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May 25 -- Tribal Cigarette Distributor Can't Skirt Recordkeeping Rules.docx
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Daily News Clips

HOT TOPICS

BIA steps out of home-site lease oks (Navajo Times, May 25, 2017)

Bill introduced to keep Navajo Generating Station open (Navajo Times, My 25, 2017)

Secretary Zinke headed to National Congress of American Indians (Indianz.com, May 25, 2017)

Latest polling shows overwhelming support for Bears Ears (Char-Kootsa News, May 25, 2107)

Tribal Council votes to impeach Cherokee Chief/North Carolina (Citizen-Times, May 24, 2017)

Governor tells Lumbees he will pursue federal recognition (The Fayetteville Observer, May 25, 2017)

President proposes $119 Million budget for Office of Special Trustee for American Indians (Char-Kootsa Times, May 25, 2017)

South Dakota Man Who Shot Tribal Officer gets 20 Years (The Associated Press, May 25, 2017)

Memo to tenants about area homelessness called racist b Alaska Native group (KTUU, May 24, 2017)

INDIAN LEGISLATIVE, LEGAL, JUSTICE AND PUBLIC SAFETY ISSUES

Tribal Cigarette Distributor Can't Skirt Recordkeeping Rules – **See Attachment 1** (Law360, May 25, 2017)

Sioux Say They Belong In Dakota Access Pipeline Suit – **See Attachment 2** (Law360, May 25, 2017)

House Dems Tell Zinke Trump Can't Touch Monuments – **See Attachment 3** ((Law360, May 25, 2017)

ECONOMIC DEVELOPMENT AND TECHNOLOGY IN INDIAN COUNTRY

Health, Education and Human Services Committee Successfully concludes 2017 Navajo Language and Culture Revitalization (Native News Online, May 26, 2017)

HEALTH & EDUCATION IN INDIAN COUNTRY

Lawmakers once again seek fixes to 'broken' Indian Health Service (Indianz.com, May 25, 2017)

Bill Seeks More Indian Health Service Accountability – **See Attachment 4** (Law360, May 25, 2017)

TRIBAL LEADERSHIP & COMMUNITY NEWS

Swinomish approve changes to constitution (Skagit Valley Herald, May 25, 2017)

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Bill Seeks More Indian Health Service Accountability

Share us on: By **Christine Powell**

Law360, New York (May 25, 2017, 6:30 PM EDT) -- Three Republican senators floated legislation Thursday aimed at boosting transparency and accountability at the Indian Health Service, in an effort to guarantee that Native Americans across the country receive reliable and quality health care.

U.S. Sens. John Barrasso of Wyoming, John Thune of South Dakota and John Hoeven of North Dakota introduced the Restoring Accountability in the Indian Health Service Act of 2017, saying in a news release that a “lack of oversight, financial integrity and employee accountability” at the agency has caused patients, families and communities to receive “substandard health care services.”

The U.S. Department of Health and Human Services agency is responsible for providing federal health care services to 2.2 million Native Americans across more than 500 federally recognized tribes spanning 36 states, according to the IHS' website.

“For years, the Indian Health Service has fallen short in providing high quality medical care throughout Indian Country,” Barrasso said in a statement. “The long history of failures at IHS are unacceptable and will not be tolerated. Our bill will ensure tribal members get the medical care they desperately need and deserve. Our legislation also increases transparency and accountability in Washington. This will go a long way in changing the culture at IHS to one that finally puts patients first.”

In particular, the measure would enhance accountability and transparency at the IHS by expanding removal and discipline authorities for “problem employees” at the agency, calling on the U.S. Government Accountability Office to prepare multiple reports, including one concerning patient care and harm at the IHS, and requiring the head of the agency to issue standards for tracking the timeliness of health care services provided at the agency’s facilities, according to the release.

Additionally, the legislation would boost staff recruitment and retention at the IHS by giving the head of the HHS direct hiring power to avoid long delays in the hiring process,

addressing gaps in IHS personnel by allowing the HHS head to establish competitive pay scales and offer temporary housing help to medical professionals, and expanding the eligibility for some IHS employees to participate in a loan repayment program, the release said.

