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Sent: 2017-05-08T13:48:44-04:00
Importance: Normal
Subject: OPA -IA Daily News Clips May 8, 2017
Received: 2017-05-08T13:50:55-04:00
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May 5 -- Tribe Member Fights Enerplus' Bid For Win In Royalty Row.docx
May 5 -- California Tribe Battles Bid to Toss Federal Recognition Suit.docx
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Daily News Clips

HOT TOPICS

Remembering Hanna: National Day of Awareness for Missing & Murdered Native Women (KRTV Great Falls News/Montana, May 7, 2017)
Seattle Indian Center's new Project Beacon is a three-year program serving Native victims of commercial sex exploitation and sex trafficking (Indian Country Today, May 8, 2017)
Tribal Leaders Call on the Trump Administration to Preserve Bears Ears National Monument (Native News Online, May 8, 2017)
Native American advocates size up Trump administration (CNN, May 6, 2017)
Interior Chief Starts Utah Review – Zinke on 4-Day trip to red rock monuments region (The Associated Press, May 8, 2017)
Terry Tempest Williams: Will Bears Ears be the next Standing Rock? (Indianz.com, May 8, 2017)
Zinke says monument designations have been an 'effective tool,' though 'very few … are to the scale of recent actions' (The Salt Lake Tribune, May 7, 2017)
Zinke says he may favor shrinking monuments (The Villages Suntimes, May 8, 2017)
Zinke met by protest as he arrives to consider Utah voices on national monuments (KLS.com, May 7, 2017)
The Latest: US Interior secretary meets with tribal leaders (The Associated Press, May 7, 2017)
Hopi Reservation High School Investigates Special Education (Indian Country Today, May 7, 2017)
Widow awarded nearly $2 million for traffic death involving her husband (The Oklahoman, May 7, 2017)
University of Oregon signs understanding with Native Tribes (Emerald Media, May 6, 2017)
Daines: Police must improve response to missing, murdered Native women (The Missoulian, May 5, 2017)
Tribes May Lose Leverage for Casinos Without DOI Fail-Safe – **See Attachment 1** (Law360, May 5, 2017)
Oklahoma Tribes Demand Sanctions Against Pipeline Company – **See Attachment 2** (Law360, May 5, 2017)
Tribe Member Fights Enerplus' Bid For Win In Royalty Row – **See Attachment 3** (Law360,

May 5, 2017)
California Tribe Battles Bid to Toss Federal Recognition Suit – **See Attachment 4** (Law360, May 5, 2017)
BLM Asks 10th Circuit to Pause Fracking Rule Litigation – **See Attachment 5** (Law360, May 5, 2017)

INDIAN LEGAL, LEGISLATIVE/JUSTICE & PUBLIC SAFETY ISSUES

Trump puts $654 Million Native American Housing Block Grant in Jeopardy (Native News Online, May 7, 2017)

Federal judge who worked to increase diversity in legal profession se to retire (The Washington Post, May 4, 2017)

ECONOMIC DEVELOPMENT AND TECHNOLOGY IN INDIAN COUNTRY

North Dakota Tourism Alliance promotes tourism in Indian Country (Minot Daily News, May 8, 2017)

Economic summit to promote tribal community development (The Associated Press, May 5, 2017)

HEALTH & EDUCATION IN INDIAN COUNTRY

Mark Trahant: Republican Party owns 'mean-spirited' health care bill (Indianz.com, May 8, 2017)

Three Hundred Native American High School Students Will Get Help for College Preparation from American Indian College Fund (American Indian College Fund News Release, May 8, 2017)

ENERGY, NATURAL RESOURCES AND ENVIRONMENT

Kootenai Tribe Hosting Sturgeon Release (Bonner County Daily Bee, May 7, 2017)

The critical coal plan Trump may not be able to save (New York Post, May 6, 2017)

TRIBAL LEADERSHIP & COMMUNITY NEWS

An Inspiration for Youth: Grandma Thomas Walked 80 Miles Each Year to Raise Funds for Youth Complex (Native News Online, May 7, 2017)

Nonprofit Working to Protect Homes in South Dakota (The Associated Press, May 6, 2017)

Montana town to honor Sacagawea with new park (Billings Gazette, May 6, 2017)

Community members invited to take part at Counselor Chapter house southeast of Farmington (Farmington Daily Times, May 7, 2017)

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BLM Asks 10th Circ. To Pause Fracking Rule Litigation

Share us on: By **Juan Carlos Rodriguez**

Law360, New York (May 5, 2017, 4:18 PM EDT) -- The U.S. Bureau of Land Management asked the 10th Circuit on Friday to hold in abeyance litigation over its rule imposing restrictions on fracking practices on federal and tribal lands, saying the Obama-era regulations may not reflect the Trump administration's policies.

