisdiction over tribe members' action; (2) tribe members' claims did not involve conduct that threatened or directly effected the political integrity, economic safety, or health or welfare of the tribe, and thus tribal court lacked jurisdiction over claims; and (3) district court did not abuse its discretion in denying school district's motion for default judgment.

106. *Fort Yates Public School Dist. # 4 v. Murphy ex rel. C.M.B.*, Nos. 14–1549, 14–1702, 2015 WL 2330317, __ F.3d __ (8th Cir. May 15, 2015). After parent of student who was a tribe member filed tribal-court complaint alleging tort claims against nonmember public school district, school district filed federal-court complaint seeking declaration that tribal court lacked jurisdiction. The district court, 997 F. Supp. 2d 1009, granted parent's motion to dismiss. School district appealed. The appellate court held

that: (1) agreement between tribe and school district was not a “consensual relationship” that conferred jurisdiction on tribal court over parent’s suit; (2) parent’s suit did not involve conduct that threatened or had some direct effect on political integrity, economic security, or health or welfare of the tribe, as would have given tribal court jurisdiction; (3) sovereign immunity barred school district’s suit against tribal court; and (4) school district was not required to exhaust its tribal remedies before commencing suit. Affirmed in part, reversed in part, and remanded.

107. *U.S. v. Billie*, No. 14–13843, 2015 WL 3450537, __ Fed. Appx. __ (11th Cir. Jun. 1, 2015). The United States filed a petition to enforce an IRS administrative summons against Colley Billie as Chairman of the General Council of the Miccosukee Tribe of Indians of Florida. The district court entered an order enforcing the summons, and Chairman Billie appealed, arguing enforcement infringes upon the sovereign status of the Tribe, requires him to release documents tribal law prohibits him from releasing, and requires him to release documents he does not possess. The appellate court concluded enforcement of the summons does not implicate tribal sovereign immunity concerns and Chairman Billie has not demonstrated a lack of possession. It also concluded the issue regarding suspension of the examination was not properly before Court. The appellate court affirmed the judgment of the district court.

108. *Sprint Communications Co. L.P. v. Wynne*, No. 4:15-CV-04051, 2015 U.S. Dist. LEXIS 103209 (D.S.D. Aug. 4, 2015). A motion for preliminary injunction filed by Sprint Communications Company, L.P., and Sprint Communications, Inc. (collectively, Sprint) was before the Court. Defendants opposed the motion. Sprint Communications, Inc. (Sprint Inc.) is the parent company of Sprint Communications Company (Sprint Communications). The Oglala Sioux Tribal Utilities Commission (OSTUC) was formally established in 2013 as a subdivision of the Oglala Sioux Tribe. The OSTUC is responsible for the exercise of tribal regulatory authority over all utility systems on the Pine Ridge Indian Reservation. As an interexchange carrier (IXC), Sprint Communications delivers long-distance calls from one local area to another. When an individual makes a long-distance telephone call, the call originates with the local exchange carrier (LEC) serving the individual making the call and is transported by the IXC selected by the calling individual to the LEC serving the individual receiving the call. IXCs pay "originating" and "terminating" access charges to the LECs that serve individuals who initiate and receive long-distance calls, respectively. In 2014, the OSTUC initiated seven rulemaking proceedings involving utility providers on Pine Ridge and adopted 12 orders. In one of those orders, U-1-2014, the OSTUC created: a registration requirement for all utilities. Sprint did not participate in the development or implementation of U-1-2014. Sprint Communications has not registered with or obtained a business license from the OSTUC. Several telecommunications companies, including Sprint Communications, have refused to comply with the requirements imposed by the OSTUC. As a result of that noncompliance, the OSTUC filed a complaint against those carriers, including Sprint. Subsequently, Sprint filed its complaint in this matter. Sprint argued that the tribal regulatory process is a disguised effort to compel IXCs to pay Native American Telecom-Pine Ridge (NAT-PR), a tribal LEC, for terminating access charges associated with an access stimulation run on Pine Ridge. Sprint seeks a declaratory judgment that neither Sprint Inc. nor Sprint

Communications is subject to regulation by the OSTUC, and an order permanently enjoining the OSTUC from proceeding against Sprint. Sprint requested a preliminary injunction. In support, Sprint asserts that it does not have to exhaust its tribal court remedies because it is plain that the tribal court does not have jurisdiction over either Sprint entity. As the FCC has recognized, tribes have a role to play in the regulation of telecommunications services. This court respects the tribal court's prerogative to settle questions of its jurisdiction and to explain the basis for its acceptance or rejection thereof. Sprint has not demonstrated that tribal jurisdiction in this matter violates an express jurisdictional prohibition or that tribal jurisdiction plainly does not exist and will only serve to delay these proceedings. Because exhaustion of tribal remedies is required as a matter of comity, the court denies Sprint's motion for a preliminary injunction. In doing so, the court does not hold that tribal jurisdiction over Sprint is ultimately proper under *Montana*, only that the tribal court should be given the first opportunity to resolve that question. Under these facts, it is proper to stay this action pending Sprint's exhaustion of its tribal remedies. Accordingly, it is ORDERED that Sprint's motion to supplement the record is granted. IT IS FURTHER ORDERED that Sprint's motion for a preliminary injunction is denied. IT IS FURTHER ORDERED that this action is stayed until further order of the court.

109. *C'Hair v. District Court of Ninth Judicial District*, No. S–14–0198, 2015 WL 5037011 (Wyo. Aug. 26, 2015). Motorist brought negligent operation and negligent entrustment action against driver and owner of automobile, who were enrolled members of Indian tribe, after driver struck motorist on state highway within reservation. Motorist brought similar action in the Shoshone and Arapaho Tribal Court after driver and owner challenged jurisdiction of state court in their answers. The parties agreed to stay the state court action, and the Tribal Court dismissed motorist's complaint on statute of limitations grounds. The District Court denied driver and owner's motion for summary judgment. Driver and owner filed petition for writ of review, which was granted. The Supreme Court, en banc, held that: (1) the District Court had subject matter jurisdiction over matter, and (2) two-year limitations period from tribal law and order code did not apply.

110. *Kelsey v. Pope*, No. 14-1537, 2016 U.S. App. LEXIS 28 (6th Cir. Jan. 5, 2016). Member of the Little River Band of Ottawa Indians petitioned for writ of habeas corpus after he had been convicted in tribal court of misdemeanor sexual assault for inappropriately touching tribal employee at Band's community center, 2008 WL 6928233, and his sentence was affirmed on appeal. The District Court, 2014 WL 1338170, granted the petition. Tribe appealed. The appellate court held that: (1) tribe had inherent authority to prosecute tribal member for offense substantially affecting tribal self-governance interests, even when such offenses took place outside of Indian country; (2) Indian Civil Rights Act (ICRA) extended due process protections to member; (3) federal constitutional standards applied; and (4) decision of tribal Court of Appeals to recognize jurisdiction over conduct of member of Indian tribe in touching victim's breasts through her clothing at tribe's off-reservation community center did not violate due process as extended through ICRA. Reversed and vacated.

111. ***Alabama-Quassarte Tribal Town v. United States***, No. CIV-06-558, 2016 U.S. Dist. LEXIS 1620 (E.D. Okla. Jan. 7, 2016). Before the court was the Creek Nation's motion to dismiss the First Amended Complaint. The Creek Nation argued that the court has no jurisdiction over Plaintiff's claims against the Creek Nation absent an express waiver of the Creek Nation's sovereign immunity. The Creek Nation further argued that Plaintiff's claims regarding the Wetumka Project lands are untimely and barred by doctrines of estoppel and preclusion. The Alabama-Quassarte Tribal Town (hereinafter Plaintiff or AQTT) filed this case against the United States, the Secretary and the Associate Deputy Secretary of the U.S. Department of the Interior (hereinafter DOI), and the Secretary of the U.S. Department of the Treasury, alleging that certain lands known as the Wetumka Project lands were purchased for the benefit of Plaintiff. The AQTT requested a declaratory judgment that the Defendants failed to fulfill their legal obligations and duties as trustees and an order compelling Defendants: (1) to assign the Wetumka Project lands to the AQTT, and (2) to provide the AQTT with a full and complete accounting of all the AQTT's trust funds and assets. On November 17, 2008, in ruling on the Defendants' motion for partial judgment on the pleadings, the court entered an Order & Opinion dismissing all claims related to the Wetumka Project lands. The court found that the Wetumka Project lands were never placed in trust for the AQTT, the AQTT's claims related to the Wetumka Project lands accrued on or before April 29, 1942, and thus those claims were time barred. The court further found that the Creek Nation is a necessary party to any claim regarding the Wetumka Project lands and could not be joined. Plaintiff's claims related to the alleged tribal trust account, the "Surface Lease Income Trust," remained. On September 21, 2010, the court denied Defendants' motion to dismiss and the parties' cross motions for summary judgment. In that Order & Opinion, the court noted that from 1961 to 1976 income from surface leases on the Wetumka Project lands was deposited into an IIM account in the AQTT's name. At some point, the funds in that account were moved into a Proceeds of Labor (hereinafter PL) account. The court continued to refer to those funds as the "Surface Lease Income Trust." The court found that Defendants ignored substantial evidence demonstrating that the Surface Lease Income Trust was created for the benefit of the AQTT and that Defendants' conclusion on the ownership of the Surface Lease Income Trust was arbitrary and capricious. The court remanded this action to Defendants for additional investigation and explanation. The court directed Defendants to assemble a full administrative record to include all of the evidence they possess with regard to the Surface Lease Income Trust and to reconsider their decision on the matter of ownership of that Trust. On remand, this action was referred to the Interior Board of Indian Appeals (IBIA). The Creek Nation entered an appearance in the matter and submitted a brief on the issues, "request(ing) the Interior Board of Indian Appeals to find and order that the Surface Lease Income Trust is the beneficial property of (the Creek Nation) and not AQTT." On October 23, 2014, the IBIA issued its final reconsidered decision on referral from the Assistant Secretary of Indian Affairs. The IBIA determined that the Surface Lease Income Trust was not held for the AQTT. Plaintiff filed its First Amended Complaint, adding the Creek Nation as a Defendant and adding a claim for appeal of the IBIA's decision as again being arbitrary and capricious. Plaintiff also added a claim for assignment of the Wetumka Project lands, stating that on remand it discovered that the Creek Nation had passed a resolution assigning the Wetumka

Project lands to the AQTT. The Court granted the Creek Nation's motion to dismiss the First Amended Complaint.