“It would be a significant understatement to say tribal members deserve better health care than what they’re accustomed to receiving from IHS,” Thune said in a statement. “After hearing about one heartbreaking story after another from tribal members in South Dakota and throughout the Great Plains area, it’s time to move away from talking about reforming IHS and begin making positive and systemic changes that lead to better care and greater oversight.”

According to the release, Republican U.S. Reps. Kristi Noem of South Dakota, Rob Bishop of Utah, Cathy McMorris-Rodgers of Washington state, and Markwayne Mullin of Oklahoma have introduced an identical bill in the House of Representatives.

Last year, Barrasso and Thune floated a similar bill, called the Indian Health Service Accountability Act of 2016, which passed out of the Senate Indian Affairs Committee but ultimately went no further, Thursday's release noted.

Representatives for IHS did not respond immediately to requests for comment Thursday.

--Editing by Edrienne Su.

Sioux Say They Belong In Dakota Access Pipeline Suit

Share us on: By **Andrew Westney**

Law360, New York (May 25, 2017, 6:43 PM EDT) -- A group of Sioux tribe members on Wednesday pressed a D.C. federal judge to let them take part in a challenge to the U.S. Army Corps of Engineers' approvals for the Dakota Access pipeline in North Dakota, saying that they may be needed in the suit to preserve claims that the pipeline violates their religious rights.

In late March, the Army and Dakota Access LLC both asked the court not to allow Sara Jumping Eagle and additional members of the Standing Rock Sioux tribe, the Cheyenne River Sioux tribe and others to intervene in the tribes' suit against the agency, arguing that the members are already adequately represented by the tribes and that the proposed intervenors' claims for damages against President Donald Trump for allegedly interfering with an environmental review of the project would slow down the case.

The Jumping Eagle group said in a reply on Wednesday that neither the agency nor Dakota Access had countered the members' argument that individuals are better suited to assert their own religious claims under the Religious Freedom Restoration Act than any government, including the two tribes' governments.

Although the tribes' standing to bring RFRA claims hasn't yet been decided by the court, if they are found to lack standing, "the Jumping Eagle intervenors are uniquely necessary to assert and preserve [the court's] jurisdiction," according to the reply.

The Jumping Eagle group **asked to be allowed to intervene** in the suit on Mar. 21, alleging that the group members, who all "own, live on or stand to inherit lands that will be impacted adversely by the Dakota Access pipeline," may not be adequately represented by Standing Rock and Cheyenne River in the suit, in part because the tribes don't necessarily share the group's Lakota faith.

The Jumping Eagle group also claimed that by signing a Jan. 24 presidential memorandum meant to push the Dakota Access pipeline forward, Trump "acted personally in seeking to force a policy preference by coercing the administrative process outside of any personal

expertise or legal right."

In opposing the intervention bid in March, the Corps said that it came too late and that the claims for damages against Trump "create an additional layer of complexity that is likely to cause undue delay and therefore prejudice the existing parties."

If the group is allowed to intervene, the court should only do so on the condition that Trump be let out of the case, the Corps said at the time. The agency also contended that the Sioux tribes adequately represent the Jumping Eagle group because they have brought similar claims under several federal laws.

Dakota Access also opposed the group's intervention in a March filing, saying that the group hasn't provided evidence showing that it has a legally protected interest in the result of the suit, such as evidence that its members use Lake Oahe or practice their Lakota faith in a way that could be substantially burdened by the Corps in violation of the RFRA.

And the group could have raised many of its claims much earlier in the administrative process for the pipeline, Dakota Access said.

The Jumping Eagle group said in Wednesday's filing that claims that its complaint is untimely "cannot even remotely apply to their administrative challenge" involving RFRA and due process claims to **the agency's Feb. 7 decision** to cut off a planned environmental review, given that the proposed intervenors filed their complaint just 13 days later.

The agency and Dakota Access didn't explain how the tribes could address personal religious practices better than individuals, and "RFRA's presumption against governmental standing demonstrates that the preferred statutory focus is the individual's assertion of their personal religious rights," the proposed intervenors said.

Bruce I. Afran, who represents the Jumping Eagle group, told Law360 on Thursday that there is no reason the claims against Trump should cause any delay in the suit, as the court "can simply segregate that into a different action" if it sees fit.