The BLM defended its right to promulgate the rule, which was **overturned** by a federal district judge in June, but said it needs time to review the measure to see if it needs revision to match the new administration's vision or if it should be completely rescinded. The agency said it would like the litigation held in abeyance until it completes its review of the rule.

"The most efficient means of resolving this case — for all involved parties and for the court — is to wait until BLM has finished the process of reconsidering the Hydraulic Fracturing Rule. In the meantime, federal and Indian lessees will continue to operate under the regulations that governed their activities under the prior regulations," the agency said. "When BLM's process is complete, the court can consider the issue of BLM's authority in the context of the specific rules (if any) that BLM claims authority to promulgate."

The Tenth Circuit in March asked the BLM if it **wanted** to proceed to oral arguments that were scheduled later that month with the same position it took during the briefing phase, noting the election of President Donald Trump could have spurred a change in the agency's legal strategy.

States, industry groups and a Native American tribe have challenged the rule imposing restrictions on hydraulic fracturing practices on federal and tribal lands. The BLM issued the rule during the administration of President Barack Obama in March 2015, imposing stringent well casing and wastewater storage requirements, as well as requiring drillers to disclose what chemicals they're using in fracking operations.

U.S. District Judge Scott Skavdahl, who in September 2015 blocked implementation of the rule until the litigation over its legality played out, said in June that the BLM overstepped its authority in issuing the rule because Congress never directed it to enact regulations

governing fracking.

The agency appealed Judge Skavdahl's ruling to the Tenth Circuit, and said Friday it finds itself in a quandary about the litigation.

"In holding that BLM lacks authority to ensure safe operations on federal and Indian lands, the district court made a serious and consequential error about federal authority and the interpretation of statutes that BLM administers. BLM now faces a significant litigation dilemma: In order to seek review of the district court's error, the agency would have to defend a rule that it no longer considered appropriate to protect federal and Indian lands," the BLM said.

But it said Trump's executive order to review and revise or rescind the rule tipped the scales.

"BLM is actively engaging in [an] administrative process and currently expects to act within the 90-day time frame that it previously described to the court," it said.

The federal government is represented by J. David Gunter II and Andrew C. Mergen of the U.S. Department of Justice and Richard McNeer of the Office of the Solicitor for the U.S. Department of the Interior.

The case is State of Wyoming et al. v. Jewell et al., case number 16-8068, in the U.S. Court of Appeals for the Tenth Circuit.

--Additional reporting by Kat Greene. Editing by Jill Coffey.

Tribe Member Fights Enerplus' Bid For Win In Royalty Row

Share us on: By **Christine Powell**

Law360, New York (May 5, 2017, 3:40 PM EDT) -- A Three Affiliated Tribes member told a North Dakota federal court Thursday that an oil and gas exploration company cannot prevail on its remaining claims in a lawsuit stemming from a royalty interest deal, questioning its standing.

Tribe member Wilbur Wilkinson lodged a response in opposition to Enerplus Resources Corp.'s **second motion for summary judgment** against him, his former attorney Ervin Lee and his current attorney Reed Soderstrom of Pringle & Herigstad PC, asserting that it lacks standing and cannot score a win on the rest of its claims.

Enerplus filed the motion after U.S. District Judge Daniel L. Hovland in February granted its first motion for summary judgment, finding that it was entitled to recover an excess $2.96 million it had mistakenly paid to the trio under the royalty interest deal.