112. *Dillon v. BMO Harris Bank, N.A.*, No. 16-5, 2016 U.S. Dist. LEXIS 13433 (N.D. Okla. Feb. 4, 2016). Before the Court is non-party The Otoe-Missouria Tribe of Indians' ("the Tribe") Motion to Quash the Subpoena of John Shotton and/or for Protective Order. Defendant BMO Harris Bank has served a subpoena on John Shotton, Chairman of the Tribe and Secretary/Treasurer of Great Plains Lending LLC ("Great Plains"), which is wholly-owned by and serves as an economic arm of the Tribe. BMO Harris subpoenaed Shotton to testify to the authenticity of loan documents produced in the underlying litigation. The Tribe asserts that the subpoena should be quashed because the Tribe and, by extension, Great Plains have sovereign immunity; thus, Shotton cannot be compelled to testify. BMO Harris argues that Shotton waived the tribe's immunity by signing, for use in the underlying litigation, declarations regarding the authenticity of the loan documents. The Court finds that the Tribe has not waived sovereign immunity with respect to the loan agreements at issue in Shotton's declaration. While the Court recognizes that this ruling may hinder BMO Harris in the underlying litigation, the "well-established doctrine" of tribal sovereign immunity cannot be abridged, even if application of the doctrine "works some inconvenience, or even injustice." *Alltel Communications, LLC v. DeJordy*, 675 F.3d 1100 (8th Cir. 2012) at 1106. Therefore, the Tribe's Motion to Quash is GRANTED. United States Court of Appeals, Eighth Circuit.

113. *Smith v. Western Sky Fin., LLC*, No. 15-3639, 2016 U.S. Dist. LEXIS 28452 (E.D. Pa. Mar. 4, 2016). This case presents an unusual and disconcerting collision between federal consumer protection laws and the sovereignty of Native American tribes and their courts. Defendants here make "payday" loans across the United States through the Internet, and they seek to have their loan agreements governed by tribal law and challenged only in certain tribal courts or arbitral forums. Given the historic injustices visited upon Native Americans, the Supreme Court has understandably admonished that federal courts should tread lightly when it comes to intruding upon their sovereignty. See *Iowa Mutual Insurance Co. v. LaPlante*, 480 U.S. 9, 107 S. Ct. 971, 94 L. Ed. 2d 10 (1987). Defendants here invoke these principles in moving to dismiss Plaintiff's case. For the reasons set forth below, I have concluded that Native American sovereignty is not at stake in this case, and I agree with the Fourth Circuit (among others) that Defendants seek "to avoid federal law and game the system." *Hayes v. Delbert Servs. Corp.*, 811 F.3d 666, 2016 WL 386016, at *9 (4th Cir., 2016). Defendants' Motion to Dismiss will be denied.

114. *Lewis v. Clarke*, No. 19464, 2016 WL 878893 (Conn. Mar. 15, 2016). Motor vehicle driver and passenger brought action against Indian tribe member, claiming member's negligence and carelessness in driving limousine, which was owned by tribal gaming authority, caused motor vehicle accident. The superior court, 2014 WL 5354956, denied member's motion to dismiss based on tribal sovereign immunity. Member appealed. The Supreme Court held that tribal sovereign immunity extended to claims. Reversed and remanded with direction.

115. *Wilson v. Doe*, No. C15-629, 2016 U.S. Dist. LEXIS 41543 (W.D. Wash. Mar. 29, 2016). Before the court were Defendant Horton’s Motion for Summary Judgment and Plaintiff’s Motion for Summary Judgment. Plaintiff Curtiss Wilson was stopped by a Lummi Tribe police officer while driving on the Lummi Reservation after drinking at the Lummi Casino. Lummi Tribal Police Officer Grant Austick stopped Plaintiff, searched his 1999 Dodge Ram Pickup, and developed probable cause that Plaintiff was committing a DUI. Officer Austick then called the Washington State Patrol and Plaintiff was arrested. Plaintiff’s truck was towed by Defendant Horton’s Towing and impounded at the direction of the Washington State Trooper. The following day, Lummi Tribal Police Officer Brandon Gates presented a “Notice of Seizure and Intent to Institute Forfeiture” (“Notice of Seizure”) from the Lummi Tribal Court to Horton’s Towing. The seizure and intent to institute forfeiture of Plaintiff’s vehicle was based on violations of the Lummi Nation Code of Laws (“LNCL”) 5.09A.110(d)(2) (Possession of Marijuana over 1 ounce), and authorized by LNCL 5.09B.040(5)(A) (Civil forfeiture section addressing Property Subject to Forfeiture, specifically motor vehicles used, or intended for use, to facilitate the possession of illegal substances.) Horton’s Towing released the truck to the Lummi Tribe. Plaintiff brought suit in Whatcom County Superior Court and the case was removed. Plaintiff originally brought claims for outrage, conversion, and relief under 42 U.S.C. §§ 1983 and 1988. All of Plaintiff’s claims, save conversion, have been previously dismissed either voluntarily or by Court order. Plaintiff’s conversion claim against both Horton’s and the United States is based on Horton’s release of the vehicle to the Lummi Tribe pursuant to the order served by Gates. Defendant Horton’s moves for summary judgment, claiming the release of the vehicle was pursuant to the Notice of Seizure, and therefore with lawful justification. Plaintiff argues in response that the Notice of Seizure is invalid or not enforceable off the reservation. The United States moves for summary judgment based on, inter alia, Plaintiff’s failure to exhaust his administrative remedies. Plaintiff’s cursory Motion for Summary Judgment and attached declaration does nothing to rebut the appropriateness of summary judgment in Defendants’ favor. Rather, Plaintiff repeats the circumstances of his DUI and loss of his truck. The Court appreciates that the temporary loss of his vehicle caused Mr. Wilson—who has a limited, fixed income—great inconvenience, even distress. However, this does not establish a genuine dispute of material fact in his case: rather, the facts are essentially undisputed. Not only has Plaintiff not established that his truck was seized without legal justification; he has not established that this Court has the jurisdiction to hear his case. Defendants’ Motions for Summary Judgment are GRANTED and Plaintiff’s Motion is DENIED.

L. TAX

116. *Seminole Tribe of Florida v. Stranburg*, No. 14-14524, 2015 WL 5023891 (11th Cir., Aug. 26, 2015). Tribe filed suit against the State of Florida and the director of the Florida Department of Revenue seeking injunctive relief against state Rental Tax and Utility Tax imposed on two non-Indian corporations with 25-year leases to provide food-court operations at two tribal casinos. The district court summary judgment was in favor of the Tribe and the State appealed. The Court of Appeals

affirmed as to the Rental Tax, holding that 25 U.S.C. 465 bars the tax in light of *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973). The court also affirmed on an issue of first impression – the effect of BIA regulations providing that “activities under a lease conducted on leased premises” are not subject to state taxation. 25 CFR 162.017(c). While the court did not defer to the Secretary’s determination of federal preemption, it agreed that the Rental Tax is preempted by federal law under *Bracker*. However, the court rejected the district court’s determination that the incidence of the Utility Tax falls on the Tribe and ruled that the Tribe has not established that the Utility Tax is generally preempted as a matter of law.

117. *Automotive United Trades Organization v. State of Washington*, No. 89734-4, 2015 WL 5076289, __Wash. 2d __ (Aug. 27, 2015). Trade association of Washington gasoline and automotive service retailers brought action against the State alleging that fuel tax compacts entered into with various Indian tribes which provide for refunds of gas tax paid were unconstitutional. The Superior Court, Grays Harbor County, dismissed for non-joinder of parties. Trade association appealed. The Supreme Court reversed and held that while Indian tribes were necessary parties, they were not indispensable so as to warrant dismissal. 175 Wash. 2d 214, 285 P.3d 52 (2012). On remand, the court dismissed on the merits and trade association appealed again. The Supreme Court, Justice Gonzales for a unanimous court, affirmed. Art. II, Sec. 40 of the Constitution expressly allows for refunds authorized by law for taxes paid on motor vehicle fuels. The then-applicable statutes (since repealed) authorized compacts that provide for refunds.

118. *Cypress v. United States*, No. 15-10132, 2016 U.S. App. LEXIS 5390 (11th Cir. Mar. 23, 2016). This appeal arises out of a dispute between sixteen members of the Miccosukee Tribe of Florida (the “Tribe members”) and the United States, the U.S. Department of the Interior, the U.S. Department of the Treasury, and the Secretaries of the Treasury and of the Interior (collectively, “the Government”). The Tribe members seek declaratory relief to avoid paying federal income taxes on distributions, including gaming proceeds, paid out of the Tribe’s trust account. The district court dismissed the complaint for lack of subject matter jurisdiction, finding that the United States had not waived sovereign immunity for suits brought by individual Tribe members. The Tribe members now appeal the dismissal. We agree with the district court that the Government did not waive sovereign immunity. Accordingly, we affirm the district court’s dismissal of this matter.