Representatives for the Standing Rock Sioux tribe, the Cheyenne River Sioux tribe, the Corps and Dakota Access were not immediately available to comment on Thursday.

The Standing Rock Sioux tribe is represented by Patti A. Goldman, Jan E. Hasselman and Stephanie Tsosie of Earthjustice.

The U.S. Army Corps of Engineers is represented by Matthew M. Marinelli and Erica M. Zilioli of the U.S. Department of Justice.

Intervenor the Cheyenne River Sioux tribe and proposed intervenor Steve Vance are represented by Conly J. Schulte, Joseph V. Messineo and Nicole E. Ducheneaux of Fredericks Peebles & Morgan LLP.

Intervenor Dakota Access LLC is represented by Kimberly H. Caine, William J. Leone and Robert D. Comer of Norton Rose Fulbright, Edward V.A. Kussy of Nossaman LLP, and William S. Scherman and David Debold of Gibson Dunn & Crutcher LLP.

The Jumping Eagle group of proposed intervenors is represented by Oliver B. Hall of the Center for Competitive Democracy and Bruce I. Afran.

The case is Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers, case number 1:16-cv-01534, in the U.S. District Court for the District of Columbia.

--Additional reporting by Jimmy Hoover, Keith Goldberg and Christine Powell. Editing by Stephen Berg.

Tribal Cigarette Distributor Can't Skirt Recordkeeping Rules

 By **Christine Powell**

Law360, New York (May 25, 2017, 4:13 PM EDT) -- A D.C. federal judge held Wednesday that Contraband Cigarettes Trafficking Act recordkeeping requirements apply to Native American entities, a blow for a group of tribally-owned cigarette distributors that sought a declaration that they do not have to comply with the requirements.

U.S. District Judge Christopher R. Cooper granted the federal government summary judgment in a lawsuit brought by Ho-Chunk Inc., Woodlands Distribution Co., HCI Distribution Co. and Rock River Manufacturing Co. in the hopes of preventing the Bureau of Alcohol, Tobacco, Firearms, and Explosives from compelling them to hand over some of their business records to the agency.

The distributors launched their case in August 2016, shortly after the ATF sent them letters declaring its intent to inspect and copy records of theirs under the CCTA, which is meant to curb untaxed cigarette trafficking. The law makes it a crime to ship, possess, sell, distribute or purchase contraband cigarettes and, among other things, requires anyone who distributes more than 10,000 cigarettes to maintain records about their distribution.

While the distributors had argued throughout the proceedings that the CCTA's recordkeeping requirements do not apply to tribal entities and that Indian Country does not fall within the territorial scope of the law's recordkeeping provisions, Judge Cooper ultimately disagreed.

"Plaintiffs do not seek to challenge the decades of authority upholding the general applicability of the CCTA to Indian country," the judge said. "The task they appoint themselves, however, is arguably even more audacious: They argue that, while much of the CCTA may apply to them, the act's recordkeeping provisions do not. The trouble is that neither the statute nor its implementing regulations support that reading."

Judge Cooper also rejected the distributors' contention that amendments Congress made to the CCTA in 2006, largely to beef up its enforcement provisions, "somehow suggest that the recordkeeping provisions exclude Indian Country," finding that, "if anything," the amendments confirm that the law's older provisions were meant to have a broad reach.

As for the distributors' argument that they are instrumentalities of a tribal government and therefore not "persons" covered by the CCTA, the judge said that it was unclear whether they are actually tribal instrumentalities and that they had appeared to concede that the issue was a factual dispute precluding summary judgment in their favor.

Assuming they are tribal instrumentalities, though, Judge Cooper nevertheless concluded that they are covered by the meaning of "persons" within the law, taking no stock in the authorities they had cited in an effort to bolster their argument to the contrary.

"The problem for plaintiffs is that these authorities are no match for the plain text of the statute — which clearly signals that tribal governments (and their agencies and instrumentalities) are intended to be covered 'persons' under the CCTA," the judge said.

Representatives for the parties did not respond immediately to requests for comment Thursday.

The distributors are represented by John M. Peebles, Patricia A. Marks and B. Benjamin Fenner of Fredericks Peebles & Morgan LLP.

The federal government is represented by Benton G. Peterson of the U.S. Department of Justice.