The case's roots stretch back to October 2010, when Wilkinson signed a settlement of earlier disputes with Peak North Dakota LLC that required the company to assign him an overriding royalty interest in oil and gas leases on lands within the Fort Berthold Indian Reservation, with a percentage of Wilkinson's interest assigned to Lee, who was his attorney at the time.

Shortly afterward, Peak North Dakota merged with Enerplus, which filed the instant lawsuit against Wilkinson, Lee and Wilkinson's new attorney, Soderstrom, in May 2016, claiming in part that it had accidentally deposited $2.96 million worth of excess payments for Wilkinson and Lee into Soderstrom's trust account due to a misplaced decimal point and that they would not return the money.

When granting Enerplus' **first motion for summary judgment** in February, Judge Hovland said that, when applied to the case, "simple and straightforward" North Dakota principles of law holding that money paid mistakenly can be recovered when the recipient is not entitled to it "clearly compel" the money to be returned to Enerplus.

With its second motion for summary judgment, Enerplus is looking for a win on the rest of its claims, which seek declarations that Wilkinson is precluded from litigating disputes arising from the settlement agreement in tribal court, that the tribal court cannot exercise jurisdiction over Enerplus and that Wilkinson must pay Enerplus' attorneys' fees and costs in the instant case and the tribal court case, plus a permanent injunction to halt the tribal court row.

While Enerplus has said in support of its bid that the royalty deal and settlement agreement contain forum selection clauses stating that any disputes must be resolved in either state or federal court in North Dakota, Wilkinson shot back in his opposition Thursday that "plaintiff lacks standing to assert a forum selection clause regarding minerals that were obtained and conveyed on the Fort Berthold Indian Reservation without any proof of its ownership through a Bureau of Indian Affairs mineral lease."

"Plaintiff has failed to provide the requisite proof to show it has standing to assert the forum selection clause," Wilkinson continued. "Assumptions have been made that plaintiff steps into the shoes of Peak North through forum selection provisions. However, leasehold requirements mandated by the BIA have been summarily disregarded."

Not only does Enerplus lack standing because it has failed to cough up the merger agreement and it is not a party to any agreement with Wilkinson, but the tribal court has on three separate occasions determined that it was the correct venue to adjudicate the dispute and, as a matter of comity, the federal court should it allow it to proceed with overseeing that case, he said.

Additionally, Wilkinson argued that Enerplus cannot recover attorneys' fees, saying he "should not be punished by plaintiff being awarded [the fees] when plaintiff has been less than forthcoming, unresponsive to previous requests and gave Wilkinson assurances they would provide the merger agreement (which still has not been done)."

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

Enerplus is represented by Neal S. Cohen of Fox Rothschild LLP.

Wilkinson is represented by Reed Soderstrom of Pringle & Herigstad PC. Soderstrom is

represented pro se. Lee is represented pro se.

The case is Enerplus Resources (USA) Corp. v. Wilkinson et al., case number 1:16-cv-00103, in the U.S. District Court for the Western District of North Dakota.

--Editing by Sara Ziegler.

Analysis

Tribes May Lose Leverage For Casinos Without DOI Fail-Safe

Share us on: By **Andrew Westney**

Law360, New York (May 5, 2017, 10:31 PM EDT) -- A recent Tenth Circuit ruling that the U.S. Department of the Interior lacks authority to approve procedures for the Pueblo of Pojoaque to continue its New Mexico casino operations in the absence of a state compact could leave the Pueblo and other tribes with a Hobson's choice of abandoning gaming altogether or taking deals they don't like from states.

After negotiations for a new gaming compact broke down between the Pueblo and New Mexico and its former compact expired in June 2015, the secretary of the interior had asserted the ability to issue procedures under the Indian Gaming Regulatory Act to permit the tribe to continue offering gaming at its Buffalo Thunder Resort & Casino and Cities of Gold Casino Hotel.

But the Tenth Circuit **said in an April 21 opinion** that IGRA only allows procedures to be issued when a federal court has ruled that a state failed to negotiate toward a compact in good faith — a course New Mexico blocked by asserting its sovereign immunity to such a suit by the tribe.

The key question in the case, attorneys say, is how to maintain tribes' right to offer gaming and states' right to have a say in how that gaming is conducted under IGRA.