M. TRUST BREACH AND CLAIMS

119. *Wolfchild, et al. v. Redwood County et al.*, No. 14–1597, 2015 WL 3616058 (D. Minn. Jun. 9, 2015). In this case, Plaintiffs sought possessory rights and damages concerning a twelve square mile area of land in southwestern Minnesota. In order to obtain such relief, Plaintiffs sought to eject an Indian Tribe from reservation lands and seventy-five private landowners who, together with their ancestors, have possessed the land at issue for over one hundred and fifty years. Prior to bringing this action, Plaintiffs litigated related claims against the United States before the Court of Federal Claims for over eleven years, which resulted in nine published opinions. A review of those nine opinions demonstrates the breadth and depth of the issues that were actually litigated. Those nine opinions also assist in demonstrating that the claims asserted in this case are so completely frivolous and without a factual or legal basis that they had to have been brought in bad faith. The court found that such conduct warrants severe sanctions against both Plaintiffs and their counsel and granted Defendants' motions for sanctions and ordered Plaintiffs and their counsel to pay Defendants their reasonable attorney's fees and costs, in addition, Plaintiffs were required to post an appeal bond in the amount of \$200,000.

120. *Shields v. Wilkinson*, No. 13–3773, 2015 WL 3634541 (8th Cir. Jun. 12, 2015). Appellants Shields and Wilson are Indians with interests on the Bakken Oil Shale Formation in the Fort Berthold Reservation in North Dakota, allotted to them under the Dawes Act of 1887. Such land is held in trust by the government, but may be leased by allottees. Shields and Wilson leased oil and gas mining rights on their allotments to companies and affiliated individuals who won a sealed bid auction conducted by the Board of Indian Affairs in 2007. After the auction, the women agreed to terms with the winning bidders, the BIA approved the leases, and the winning bidders sold them for a large profit. Shields and Wilson filed a putative class action, claiming that the government had breached its fiduciary duty by approving the leases for the oil and gas mining rights, and that the bidders aided, abetted, and induced the government to breach that duty. The district court concluded that the United States was a required party which could not be joined, but without which the action could not proceed in equity and good conscience, and dismissed. The Eighth Circuit affirmed. The United States enjoys sovereign immunity for the claims and can decide itself when and where it wants to intervene.

121. *Robinson v. Jewell*, No. 12–17151, 2015 WL 3824658 (9th Cir. Jun. 22, 2015). Non-federally recognized Native American tribe and its elected chairperson sued Secretary of Department of Interior (DOI), county, and ranch owners asserting title to ranch. The district court, 885 F. Supp. 2d 1002, dismissed complaint, and plaintiffs appealed. The appellate court held that: (1) tribe's failure to present claim pursuant to California Land Claims Act of 1851 extinguished its title to property; (2) Congress's ratification of 1849 Treaty with Utah did not give tribe any enforceable rights to property; (3) treaty that was never ratified by Senate carried no legal effect; (4) reservation for tribe was not created pursuant to Act of Congress of 1853; and (5) any rights to property that tribe possessed as result of Acts of 1853 and 1855 were extinguished by Act of 1864.

122. *Pueblo of Jemez v. United States*, No. 13–2181, 2015 WL 3916572 (10th Cir. Jun. 26, 2015). Indian tribe brought action against the United States, seeking to quiet its allegedly unextinguished and continuing aboriginal title to lands under the federal common law and the Quiet Title Act (QTA). The district court dismissed for lack of subject matter jurisdiction. Tribe appealed. The appellate court held that: (1) United States’ grant of land to private landowners did not extinguish a tribe’s aboriginal right of occupancy; (2) there was no evidence that private landowners’ use of the land was inconsistent with tribe’s occupancy of the land; (3) tribe sufficiently put the United States on notice of its claim to aboriginal title; and (4) the Preservation Act did not extinguish the tribe’s aboriginal title.

123. *Sisseton Wahpeton Oyate of the Lake Traverse Reservation v. Jewell*, No. 13-00601, 2015 U.S. Dist. LEXIS 124483 (D.D.C. Sept. 17, 2015). Pending before the Court was Defendants’ Motion to Dismiss, which seeks dismissal of Plaintiff’s Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) based on lack of subject matter jurisdiction. This lawsuit was filed by four federally-recognized American Indian tribes seeking declaratory and injunctive relief against the Secretary of the Interior and the Secretary of the Treasury (“Defendants”) for their alleged breaches of fiduciary duties relating to tribal trust accounts. Plaintiffs amended their Complaint to add additional American Indian tribes, bringing the total number of Plaintiff-tribes to ten. Defendants moved to dismiss the Plaintiffs’ Complaint based on lack of jurisdiction. Defendants contended that the Court lacks subject matter jurisdiction because the government has not waived its sovereign immunity from the Plaintiffs’ claims. The federal government has held funds and assets in trust for American Indian tribe beneficiaries for well over a century. Unfortunately, the federal government has failed to discharge its fiduciary duties in its role as trustee for the tribes, and those trust accounts have been mismanaged for almost as long as they have been in existence. *See Cobell v. Norton*, 240 F.3d 1081, 1086, 345 U.S. App. D.C. 141 (D.C. Cir. 2001). Plaintiffs sought declaratory relief that certain previous attempts to reconcile the trust accounts did not satisfy the government’s responsibility to provide a complete and accurate accounting of those accounts. Plaintiffs also sought injunctive relief compelling Defendants to perform their duties to provide complete and accurate accountings, preserve any and all documents concerning Plaintiffs’ trust accounts, and make their accounts whole. Finally, Plaintiffs sought judicial review of the agencies’ actions under the Administrative Procedures Act (“APA”). Defendants argued that Plaintiffs’ claims were improperly based on the “inherent fiduciary duty” between the federal government and Plaintiff-tribes, and that Plaintiffs have failed to properly identify the statute or regulation on which their claims are based. Defendants also argued that Plaintiffs did not sufficiently allege that the “complete and accurate trust accounting” they seek is demanded by law, which means that Plaintiffs failed to properly invoke the APA’s waiver of sovereign immunity. Defendants further contended that (1) Plaintiffs sought broad structural relief which is not proper under the APA, (2) Plaintiffs’ claims were impermissible programmatic challenges, (3) Plaintiffs’ claims related to recordkeeping should be dismissed because there is no private right of action, and (4) Plaintiffs’ claims for injunctive relief were actually seeking monetary damages which is outside the scope of the waiver of sovereign immunity and not within the Court’s jurisdiction. Finally,

Defendants argued that Plaintiffs' claims are time-barred under the applicable statute of limitations. As a threshold matter, the Court noted that it has jurisdiction in the matter because the prospective relief Plaintiffs seek is a "civil action[] arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Because the government challenged whether it has waived sovereign immunity for Plaintiffs' claims, this does not end the jurisdictional inquiry. The Court denied the Defendants' Motion to Dismiss.

124. *Cobell v. Jewell*, No. 14-5119, 2015 U.S. App. LEXIS 16625 (D.C. Cir. Sept. 18, 2015). Plaintiffs' appeal from the district court's denial of additional compensation for expenses for the lead plaintiff was timely, and the order appealed from was both final under 28 U.S.C.S. § 1291 and ripe under U.S. Const. art. III. The district court properly denied the denial of additional compensation for expenses for the lead plaintiff because it expressly wrapped those costs into an incentive award given to her earlier. The district court erred in categorically rejecting as procedurally barred the class representatives' claim for the recovery of third-party payments. Judgment affirmed in part and reversed in part. Case remanded.

125. *Quapaw Tribe of Okla. v. United States*, No. 12-592L, 2015 U.S. Claims LEXIS 1275 (Fed. Cl. Oct. 1, 2015). This case involves the claims of the Quapaw Indian Tribe of Oklahoma for breach of fiduciary duty and breach of trust obligations. On April 6, 2015, the Quapaw Tribe filed a motion for partial summary judgment on three grounds: (1) that the Government is liable for annual educational payments of \$1,000 from 1932 to the present under the Treaty of 1833; (2) that the Government is liable for \$31,680.80 in unauthorized disbursements from the Quapaw Tribe's trust accounts, as found in the 1995 Tribal Trust Funds Reconciliation Project Report prepared by Arthur Andersen LLP; and (3) that the Government is liable for \$70,330.71 in transactions that should have been credited to the Quapaw Tribe's trust accounts but were not, as reported in the 2010 Quapaw Analysis. I. Educational Payments. The Treaty of May 13, 1833 between the United States and the Quapaw Indians contained terms under which the Quapaw Tribe would move to new lands and resolve past disputes with the Government. Among a host of terms describing what the Quapaw Tribe would receive, one provision provided for the United States to make an annual educational payment to the Quapaw Tribe. From 1932 through 2015, despite inquiries and demands from the Quapaw Tribe, the United States did not make this annual treaty payment of \$1,000, and the President has never deemed the payment unnecessary. The Quapaw Tribe asserts that the Government's failure to meet its treaty responsibility is a breach of a fiduciary obligation. The Quapaw Tribe claims damages of \$1,000 per year from 1932 to 2015 (\$83,000), plus investment income the funds would have earned had they been timely deposited. The accounting review known as "the Quapaw Analysis," performed during 2004-2010, found no record that any educational payments required by the 1833 Treaty had been made from 1932 to the present. Defendant does not accept Plaintiff's educational payments claim, and has raised a number of defenses. However, none of the defenses has any merit. II. Unauthorized Disbursements. As a second basis for partial summary judgment, Plaintiff asserts that the congressionally authorized Tribal Trust Funds Reconciliation, which culminated in a December 31, 1995 report by Arthur Andersen LLP, identified three disbursements from the Quapaw Tribe's

trust accounts, totaling \$31,680.80, that were not authorized. The 2010 Quapaw Analysis confirmed this total, and also calculated that, had those funds been kept in the trust account, they would have accumulated \$903.00 in statutorily required interest as of September 30, 1992. III. Transactions That Should Have Been Credited. As its third basis for partial summary judgment, Plaintiff claims \$70,330.71 in unauthorized transactions. The Quapaw Analysis refers to these amounts as “transactions posted to the Tribal Trust Accounts and transactions in which monies should have been received, or were received, but that cannot be verified (as posted) to the Tribal Trust Accounts. . . . The total dollar amounts unaccounted for before interest accrual are \$70,331.” The Government has stated in discovery that it has no information regarding these transactions, but the Government updated its discovery response on October 24, 2014 to say that it now has information to contest these amounts, i.e., eight ledger sheets for account Q-32. As noted in Section II above, finality must attach to the Quapaw Analysis. The Court will not permit Defendant to impeach this detailed report, when it could have produced documents or raised its concerns at a much earlier time. The Quapaw Analysis is binding upon the United States. Based upon the foregoing, the Court GRANTS Plaintiff’s motion for partial summary judgment on its educational payments claim (\$83,000), its unauthorized disbursements claim (\$31,680.80), and its unauthorized transactions claim (\$70,331), together with investment income that would have been earned if these amounts had been timely credited to the Quapaw Tribe’s account.