The case is Ho-chunk Inc. et al. v. Lynch et al., case number 1:16-cv-01652, in the U.S. District Court for the District of Columbia.

--Editing by Alyssa Miller.

House Dems Tell Zinke Trump Can't Touch Monuments

Share us on: By **Christine Powell**

Law360, New York (May 25, 2017, 5:21 PM EDT) -- A group of 86 Democratic U.S. representatives told Interior Secretary Ryan Zinke on Thursday that Congress, not the president, has the authority to revoke or shrink national monuments, meaning that his ongoing review of certain monuments at President Donald Trump's direction is a waste of time and money.

The lawmakers, led by House Natural Resources Committee Ranking Member Raúl Grijalva of Arizona, sent Zinke a letter pointing out that the Constitution says "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

While Congress has assigned federal land management responsibilities to the executive branch, including by giving the president the authority under the Antiquities Act to designate national monuments, it has "not delegated the authority to significantly diminish or abolish an existing national monument," the letter said.

As such, they questioned the validity of reports that Zinke is compiling under an **executive order** signed by Trump in April, which directed him to review monument designations or expansions by presidents going back to Jan. 1, 1996, and to consider whether they balanced the protection of landmarks with the appropriate use of federal lands and were based on adequate public outreach and coordination with stakeholders.

The "ostensible purpose" of the review is to aid Trump in revoking or shrinking monuments, a House Natural Resources Committee press release announcing the letter said, adding that Zinke is expected to deliver a preliminary report to the White House in June and a more comprehensive report in August "recommending weakened protections for some national monuments and potentially the revocation of monument status at certain sites."

Given that Trump lacks that power, though, "developing a report to the president regarding the use of authority he does not possess is a misuse of your time and the public's money," the lawmakers told Zinke in their letter.

Trump has criticized previous administrations' use of the Antiquities Act, which was passed by Congress and signed into law by former President Theodore Roosevelt in 1906 and allows presidents to protect historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.

"In December of last year alone, the federal government asserted this power over 1.35 million acres of land in Utah, known as Bears Ears — I've heard a lot about Bears Ears, and I hear it's beautiful — over the profound objections of the citizens of Utah," Trump said at a signing ceremony for the executive order. "The Antiquities Act does not give the federal government unlimited power to lock up millions of acres of land and water, and it's time we ended this abusive practice."

Earlier this month, the U.S. Department of the Interior opened a **public comment** period for certain national monument designations, including Bears Ears, with Zinke saying at the time that the process "finally gives a voice to local communities and states when it comes to Antiquities Act monument designations."

"There is no predetermined outcome on any monument," he said. "I look forward to hearing from and engaging with local communities and stakeholders as this process continues."

To that end, a spokeswoman for the DOI told Law360 in an email Thursday that "no decisions have been made about any monument yet, and the secretary encourages people to log on to regulations.gov or mail in their comments by the deadline to ensure their voices are heard."

A spokeswoman for the White House directed inquiries to the DOI.

The Bears Ears designation, in particular, has come under fire not only from Trump but from Republican lawmakers, with House Natural Resources Committee Chair Rob Bishop of Utah saying shortly after the designation that the decision was "alien to the desires of the overwhelming number of Native Americans who live in this area, who will use this area, who approached us on how they wanted to function on this land."

But tribal supporters of the designation, including the Bears Ears Inter-Tribal Coalition — a group representing the Hopi Tribe, Navajo Nation, Ute Indian Tribe, Ute Mountain Ute

Tribe and Zuni Tribe — have said that the monument was more than 80 years in the making and that Zinke has “ignored meeting requests from sovereign nations to meet regarding Bears Ears since January."

Meanwhile, Democrats on the House Committee on Oversight and Government Reform have disputed Republican lawmakers' contention that there was not enough local input on Bears Ears, saying that documents they have obtained **contradict claims** that the Obama administration failed to adequately consult with the community or get local support before its designation.

Earlier this week, a conservation group accused the DOI of ignoring its request for information about the Obama administration’s deliberations over five national monuments, including Bears Ears — documents it hopes will shed light on what it called Zinke’s “sham review” of their designations and **settle allegations** that their designations were made in the absence of public input.

--Additional reporting by Andrew Westney, Kat Sieniuc and Michael Phillis. Editing by Sara Ziegler.