The Tenth Circuit came down firmly in favor of New Mexico, saying IGRA wasn't meant to guarantee tribes the chance to offer gaming under any circumstances, and that the possibility of allowing the DOI to issue procedures for the Pueblo after it didn't sign a new compact with the state "fundamentally alters the bargaining power of the parties and undoes Congress' delicate balancing of the competing state and tribal interests at stake."

But for tribes seeking to open casinos or reach a new deal, "IGRA was really designed to keep the states' role limited and to protect the tribes' fundamental sovereign right to engage in gaming," Procopio Cory Hargreaves & Savitch LLP partner Kerry K. Patterson said.

"Secretarial procedures are really designed to be a safeguard against states that refuse to negotiate in good faith, and it's one of those issues that Congress foresaw when it passed IGRA," Patterson said.

Before its 2001 gaming compact with New Mexico expired in 2015, the Pueblo of Pojoaque rejected a new compact proposed by the state that the tribe claimed would have increased the percentage of revenue the tribe must share with the state from 8 percent to 10 percent without giving anything of value in return.

Despite failing to reach a deal with the state, Pojoaque has been able to keep its casino open under an agreement with the U.S. Attorney's Office for the District of New Mexico, which allowed the tribe to continue operating under the same terms as the 2001 agreement while litigation over the compact continues.

However, New Mexico still considers the tribe's casino operations illegal without a tribal-state gaming compact in place, and took the DOI to court to cut off the possibility of secretarial procedures allowing the Pueblo to avoid having to sign a compact.

Now, the Tenth Circuit's ruling threatens the future of the Pueblo's casino by depriving the tribe of any real leverage in gaming compact negotiations, according to Scott Crowell of the Crowell Law Office, who represents the Pueblo in the case.

In passing IGRA, Congress "went out of their way to make sure tribes have recourse to avoid the very circumstances the Pueblo is now in, where the state essentially has all the power now to completely deprive the Pueblo of its statutory and sovereign rights by simply hiding behind 11th Amendment immunity and making whatever demands, with or without merit, at the negotiating table," Crowell said.

The case is likely to have a nationwide impact by providing a "road map for other states to simply steamroll tribes in the compact negotiation process," Crowell said.

While IGRA-related suits aren't uncommon in federal courts, the law has been largely successful in bringing states and tribes to the table to put together mutually beneficial compacts, attorneys say.

But that success has, in part, hinged on tribes' ability to bring suit over whether states have

negotiated toward a gaming compact in good faith in states that haven't waived their sovereign immunity to such litigation, including California.

The Tenth Circuit's ruling will likely give an incentive to drive a harder bargain to states that haven't waived their immunity, like New Mexico, where other Pueblos have signed on to the same compact the Pojoaque rejected, attorneys say.

For tribes facing the possibility of extensive litigation — or even no gaming at all without a compact if the Tenth Circuit's ruling on the DOI procedures stands — accepting the compact a state offers may be as good as it gets.

"It's a calculation about what's going to end up being the better deal, even if you're looking at two deals that aren't that great," Dorsey & Whitney LLP senior attorney James Nichols said.

And the ruling brings into question whether IGRA can function at all without procedures, as the Pueblo contended that if the portion of the law allowing procedures is removed, other parts of the law would have to be changed to give the tribe a potential remedy when a state asserts immunity to a good faith suit.

The Tenth Circuit rejected that argument, saying IGRA can function as intended even when states can assert immunity, because the federal government could potentially sue a state itself to enforce IGRA and a tribe might be able to sue the government to make that happen.

But getting the government to sue New Mexico would be "a very, very difficult task," Crowell said, adding that Congress meant for tribes to protect their own interests under the law.

While Pojoaque intends to ask the Tenth Circuit for a rehearing or a rehearing en banc, the Tenth Circuit's ruling puts more pressure on the tribe and the federal government to keep the tribe's gaming business viable.

The deal between the Pueblo and the federal government to keep the tribe in business might be difficult for New Mexico to undermine, as "the state may be forced to reckon with the fact that the United States is the only one who can enforce, or not, any prohibition on gaming by the tribe," Nichols said.

Yet the state has other means to inhibit the tribe's gaming, including fining third-party vendors working with the tribe — a practice that prompted Pojoaque to file a separate suit to stop that effort.