126. *Goodeagle v. United States*, Nos. 12-431L, 12-592L, 13-51X1, 2015 U.S. Claims LEXIS 1312 (Fed. Cl. Oct. 16, 2015). (*Grace M. Goodeagle, et al. v. United States*; *Quapaw Tribe Of Oklahoma v. United States*; *Thomas Charles Bear et al. v. United States*) In these Indian Tribe cases involving significant claims against the United States for breach of fiduciary duty, among other things, Plaintiffs filed a motion for discovery relief seeking an order in their favor on the following grounds: (1) the Government failed substantially and in multiple ways to produce documents in compliance with Rule 34 of the Court of Federal Claims Rules (“RCFC”); and (2) the Government failed to produce a witness or witnesses under RCFC 30(b)(6) who could respond to designated subjects listed in the deposition notice. Plaintiffs also requested the imposition of sanctions, and the reimbursement for costs and fees associated with this motion under RCFC 37. Plaintiffs asserted that, at the beginning of discovery, they served the Government with reasonable requests for production of documents identifying specific topics relating to the relevant issues in these cases. Plaintiffs complained that, in violation of RCFC 34, the Government refused to organize its responsive documents by the requested topics. Also, Plaintiffs alleged that the Government procrastinated in its document production, producing 75 percent of the requested documents in the final six weeks of the discovery period without any organization or labeling. Plaintiffs argued that disorganized and unusable “data dumps” like this one are precisely an outcome that RCFC 34 is intended to avoid. Plaintiffs asked the Court to require the Government to re-produce its documents organized and labeled to correspond to the categories of documents contained in Plaintiffs’ requests. The Government opposed Plaintiffs’ motion by arguing that its document production substantially complied with RCFC 34, and that many of Plaintiffs’ requests were overly broad and not amenable to the categorization requirement of the rule. The Government

also asserted that it is not required to label and categorize publicly available documents, and that it produced some of the documents as they are kept in the usual course of business, thus negating a need to label and categorize. Under the circumstances, the Court found that the Government failed to comply with RCFC 34 and its fiduciary trust obligations. Despite the expense that may be involved, the Government is directed to produce its responsive documents again, organized and labeled in a way that complies with Rule 34. Discovery has been extended for three months to allow the completion of this effort. The only exception to this requirement is for documents that are available to the public, which need not be separately organized and labeled. Plaintiffs served on the Government a notice of deposition under RCFC 30(b)(6), identifying fifteen topics for examination. For six of these topics, the Government refused to produce a witness. For four other topics, the Government refused to produce a witness for the time period prior to 2007. For eight topics, the Government designated a witness, Mr. Paul Yates, Superintendent of the Miami Agency, but he was unable to provide answers on many of the eight topics for which he had been designated. Plaintiffs asked for the imposition of sanctions due to the Government's failure to designate a proper witness under RCFC 30(b)(6). In Plaintiffs' view, the Government should be prohibited from offering evidence at trial for any subject where its RCFC 30(b)(6) deponent failed to give testimony at the deposition. The Court declines to impose such a severe sanction where there is no indication that the Government acted with willful neglect or bad faith. Also, there is no prior discovery order that has been violated. The better course, in the interest of full development of the facts, is to allow the Government a second chance to comply with Plaintiffs' RCFC 30(b)(6) deposition notice. As with the Court's reading of Plaintiffs' document requests, the topics listed in the deposition notice were comprehensive, but not overly broad. Therefore, the Government is directed to produce knowledgeable persons who can respond under oath in a RCFC 30(b)(6) deposition on behalf of the United States. On October 15, 2015, the Court entered an order granting the parties' joint motion to amend the pretrial schedule by adding three months to the remaining discovery tasks. Under the amended schedule, the parties will have until July 14, 2016 to complete all discovery. During this period, the parties will have opportunities to cure the discovery shortcomings that have occurred thus far. Accordingly, the Court will deny Plaintiffs' claim for recovery of fees and costs without prejudice, subject to Plaintiffs reasserting the claim if the forthcoming discovery efforts are still unsatisfactory. Based upon the foregoing, Plaintiffs' motion for discovery relief was granted in part and denied in part.

127. *Wyandot Nation v. United States*, No. 15-560C, 2016 U.S. Claims LEXIS 1 (Fed. Cl. Jan 4, 2016). Plaintiff, the Wyandot Nation of Kansas (Wyandot Nation), is an Indian tribe whose members trace their ancestry to the Historic Wyandott Nation and the Wyandotte Tribe of Indians. The Historic Wyandott Nation's government-to-government relations with the United States were dissolved and terminated 160 years ago by the Treaty of January 31, 1855, 10 Stat. 1159 (1855 Treaty). Following the Historic Wyandott Nation's termination, the Wyandotte Tribe of Indians was established as a reorganized tribe under Article 13 of the Treaty of February 23, 1867 (1867 Treaty). Plaintiff claims to be both a successor-in-interest to all of the treaties entered into by the Historic Wyandott Nation with the United States and a part of the reorganized Wyandotte Tribe of Indians. The Wyandot Nation's claims

involve treaty trust funds and trust land that the Government allegedly holds in trust for the Wyandot Nation. The funds Plaintiff claims the Government holds in trust for it fall into two categories. Plaintiff's "Category One trust funds are those funds described in Schedule A of the 1867 Treaty." According to Plaintiff, its Category One funds ". . . were derived from the sale of Historic Wyandott Nation lands that were placed in U.S. Treasury trust accounts." Plaintiff's "Category Two trust funds are derived from easements for grants of rights-of-way for the use of two tracts of the Huron Cemetery trust land for Kansas City, Kansas streets since 1857." The Wyandot Nation filed a complaint against the United States for money damages arising from the Government's alleged breach of trust and fiduciary obligations owed to the Wyandot Nation. The complaint contained four causes of action: (1) breach of fiduciary duties based on a failure to provide a full, accurate, and timely accounting of Category One treaty trust funds; (2) breach of fiduciary trust responsibilities based on a failure to collect, deposit, account for, and invest trust funds that should have been collected for use of Huron Cemetery trust lands by the City of Kansas City, Kansas; (3) mismanagement of Category One treaty trust funds and accounts; and (4) mismanagement of Category Two Huron Cemetery trust funds. Plaintiff requested full trust fund accountings from the United States based on the allegations in its first and second claims, and monetary damages from the Government based on the alleged mismanagement of Plaintiff's funds and property in its third and fourth claims. Defendant filed a motion to dismiss Plaintiff's complaint contending that Plaintiff's claims should be dismissed as untimely, for failure to allege sufficient jurisdictional facts, or for failure to state a claim upon which relief can be granted. Additionally, Defendant argued that Plaintiff lacks standing to assert any claims regarding the Huron Cemetery. The Court granted the Government's motion to dismiss Plaintiff's claims.

128. *Kelii Akina, et al. v. The State of Hawaii, et al.*, No. 15–00322 (D. Haw. Oct. 29, 2015). Defendant Nai Aupuni is conducting an election of Native Hawaiian delegates to a proposed convention of Native Hawaiians to discuss, and perhaps to organize, a Native Hawaiian governing entity. Delegate candidates have been announced, and voting is to run from November 1, 2015 to November 30, 2015. Plaintiffs have filed a Motion for Preliminary Injunction seeking, among other relief, to halt this election. The voters and delegates in this election are based on a "Roll" of "qualified Native Hawaiians" as set forth in Act 195, 2011 Haw. Sess. Laws, as amended (the "Native Hawaiian Roll" or "Roll"). A "qualified Native Hawaiian" is defined as an individual, age eighteen or older, who certifies that they (1) are "a descendant of the aboriginal peoples who, prior to 1778, occupied and exercised sovereignty in the Hawaiian islands, the area that now constitutes the State of Hawaii," Haw. Rev. Stat. ("HRS") § 10H-3(a)(2)(A), and (2) have "maintained a significant cultural, social, or civic connection to the Native Hawaiian community and wishes to participate in the organization of the Native Hawaiian governing entity." HRS § 10H–3(a)(2)(B). Through a registration process, the Native Hawaiian Roll Commission (the "commission") asked or required prospective registrants to the Roll to make the following three declarations: Declaration One. I affirm the unrelinquished sovereignty of the Native Hawaiian people, and my intent to participate in the process of self-governance. Declaration Two. I have a significant cultural, social or civic connection to the Native Hawaiian community. Declaration Three. I am a Native Hawaiian: a lineal descendant of the people who lived

and exercised sovereignty in the Hawaiian islands prior to 1778, or a person who is eligible for the programs of the Hawaiian Homes Commission Act, 1920, or a direct lineal descendant of that person. Separately, the Roll also includes as qualified Native Hawaiians “all individuals already registered with the State as verified Hawaiians or Native Hawaiians through the Office of Hawaiian Affairs (“OHA”) as demonstrated by the production of relevant [OHA] records[.]” HRS § 10H–3(a)(4). Those on the Roll through an OHA registry do not have to affirm Declarations One or Two. Plaintiffs filed suit on August 13, 2015, alleging that these “restrictions on registering for the Roll” violate the U.S. Constitution and the Voting Rights Act of 1965, 52 U.S.C. § 10301. As to the constitutional claims, they allege violations of (1) the Fifteenth Amendment; (2) the Equal Protection and Due Process clauses of the Fourteenth Amendment; and (3) the First Amendment. They further allege that Nai Aupuni is acting “under color of state law” for purposes of 42 U.S.C. § 1983, and is acting jointly with other state actors. The Complaint seeks to enjoin Defendants “from requiring prospective applicants for any voter roll to confirm Declaration One, Declaration Two, or Declaration Three, or to verify their ancestry.” The Complaint also seeks to enjoin “the use of the Roll that has been developed using these procedures, and the calling, holding, or certifying of any election utilizing the Roll.” Plaintiffs have moved for a preliminary injunction, seeking an Order preventing Defendants “from undertaking certain voter registration activities and from calling or holding racially-exclusive elections for Native Hawaiians, as explained in Plaintiffs’ Complaint.” They seek to stop the election of delegates, and thereby halt the proposed convention. Plaintiffs’ Motion for Preliminary Injunction was denied.