In the vendor suit, the Tenth Circuit in March kept an injunction in place against New Mexico after the tribe claimed that the state's gaming control board had threatened the tribe's major vendors with millions of dollars in fines, causing several of those vendors to stop working with the tribe and putting its casinos at risk of imminently shutting down.

But following the ruling on secretarial procedures, the Tenth Circuit asked the Pueblo and New Mexico what impact they believe the ruling should have on the tribe's suit.

If the Tenth Circuit agrees with the state in the vendor case — which **argued in a May 1 brief** that the court's earlier ruling backs the notion that a balance of state and tribal interests must favor New Mexico's protection of its gaming environment — the tribe may struggle to keep its casino going, even with the federal government's permission to do so, attorneys say.

Though IGRA's framework for tribal gaming typically works, it remains to be seen if the Pojoaque's situation could be "a turning point toward disintegration of that process, more impasses and more standoffs, or if something is going to give as they continue to fight it out there," Nichols said.

The Pueblo's battle could even lead to lawmakers revisiting IGRA at some point, Nichols added.

"If this leads to more disputes in other states or remains isolated, that will be what determines if Congress gets involved again," he said.

The DOI consolidated cases are State of New Mexico v. DOI et al., case numbers 14-2219 and 14-2222, in the U.S. Court of Appeals for the Tenth Circuit.

The vendor case is Pueblo of Pojoaque et al. v. State of New Mexico et al., case number 16-2228, in the U.S. Court of Appeals for the Tenth Circuit.

--Editing by Philip Shea and Aaron Pelc.

Calif. Tribe Battles Bid To Toss Federal Recognition Suit

 By **Christine Powell**

Law360, New York (May 5, 2017, 5:58 PM EDT) -- The Tsi Akim Maidu of Taylorsville Rancheria fought back Thursday against the U.S. Department of the Interior's bid to nix the tribe's suit seeking to compel the federal government to find that the tribe never lost its status as federally recognized, rejecting the contention that its claims are barred by a statute of limitations.

The tribe filed a response in opposition to the DOI's **motion to dismiss** its suit, which seeks to challenge a June 2015 letter from then-Assistant Secretary of Indian Affairs Kevin K. Washburn stating that the federal government's sale of the Taylorsville Rancheria in 1966 pursuant to the California Rancheria Act terminated a federal relationship with a tribe.

While the DOI had argued that the suit's claims first accrued well outside the six-year statute of limitations applicable to civil actions brought against the United States and that they are therefore barred, the tribe argued that "this challenge to AS-IA's decision, alleging lack of agency authority, is within the statute of limitations as it is being brought within six-years after the June 9, 2015 decision."

Although the DOI had argued that the tribe cannot identify any law obligating the department to add it to the list of federally recognized tribes and that it therefore has not pled an agency action that is being wrongfully withheld, the Tsi Akim Maidu said it had simply asked the court to review the June 2015 decision and to determine whether the California Rancheria Act affects its status as a tribe, noting that it is "neither explicitly nor implicitly seeking to obtain status."

As for the DOI's argument that the case had been filed in the wrong venue because many of the events giving rise to the tribe's claims occurred near, but not in, the Northern District of California, the tribe shot back, "That venue is proper in this district because majority members of the plaintiff live in this district."

Transferring the case to the Eastern District of California or the District of Columbia, as the DOI had suggested as an alternative, would "cause significant hardship on plaintiff, and no

property or local interests are involved in this action mandating a transfer to a different district," the tribe added.

The Tsi Akim Maidu of Taylorsville Rancheria filed its suit in December, petitioning the court to compel the DOI to find as a matter of statutory interpretation that the tribe never lost its status as a federally recognized Indian tribe and to restore to the tribe all the privileges, titles and interests that come from that status.

"Nothing in the animus of the CRA indicates that the sale of the ranch terminates the status of the tribe," the complaint said. "Further, nothing in the animus of the CRA indicates that the purchase and designation of ranch creates the status of the tribe … The defendants erroneously extend the reasoning of the CRA to conclude that the sale of the ranch corresponds with the termination of the status of the tribe."

Representatives for the tribe did not immediately respond to requests for comment on Friday. The federal government does not comment on pending litigation.

The Tsi Akim Maidu of Taylorsville Rancheria is represented by Mogeeb Weiss of Weiss Law PC.

The federal government is represented by Brian J. Stretch, Sara Winslow and Michelle Lo of the U.S. Attorney's Office.

The case is Tsi Akim Maidu of Taylorsville Rancheria v. U.S. Department of the Interior et al., case number 3:16-cv-07189, in the U.S. District Court for the Northern District of California.

--Additional reporting by Adam Lidgett. Editing by Jill Coffey.

Okla. Tribes Demand Sanctions Against Pipeline Co.

Share us on: By **Nicole Narea**

Law360, New York (May 5, 2017, 7:19 PM EDT) -- Tribal landowners asked an Oklahoma federal judge Thursday to impose sanctions on Enable Midstream Partners LP for defying court orders and failing to produce discovery documents as part of a suit challenging the company's use of a natural gas pipeline on their property.

The landowners argued that Enable's newly appointed McAffee & Taft counsel attempted to skirt sanctions and "re-write the history" of the discovery dispute over the company's initial refusal to provide any financial or transmission information related to the pipeline. They also requested attorneys' fees on the basis that Enable has been "disingenuous" about its ability to produce documents that it had available and had initiated an unnecessary and time-consuming battle over discovery.

"Like most revisionist histories, Enable's account does not hold up to scrutiny," the landowners' motion says. "Despite the spin Enable tries to place on the facts, [the landowners'] motion to compel and for sanctions was, and remains, well founded."

Enable initially filed suit in 2015 to seek an easement by condemnation on property allotted to tribal landowners, which include members of the Kiowa, Comanche, Caddo, Apache and Cherokee tribes. The landowners countersued days later, alleging that Enable had kept operating its pipeline after the Bureau of Indian Affairs vacated an earlier approval by an agency official of a new 20-year easement across the allotment in Caddo County.

Enable's suit was tossed in August on the basis that the Kiowa had a substantial interest in the pipeline's land, and the company was found liable on the landowners' trespass claim in March and ordered by the court to move the pipeline within six months.

In their Thursday motion, the landowners blasted Enable's claims that the requested information was not available in the correct format and irrelevant to the suit's already well-established facts, asserting that they never asked for the information in a specific format and that the court had already deemed the information relevant. They cited a November order concerning the damages available in the dispute, which suggested that accounting

and disgorgement of Enable's profits could be a potential remedy.

Although Enable's new counsel insisted that they were not "recalcitrant in discovery," the landowners claimed that their tone was "at odds with all of Enable's previous communications" that had prompted them to file the motion to compel the company to produce the documents in the first place.

The change in Enable's apparent willingness to cooperate should not erase its prior reluctance to comply with court orders, the motion states. The landowners stated that Rule 37, which governs cooperation in discovery, unequivocally requires that Enable be sanctioned as a result.

"In this case, sanctions are necessary not only to remedy the unnecessary costs Enable caused Plaintiffs to incur in pursuing responses their legitimate discovery requests, but also to penalize Enable's misconduct," the landowners said.

The tribes also pushed back against Enable's defense that accounting and disgorgement are not "always" available in trespassing cases, citing "well-established" precedent that a party "may not resist discovery by challenging the merits of a claim."

Counsel and representatives for Enable and the landowners did not respond to requests for comment Friday.

The landowners are represented by C. Steven Hager of Oklahoma Indian Legal Services and by David C. Smith, Dustin T. Greene and Catherine F. Munson of Kilpatrick Townsend & Stockton LLP.

Enable is represented by Clint Russell, Kassie N. McCoy, Stratton Taylor and Toney D. Foster of Taylor Foster Mallett Downs Ramsey & Russell and by John. A. Kenney, Michael K. Avery and Michael D. McClintock of McAfee & Taft.

The case is Davilla et al. v. Enable Midstream Partners LP et al., case number 5:15-cv-01262, in the U.S. District Court for the Western District of Oklahoma.

--Additional reporting by Martin O'Sullivan and Andrew Westney. Editing by Christopher DeZinno and Jill Coffey.