129. *Flute v. U.S.*, No. 14–1405, 2015 WL 9298089 (10th Cir. Dec. 23, 2015). Descendants of victims of United States Army’s 1864 massacre of certain bands of Cheyenne and Arapaho Indian tribes brought putative class action against federal government, Department of Interior (DOI), and Bureau of Indian Affairs (BIA), alleging breach of trust and seeking accounting of reparation payments promised to their ancestors by treaty and award of funds found still owing. The District Court, 67 F. Supp. 3d 1178, dismissed the action. Descendants appealed. The appellate court held that: 1) Department of Interior (DOI) Appropriations Act of 2009 that tolled running of applicable statute of limitations for claims “concerning losses to or mismanagement of trust funds” did not relieve descendants of independent obligation to identify unequivocal waiver of immunity or express consent to be sued; 2) Treaty of Little Arkansas and 1866 Appropriations Act did not create ongoing fiduciary obligations to descendants; and 3) descendants were not entitled to accounting. Affirmed.

130. *Fletcher v. United States*, No. 02-CV-427, 2015 U.S. Dist. LEXIS 172877 (N.D. Okla. Dec. 30, 2015). In the early twentieth century, large quantities of oil and gas were discovered on lands belonging to the Osage Nation. Shortly thereafter, Congress enacted the Osage Allotment Act of 1906, Act of June 28, 1906, Pub. L. No. 59-321, 34 Stat. 539 (Osage Allotment Act or 1906 Act), which severed the mineral estate underlying Osage lands from the surface estate, placed the mineral estate in trust, and directed the Secretary of Interior to collect and distribute royalty income every quarter to persons on the 1906 tribal membership roll. The right to receive such royalty payments is called a “headright.” The sole remaining claim in this long-running case concerns the federal government’s duty to account to individual Osage headright

owners. Certified as a class in 2014, plaintiffs are Osage Indians who receive headright payments pursuant to the 1906 Act. They brought this claim pursuant to the Administrative Procedure Act (APA) seeking an accounting of tribal trust funds held on their behalf. In particular, plaintiffs requested an accounting of the Osage tribal trust account, an account within the United States Treasury which holds Osage royalty income prior to its distribution to the headright owners. The government maintained that the account at issue is held in trust for the Osage Nation only and that, as such, plaintiffs are not entitled to the accounting they seek. The court held that the plaintiffs are entitled to accounting of the Osage tribal trust account in accordance with the requirements set forth herein and ordered that the government provide plaintiffs with an accounting of the Osage tribal trust account in accordance with the following requirements: (1) The accounting must run from the first quarter of 2002 until the last available quarter; (2) the accounting must be divided and organized either by month or by quarter; (3) The accounting must state the date and dollar amount of each receipt and distribution; (4) The accounting must briefly identify and describe the source of each trust receipt (i.e., the name of the payer/lessee and the contract number for the oil and/or gas lease on which the payment is made); (5) The accounting must state the name of the individual or organization to whom each trust distribution was made; (6) For headright distributions, the accounting must state the headright interest that each beneficiary possessed at the time of distribution; (7) The accounting must state the amount of interest income generated from the tribal trust account and the date on which such interest was credited to the account.

131. *Tanner-Brown v. Jewell*, 2016 U.S. Dist. LEXIS 9333 (D.D.C. Jan. 27, 2016). Plaintiffs Leatrice Tanner-Brown and the Harvest Institute Freedman Federation, LLC (HIFF) filed this class action against Defendants Sally Jewell, the Secretary of the United States Department of the Interior, and Kevin Washburn, the Assistant Secretary for Indian Affairs at the Department of the Interior, in their official capacities seeking an accounting relating to alleged breaches of fiduciary duties concerning land allotted to the minor children of former slaves of Native American tribes. Defendants have filed a motion to dismiss the Complaint in its entirety on a variety of grounds. The Court finds that Plaintiffs lack standing under Article III of the Constitution and will therefore grant Defendants' motion and dismiss the Complaint for lack of jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

132. *Inter-Tribal Council of Ariz., Inc. v. United States*, No. 15-342L, 2016 U.S. Claims LEXIS 99 (Fed. Cl. Feb. 22, 2016). Pending before the court is a motion filed by defendant the United States ("government") to dismiss this action filed by plaintiff Inter-Tribal Council of Arizona, Inc. ("ITCA") for breach of tribal trust obligations. The ITCA, which represents nineteen Arizona tribes claims that the government is liable for a breach of trust by failing to fulfill its obligations under the Arizona-Idaho Conservation Act of 1988, Pub. L. No. 100-696, 102 Stat. 4571, 4577-93 (1988) ("the Act"); 25 U.S.C. § 162a; and the American Indian Trust Fund Management Reform Act of 1994, Pub. L. No. 103-412, 108 Stat. 4239 (1994) ("the Trust Fund Reform Act"). Title IV of the Act, which is sometimes referred to as the Arizona-Florida Land Exchange Act, ratified an agreement between the government and the Barron Collier Company, Collier Development Corporation, and Collier Enterprises (together "Collier")

to exchange federally owned property in Arizona for wetlands in Florida owned by Collier. The ITCA alleges that under the Act the government is required to make payments into a trust that was established for the benefit of the ITCA's member tribes and for ensuring a lump sum payment to the ITCA's trust fund at the end of a 30-year payment period. Under the Act, the trust was held by the government and maintained by annual payments from Collier. Under the terms of the trust agreement, Collier was also obligated to pay into an annuity fund designed to ensure a lump sum payment at the end of 30 years. The trust agreement gave the government a security interest in land owned by Collier as collateral on the 30-year payment obligation. Collier stopped making payments into the trust and into the annuity fund in 2012. The ITCA alleges that the government has breached its trust obligations by failing to make the payments itself when Collier stopped paying. Finally, the ITCA claims that the government breached its trust obligations by failing to prudently invest the trust funds and by failing to provide a proper accounting of the funds. The government has filed a motion to dismiss the complaint on the grounds that the government does not have any obligation under the Act to make up Collier's missed payments to either the trust fund or the annuity. The government further argues that it has no trust obligation under the Act to monitor or supplement the value of the collateral or security obtained from Collier. In this connection, the government also argues that to the extent the ITCA's breach of trust claims relate to the release of collateral more than six years ago, this portion of the claim is barred by the 6-year statute of limitations in 28 U.S.C. § 2501. In addition, the government asserts that the ITCA's claims with regard to the collateral are not ripe because the government is in ongoing litigation against Collier in United States District Court for the District of Arizona ("the district court") to resolve the collateral issues. The government further argues that the ITCA has failed to state a claim with regard to the government's management of the trust fund. The government states that the Act gave the government unreviewable discretion in making investment decisions and that there is no allegation of facts to show mismanagement. Finally, the government asserts that the court lacks jurisdiction to grant the ITCA's claim for an accounting on the grounds that the ITCA cannot establish a claim for money damages based on management of the trust fund. In such circumstances, the government argues that the ITCA must go to the district court for an accounting. Based on these arguments, the government asks the court to dismiss the ITCA's claims for lack of jurisdiction pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims ("RCFC") and for failure to state a claim pursuant to RCFC 12(b)(6). The court agrees with the government that this court does not have jurisdiction over the ITCA's claims based on the government's failure to make up Collier's missed payments. These claims fail for lack of jurisdiction on the grounds that the ITCA has not established a fiduciary obligation to make the payments under the Act and thus the ITCA has failed to establish a money-mandating breach of trust claim. However, the court finds that the ITCA has identified potential money-mandating breach of trust claims with regard to the government's alleged failure to monitor and maintain adequate collateral to ensure the final payment into the fund. Yet, a portion of the collateral-related claims may be barred by the 6-year statute of limitations. Thus, the court finds that a final decision on its jurisdiction to hear those claims must await a determination of the merits. In addition, the court finds that the ITCA has failed to state a claim to the extent that it argues the government breached its

trust obligations by failing to hold the trust fund payments security in trust at the Department of Treasury rather than in a private annuity and certain interests in real property. Finally, the court agrees with the government that plaintiff has not stated a claim with regard to mismanagement of the trust fund and as such this court does not have jurisdiction to order an accounting. Accordingly, the government's motion to dismiss is GRANTED-IN-PART and DENIED-IN-PART.

133. *Fredericks v. United States*, No. 14-296L, 2016 U.S. Claims LEXIS 110 (Fed. Cl. Feb. 24, 2016). Five Indian heirs to their deceased father's allotted lands have filed this breach of trust case, contesting actions taken by the Department of the Interior's Bureau of Indian Affairs ("BIA") regarding the estate's lands and assets. After the death of plaintiffs' father in 2006, BIA began probate proceedings, which lasted until 2013. The plaintiffs allege that during probate, and continuing to this day, the United States improperly granted and approved leases of their father's land in violation of trust duties imposed by the Fort Berthold Mineral Leasing Act, Pub. L. No. 105-188, 112 Stat. 620 (1998), as amended by Pub. L. No. 106-67, 113 Stat. 979 (1999), and the American Indian Agricultural Resource Management Act ("AIARMA"), Pub. L. No. 103-177, 107 Stat. 2011 (1993) (codified as amended at 25 U.S.C. §§ 3701-46). They also allege a taking of property without just compensation in contravention of the Fifth Amendment. Pending before the court is the United States' ("government's") motion to dismiss under Rules 12(b)(1) and 12(b)(6) of the Rules of the Court of Federal Claims ("RCFC"). The government's principal arguments are that the Indian heirs lack standing because they had no property interests until the conclusion of probate, and that pertinent statutes impose no money-mandating duties on the government in favor of the heirs. The government's motion to dismiss is DENIED in part and otherwise DEFERRED for prudential reasons, awaiting resolution of pending administrative proceedings. On or before March 11, 2016, defendant shall file an answer to plaintiffs' amended complaint.

134. *Ramah Navajo Chapter v. Jewell*, No. 90 CV 957, 2016 U.S. Dist. LEXIS 27624 (D.N.M. Mar. 2, 2016). On September 30, 2015, the Court granted preliminary approval of the final settlement agreement (FSA) in this class action and ordered that notice be sent to all class members. The Court has ruled on the sole objection to the FSA in which the United South Eastern Tribes, Inc. argued that it was improperly excluded from the Class members listed in Appendix 2 of the FSA. The Court sustained in part and overruled in part the Objection. On January 8, 2016, the parties filed their Motion for Final Approval. The same day, Class Counsel filed their Consent Motion for Approval of Attorneys' Fees. Class Counsel had filed their Class Counsel Application For Award Of Attorney Fees And Costs on September 29, 2015. The Court considered the FSA, the evidence, the arguments of the parties, including affidavits of Class Counsel and the Class Representatives. In addition, the Court heard arguments by Class Counsel, by other attorneys representing the Class, and by Counsel for the Government. During the hearing, the Court concluded that the FSA is in the best interest of the Class and should be approved. As to the Consent Motion for Approval of Attorneys' Fees, during the January 20, 2016 hearing the Court asked whether the notice to the Class members clearly stated how the New Mexico Gross Receipts Taxes (NMGRT) on the attorneys' fees would be paid. Class Counsel, Class Representatives, and Counsel for the Government conferred and reached an agreement clarifying

responsibility for the payment of NMGRT on attorneys' fees and said they would submit a written stipulation memorializing their agreement. The Court found that the Joint Stipulation clarified the obligations regarding payment of the New Mexico Gross Receipts Taxes. On February 19, 2016, the Court entered an Order adopting the Joint Stipulation as a supplement to the FSA and approving the Joint Stipulation. The Application describes the work of Class Counsel, and by other attorneys in their law firms and by attorneys specializing in Indian Law and in Supreme Court litigation. No objections to the Application were filed. The Government, in its role as trustee for all tribes and tribal organizations, supports the requested fee and agrees that an award of 8.5% of the amount paid from the Judgment Fund as defined in the FSA is fair and reasonable under the totality of the circumstances. The Court concludes that the requested attorneys' fee of 8.5% of the amount paid from the Judgment Fund as defined in the FSA is fair and reasonable. Hence, the Court will grant the Consent Motion for Approval of Attorneys' Fees and will approve the Application.

N. MISCELLANEOUS

135. *Navajo Nation v. San Juan Cnty.*, No. 2:12-cv-00039, 2016 U.S. Dist. LEXIS 20533 (D. Utah Feb. 19, 2016). This case is about voting rights and the election districts in San Juan County, Utah. Plaintiffs are Navajo Nation—a federally recognized Indian tribe—and several individual Tribe members. Navajo Nation sued the County shortly after the County Commission redistricted in 2011, and directs two of its four claims for relief to the County's three Commission election districts. Navajo Nation alleges in its first claim for relief that the County Commission's 2011 redistricting and its present three districts violate the Equal Protection Clause of the Fourteenth Amendment and the Fifteenth Amendment to the United States Constitution. It asserts in its second claim for relief that the same election districts violate § 2 of the Voting Rights Act. Before the court are the parties' cross-motions for summary judgment on Navajo Nation's first claim. Navajo Nation points specifically to the Commission's District Three, which the County established in 1986 to be majority Native American in the wake of a lawsuit brought against it by the United States Department of Justice. The District Three boundaries remain unchanged since they were drawn three decades ago. Navajo Nation claims that the County Commission relied on race in its decision to maintain the District Three boundaries as part of the County's redistricting in 2011. Navajo Nation urges the court to conclude under the strict scrutiny analysis that must follow that the County's race-based decision-making was not narrowly tailored to further a compelling governmental interest, and is thus unconstitutional in violation of the Equal Protection Clause of the Fourteenth Amendment. San Juan County responds that it had a compelling government interest in maintaining the decades-old District Three boundaries when it redistricted in 2011. It contends that it was legally required to do so to comply with the terms of a Consent Decree and a Settlement and Order entered when the County resolved the Department of Justice lawsuit against it in the 1980s. The court finds that the County's position is unsupported by the language of the Consent Decree and Settlement and Order. These documents did not require the County to draw and maintain—in perpetuity—the 1986 District Three boundaries. The

court concludes that the County lacks a compelling government interest in its racially-motivated districting decisions. As drawn in 1986 and maintained in 2011, the County's Commission Districts violate the Equal Protection Clause and are unconstitutional. The court therefore grants summary judgment in favor of Navajo Nation, and denies the County's cross-motion.

INDEX OF CASES

<i>Alabama v. PCI Gaming Auth.,</i> 2015 U.S. App. LEXIS 15692 (11th Cir. Ala. Sept. 3, 2015)	31
<i>Alabama-Quassarte Tribal Town v. United States,</i> No. CIV-06-558, 2016 U.S. Dist. LEXIS 1620 (E.D. Okla. Jan. 7, 2016)	56
<i>Alaska Dept. of Natural Resources v. U.S. ,</i> No. 14–35051, 2016 WL 946917 (9th Cir. Mar. 14, 2016)	25
<i>Alaska Oil and Gas Ass’n v. Jewell,</i> Nos. 13–35619, 13–35666, 13–35662, 13-35667, 13-35669, 2016 WL 766855 (9th Cir. Feb. 29, 2016).....	25
<i>Alto, et al. v. Jewell,</i> No. 11-cv-2276, 2015 U.S. Dist. LEXIS 133540 (S.D. Cal. Sept. 30, 2015)	3
<i>Amador Cnty. v. Jewell,</i> No. 05-00658, 2016 U.S. Dist. LEXIS 33791 (D.D.C. Mar. 16, 2016).....	40
<i>Anderson v. Coushatta Casino Resort,</i> No. 2:15-01203, 2016 U.S. Dist. LEXIS 49416 W.D. La. Apr. 12, 2016)	20
<i>Arizona v. Tohono O’odham Nation,</i> Nos. 13–16517, 13–16519, 13–16520, 2016 WL 1211834 (9th Cir. Mar. 29, 2016).....	41
<i>Arrow Midstream Holdings, LLC v. 3 Bears Constr., LLC,</i> No. 20150057, 2015 ND 302 (N.D. Dec. 29, 2015)	15
<i>Automotive United Trades Organization v. State of Washington,</i> No. 89734-4, 2015 WL 5076289, __ Wash. 2d __ (Aug. 27, 2015)	59
<i>Belcourt Public School District v. Davis,</i> Nos. 14–1541, 14–1542, 14–1543, 14–1545, 14–1548, 2015 WL 2330293 (8th Cir. May 15, 2015)	53
<i>Bettor Racing, Inc. v. Nat’l Indian Gaming Comm’n,</i> No. 15-1335, 2016 U.S. App. LEXIS 1456, 812 F.3d 648 (8th Cir. Jan. 29, 2016)	39
<i>Big Lagoon Rancheria v. California,</i> Nos. 10–17803, 10–17878, 2015 WL 3499884, __ F.3d __ (9th Cir. Jun. 4, 2015)	31
<i>Blue Lake Rancheria v. Lanier,</i> No. 2:11–cv–01124, 2015 WL 2340359, __ F. Supp. 3d __ (E.D. Cal. May 13, 2015)	50

<i>Boricchio v. Casino,</i> Nos. 14–818, 14–819, 14–820, 14–821, 14–822, 2015 WL 3648698 (E.D. Cal. Jun. 10, 2015)	17
<i>Bruette v. Jewell,</i> No. 15-2897, 2016 U.S. App. LEXIS 5827 (7th Cir. Mar. 30, 2016).....	5
<i>C’Hair v. District Court of Ninth Judicial District,</i> No. S–14–0198, 2015 WL 5037011 (Wyo. Aug. 26, 2015).....	55
<i>Cascadia Wildlands v. Bureau of Indian Affairs,</i> No. 14–35553, 2015 WL 5306321 (9th Cir. Sept. 11, 2015).....	22
<i>Cayuga Nation v. Tanner,</i> No. 5:14–CV–1317, 2015 WL 2381301 (N.D.N.Y May 19, 2015).....	30
<i>Cherokee Nation v. Johnson & Johnson, Inc.,</i> No. 15-CV-280, 2016 U.S. Dist. LEXIS 46421 (E. D. Okla. Apr. 6, 2016).....	48
<i>Citizens Against Casino Gambling v. Jonodev Osceola Chauduri,</i> Nos. 11-5171, 11-5466, 13-2339, 13-2777, 2015 U.S. App. LEXIS 16439 (2d Cir. Sept. 15, 2015)	32
<i>Citizens for a Better Way. et al. v. United States Dept. of the Interior, et al.,</i> No. 2:12-cv-3021, 2015 U.S. Dist. LEXIS 128745 (E.D. Cal. Sept. 23, 2015)	22
<i>City of Duluth v. Fond Du Lac Band of Lake Superior Chippewa,</i> No. 13-3408, 2015 WL 2151774 (8th Cir. May 8, 2015)	30
<i>Cobell v. Jewell,</i> No. 14-5119, 2015 U.S. App. LEXIS 16625 (D.C. Cir. Sept. 18, 2015)	62
<i>Colbert v. United States,</i> No. 14-12007 (11th Cir. May 7, 2015)	9
<i>Coppe v. Sac & Fox Casino Healthcare Plan,</i> No. 2:14-cv-02598, 2015 U.S. Dist. LEXIS 150319 (D. Kan. Nov. 5, 2015).....	18
<i>Cosentino v. Fuller,</i> No. G050923, 2015 WL 3413542, __ Cal. Rptr. 3d __ (Cal. Ct. App. May 28, 2015)	31
<i>County of Amador v. United States Dept. of the Interior, et al.,</i> No. 2:12-cv-01710, 2015 U.S. Dist. LEXIS 133482 (E.D. Cal. Sept. 29, 2015)	34
<i>Cypress v. United States,</i> No. 15-10132, 2016 U.S. App. LEXIS 5390 (11th Cir. Mar. 23, 2016).....	59
<i>D.B. v. M.H.,</i> No. E062459, 2015 Cal. App. Unpub. LEXIS 5581 (Cal. App. 4th Dist. Aug. 4, 2015)	7
<i>Dillon v. BMO Harris Bank, N.A.,</i> No. 16-5, 2016 U.S. Dist. LEXIS 13433 (N.D. Okla. Feb. 4, 2016).....	57

<i>Douglas Indian Ass’n v. Cent. Council of Tlingit & Haida Indian Tribes,</i> No. 1:15-cv-00004, 2015 U.S. Dist. LEXIS 107844 (D. Alaska Aug. 17, 2015)	12
<i>Estom Yumeka Maidu Tribe of the Enter. Rancheria of Cal. v. California,</i> No. 2:14-cv-01939, 2016 U.S. Dist. LEXIS 19330 (E.D. Cal. Feb. 16, 2016)	40
<i>Flandreau Santee Sioux Tribe v. Gerlach,</i> No. 14-4171, 2015 U.S. Dist. LEXIS 169317 (D.S.D. Dec. 18, 2015).....	38
<i>Flandreau Santee Sioux Tribe v. Gerlach,</i> No. 14-4171, 2016 U.S. Dist. LEXIS 16682 (D.S.D. Feb. 11, 2016).....	40
<i>Flathead Irrigation Dist. v. Jewell,</i> No. 14-88, 2015 U.S. Dist. LEXIS 109728 (D. Mont. Aug. 19, 2015).....	26
<i>Fletcher v. United States,</i> No. 02-CV-427, 2015 U.S. Dist. LEXIS 172877 (N.D. Okla. Dec. 30, 2015).....	66
<i>Flute v. U.S.,</i> No. 14–1405, 2015 WL 9298089 (10th Cir. Dec. 23, 2015).....	66
<i>Fort Sill Apache Tribe v. National Indian Gaming Commission,</i> No. 14–958, 2015 WL 2203497, ___ F. Supp. 3d ___ (D.D.C. May 12, 2015).....	2
<i>Fort Yates Public School Dist. # 4 v. Murphy ex rel. C.M.B.,</i> Nos. 14–1549, 14–1702, 2015 WL 2330317, ___ F.3d ___ (8th Cir. May 15, 2015).....	53
<i>Fredericks v. United States,</i> No. 14-296L, 2016 U.S. Claims LEXIS 110 (Fed. Cl. Feb. 24, 2016)	69
<i>Gila River Indian Cmty. v. Dep’t of Child Safety,</i> No. 1 CA-JV 15-0178, 2015 Ariz. App. LEXIS 294, 727 Ariz. Adv. Rep. 28 (Ariz. Ct. App. Dec. 8, 2015).....	8
<i>Goodeagle v. United States,</i> Nos. 12-431L, 12-592L, 13-51X1, 2015 U.S. Claims LEXIS 1312 (Fed. Cl. Oct. 16, 2015)	63
<i>Grand Canyon Skywalk Dev. LLC v. Cieslak,</i> Nos. 2:15-01189 and 2:13-00596, 2015 U.S. Dist. LEXIS 107457 (D. Nev. Aug. 13, 2015)	10
<i>Grand Canyon Skywalk Dev. v. Steele,</i> No.: 2:13-cv-00596, 2015 U.S. Dist. LEXIS 160906 (D. Nev. Nov. 30, 2015).....	14
<i>Guidiville Rancheria of Cal. v. United States,</i> No. 12-cv-1326, 2015 U.S. Dist. LEXIS 109057 (N.D. Cal. Aug. 18, 2015).....	13
<i>Hammond v. Jewell,</i> No. 1:15-00391, 2015 U.S. Dist. LEXIS 137141 (E.D. Cal. Oct. 7, 2015).....	45
<i>Harvey v. Ute Indian Tribe of the Uintah & Ouray Reservation,</i> No. 14-4089, 2015 U.S. App. LEXIS 14234 (10th Cir. Aug. 13, 2015).....	52

Hayes v. Delbert Servs. Corp., No. 15-1170, No. 15-1217, 2016 U.S. App. LEXIS 1747, 811 F.3d 666 (4th Cir. Va. Feb. 2, 2016)	47
Howard ex rel. U.S. v. Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, No. 13-16118, 2015 WL 3652509 (9th Cir. June 15, 2015)	43
Idaho v. Coeur D’Alene Tribe, No. 14–35753, 2015 WL 4461055 (9th Cir. Jul. 22, 2015).....	31
In re Adoption of T.A.W., No. 47364–0–II, 2015 WL 4093335, __ P.3d __ (Wash. Ct. App. Jul. 7, 2015).....	6
In re Amy J., No. A145782, 2016 Cal. App. Unpub. LEXIS 1243 (Cal. Ct. App. Feb. 18, 2016).....	8
In re Greektown Holdings, LLC, No. 14–14103, 2015 WL 3632202 (E.D. Mich. Jun. 9, 2015)	51
In re K.M., No. G051656, 2015 WL 7352048 (Cal. Ct. App. Nov. 20, 2015)	8
In re Natalie P., No. D067689, 2015 WL 4072120 (Cal. Ct. App. Jul. 6, 2015)	6
In re the General Adjudication Of All Rights To Use Water In The Big Horn River System, No. S–14–0257, 2015 WL 5439947 (Wyo. Sept. 16, 2015).....	27
Inter-Tribal Council of Ariz., Inc. v. United States, No. 15-342L, 2016 U.S. Claims LEXIS 99 (Fed. Cl. Feb. 22, 2016)	67
J.N.T. v. Cullman County Dept. of Human Resources, No. 2140171, 2015 WL 1958070, __ So. 3d __ (Ala. Civ. App. May 1, 2015).....	6
Jennifer L. v. State Department of Health and Social Services, No. S –15646, 357 P.3d 110 (Alaska Aug. 28, 2015)	7
K.P. v. Michelle T., No. D067797, 2015 Cal. App. Unpub. LEXIS 8073 (Cal. App. 4th Dist. Nov. 10, 2015)	7
Kelii Akina, et al. v. The State of Hawaii, et al., No. 15–00322 (D. Haw. Oct. 29, 2015).....	65
Kelsey v. Pope, No. 14-1537, 2016 U.S. App. LEXIS 28 (6th Cir. Jan. 5, 2016)	55
Lewis v. Clarke, No. 19464, 2016 WL 878893 (Conn. Mar. 15, 2016).....	57
Longo v. Seminole Indian Casino-Immokalee, No. 15–12460, 2016 WL 722526 (11th Cir. Feb. 24, 2016).....	19

<i>Maniilaq Ass’n v. Burwell,</i> No. 15-152, 2016 U.S. Dist. LEXIS 36605 (D.D.C. Mar. 22, 2016).....	16
<i>Massachusetts v. Wampanoag Tribe of Gay Head (Aquinnah),</i> No. 13-13286, 2015 U.S. Dist. LEXIS 153935 (D. Mass. Nov. 13, 2015)	36
<i>Menominee Indian Tribe of Wisconsin v. U.S.,</i> Docket No. 14-510, 136 S. Ct. 750, 193 L. Ed. 2d 652, 2016 U.S. LEXIS 971, 84 U.S.L.W. 4081, 25 Fla. L. Weekly Fed. S 604 (U.S. 2016)	2
<i>Meyer & Associates, Inc. v. Coushatta Tribe of Louisiana,</i> Nos. 14–1109, 14-1114, 2016 WL 385308 (La. Ct. App. Jan. 27, 2016)	16
<i>Miccosukee Tribe of Indians of Florida v. Cypress,</i> No. 14–12115, 2015 WL 9310571 (11th Cir. Dec. 23, 2015).....	47
<i>National Labor Relations Board v. Little River Band of Ottawa Indians Tribal Government,</i> No. 14–2239, 2015 WL 3556005 (6th Cir. Jun, 9, 2015)	42
<i>Navajo Nation v. DOI,</i> No. 14-cv-1909, 2016 U.S. Dist. LEXIS 42242 (D.D.C. Mar. 30, 2016).....	17
<i>Navajo Nation v. San Juan Cnty.,</i> No. 2:12-cv-00039, 2016 U.S. Dist. LEXIS 20533 (D. Utah Feb. 19, 2016).....	70
<i>Navajo Nation v. U.S. Dept. of Interior,</i> Nos. 13–16517, 13–16519, 13–16520, 2016 WL 1359869 (9th Cir. Apr. 6, 2016)	50
<i>Nawls v. Shakopee Mdewakanton Sioux Cmty. Gaming Enters.- Mystic Lake Casino,</i> No. 15-2769, 2016 U.S. Dist. LEXIS 17902 (D. Minn. Feb. 12, 2016)	19
<i>Nebraska v. Parker,</i> No. 14-1406, 2016 U.S. LEXIS 2132 (U.S. Mar. 22, 2016).....	1
<i>New Mexico v. Trujillo,</i> No. 15–2047, 2016 WL 683831 (10th Cir. Feb. 19, 2016)	28
<i>Ninilchik Traditional Council v. Towarak,</i> No. 3:15-cv-00205, 2016 U.S. Dist. LEXIS 51370 (D. Alaska Apr. 17, 2016).....	29
<i>No Casino in Plymouth v. Jewell,</i> No. 2:12-cv-01748, 2015 U.S. Dist. LEXIS 134375 (E.D. Cal. Sept. 30, 2015).....	34
<i>North Fork Rancheria of Mono Indians v. California,</i> No. 1:15-cv-00419, 2015 U.S. Dist. LEXIS 154729 (E.D. Cal. Nov. 13, 2015).....	37
<i>Oklevueha Native Am. Church of Haw., Inc. v. Lynch,</i> No. 14-15143, 2016 U.S. App. LEXIS 6275 (9th Cir. Apr. 6, 2016)	50
<i>Organized Village of Kake, et al. v. U.S. Dept. of Agriculture, et al.,</i> No. 11–35517, 2015 WL 4547088, ___ F.3d ___ (9th Cir. Jul. 29, 2015)	21

<i>Paskenta Band of Nomlaki Indians v. Crosby,</i> No. 2:15-cv-00538, 2016 U.S. Dist. LEXIS 53145 (E.D. Cal. Apr. 20, 2016).....	20
<i>Patchak v. Jewell,</i> No. 08–1331, 2015 WL 3776490, __ F. Supp. 3d __ (D.D.C. Jun. 17, 2015).....	3
<i>Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation v. California,</i> Nos. 14–56104, 14–56105, 2015 WL 6445610 (9th Cir. Oct. 26, 2015).....	35
<i>Penobscot Nation v. Mills,</i> No. 1:12-cv-254, 2015 U.S. Dist. LEXIS 169342 (D. Me. Dec. 16, 2015).....	27
<i>People v. Riley,</i> No. E059103, 2015 WL 4448081(Cal. Ct. App. Jul 21, 2015)	10
<i>Pistor v. Garcia,</i> No. 12–17095, 2015 WL 3953448 (9th Cir. Jun. 30, 2015)	51
<i>Pit River Tribe v. Bureau of Land Management,</i> No. 13–16961, 2015 WL 4393982 (9th Cir. Jul. 20, 2015).....	21
<i>Public Serv. Co. of N.M. v. Approximately 15.49 Acres of Land in McKinley Cnty.,</i> No. 15 CV 501, 2015 U.S. Dist. LEXIS 174900 (D.N.M. Dec. 1, 2015)	53
<i>Pueblo of Jemez v. United States,</i> No. 13–2181, 2015 WL 3916572 (10th Cir. Jun. 26, 2015)	61
<i>Quapaw Tribe of Okla. v. United States,</i> No. 12-592L, 2015 U.S. Claims LEXIS 1275 (Fed. Cl. Oct. 1, 2015).....	62
<i>Ramah Navajo Chapter v. Jewell,</i> No. 90 CV 957, 2016 U.S. Dist. LEXIS 27624 (D.N.M. Mar. 2, 2016).....	69
<i>Robinson v. Jewell,</i> No. 12–17151, 2015 WL 3824658 (9th Cir. Jun. 22, 2015)	60
<i>San Pasqual Band of Mission Indians v. State,</i> No. B254870, 2015 WL 6438536 (Cal. Ct. App. Oct. 5, 2015)	35
<i>Sanders v. Anoatubby,</i> No. 15-6116, 2015 U.S. App. LEXIS 20268 (10th Cir. Nov. 23, 2015).....	18
<i>Seminole Tribe of Florida v. Stranburg,</i> No. 14-14524, 2015 WL 5023891 (11 th Cir., Aug. 26, 2015).....	58
<i>Shields v. Wilkinson,</i> No. 13–3773, 2015 WL 3634541 (8th Cir. Jun. 12, 2015)	60
<i>Shingle Springs Band of Miwok Indians v. Caballero,</i> No. 13-15411, 2015 U.S. App. LEXIS 20094 (9th Cir. Nov. 19, 2015).....	46
<i>Sisseton Wahpeton Oyate of the Lake Traverse Reservation v. Jewell,</i> No. 13-00601, 2015 U.S. Dist. LEXIS 124483 (D.D.C. Sept. 17, 2015).....	61

<i>Smith v. Western Sky Fin., LLC,</i> No. 15-3639, 2016 U.S. Dist. LEXIS 28452 (E.D. Pa. Mar. 4, 2016)	57
<i>Soaring Eagle Casino and Resort v. N.L.R.B.,</i> Nos. 14–2405, 14–2558, __ F.3d __, 2015 WL 3981378 (6th Cir. Jul. 1, 2015).....	44
<i>South Fork Livestock Partnership v. U.S.,</i> No. 3:15–CV–0066, 2015 WL 4232687 (D. Nev. Jul. 13, 2015)	52
<i>Sprint Communications Co. L.P. v. Wynne,</i> No. 4:15-CV-04051, 2015 U.S. Dist. LEXIS 103209 (D.S.D. Aug. 4, 2015).....	54
<i>State v. Central Council of Tlingit and Haida Indian Tribes of Alaska,</i> No. S–14935, 2016 WL 1168202 (Alaska Mar. 25, 2016)	9
<i>State v. DePoe,</i> No. 44886–6, 2015 WL 3618745 (Wash. Ct. App. Jun 9, 2015).....	42
<i>State v. Hill,</i> No. A147778, 2016 Ore. App. LEXIS 483, 277 Ore. App. 751 (Or. Ct. App Apr. 20, 2016).....	49
<i>State v. Joseph B. (In re Tavian B.),</i> No. S-15-129, 292 Neb. 804, 2016 Neb. LEXIS 24 (Neb. Feb 19, 2016)	9
<i>Sturgeon v. Frost,</i> Docket No. 14-1209 (U.S. Mar. 22, 2016).	1
<i>Tanner-Brown v. Jewell, ,</i> 2016 U.S. Dist. LEXIS 9333 (D.D.C. Jan. 27, 2016).....	67
<i>Tohono O’odham Nation v. Ducey,</i> No. CV-15-01135, 2016 U.S. Dist. LEXIS 42410 (D. Ariz. Mar. 30, 2016).....	41
<i>Tohono O’odham Nation v. Ducey, et al.,</i> No. CV-15-01135, 2015 U.S. Dist. LEXIS 124979 (D. Ariz. Sept. 16, 2015)	32
<i>Tohono O’odham Nation v. City of Glendale,</i> No. 11-16811, No. 11-16833, 2015 U.S. App. LEXIS 19407 (9th Cir. Nov. 6, 2015)	4
<i>Trapp v. Roden,</i> No. SJC–11863, 2015 WL 7356318 (Mass. Nov. 23, 2015).....	49
<i>Tulalip Tribes v. Suquamish Indian Tribe,</i> No. 13–35773, 2015 WL 4509235 (9th Cir. Jul. 27, 2015).....	26
<i>Turunen v. Creagh,</i> No. 2:13-CV-106, 2016 U.S. Dist. LEXIS 43158 (W.D. Mich. Mar. 31, 2016).....	28
<i>Tuttle v. Jewell,</i> No. 13-365, 2016 U.S. Dist. LEXIS 31398 (D.D.C. Mar. 11, 2016).....	5
<i>U.S. v. Billie,</i> No. 14–13843, 2015 WL 3450537, __ Fed. Appx. __ (11th Cir. Jun. 1, 2015)	54

<i>U.S. v. Bryant,</i> No. 12–30177, 2015 WL 4068824 (9th Cir. Jul. 6, 2015).....	44
<i>U.S. v. Harlan,</i> No. 15–1552, 815 F.3d 1100 (8th Cir. Feb. 16, 2016)	48
<i>U.S. v. Janis,</i> No. 14–3888, 2016 WL 191934 (8th Cir. Jan. 15, 2016)	47
<i>U.S. v. Washington,</i> No. 70–9213, 2015 WL 3504872 (W.D. Wash. Jun. 3, 2015).....	26
<i>U.S. v. Washington,</i> No. C70–9213, 2015 WL 4405591 (W.D. Wash. Jul. 17, 2015)	26
<i>U.S. v. Washington,</i> No. C70–9213, Subproceeding No. 89–3–09, 2015 WL 3451316 (W.D. Wash. May 29, 2015)	25
<i>United States v. Aubrey,</i> No. 13–10510, 2015 WL 5201800 (9th Cir. Sept. 8, 2015).....	13
<i>United States v. Osage Wind, LLC,</i> No. 14-CV-704, 2015 U.S. Dist. LEXIS 132480 (N.D. Okla. Sept. 30, 2015).....	44
<i>United States v. Zepeda,</i> No. 10–10131, 2015 WL 4080164 (9th Cir. Jul. 7, 2015).....	44
<i>Ute Indian Tribe of the Uintah & Ouray Reservation v. Utah,</i> No. 14-4028, 2015 WL 3705904 (10th Cir. June 16, 2015)	43
<i>Walker River Paiute Tribe v. United States HUD,</i> No. 3:08-CV-0627, 2015 U.S. Dist. LEXIS 166979 (D. Nev. Dec. 14, 2015)	14
<i>Williams v. Poarch Band of Creek Indians,</i> No. 14–594, 2015 WL 4104611 (S.D. Ala. Jul. 8, 2015).....	17
<i>Wilson v. Doe,</i> No. C15-629, 2016 U.S. Dist. LEXIS 41543 (W.D. Wash. Mar. 29, 2016).....	58
<i>Wolfchild, et al. v. Redwood County et al.,</i> No. 14–1597, 2015 WL 3616058 (D. Minn. Jun. 9, 2015).....	60
<i>Wyandot Nation v. United States,</i> No. 15-560C, 2016 U.S. Claims LEXIS 1 (Fed. Cl. Jan 4, 2015).....	64
<i>Wyoming v. United States DOI,</i> No. 2:15-CV-043-SWS (Lead Case); Case No. 2:15-CV-041, 2015 U.S. Dist. LEXIS 135044 (D. Wyo. Sept. 30, 2015)	23
<i>Yurok Tribe v. Department of the Interior,</i> No. 2014-1529, 2015 WL 2146614 (Fed. Cir. May 8, 2015).....	10