To: Benjamin Keel[Benjamin_Keel@ios.doi.gov]; Clint Bowers[clint.bowers@bie.edu]; Dearman, Tony[tony.dearman@bie.edu]; Elizabeth Appel[elizabeth.appel@bia.gov]; Kraynal Alfred[kraynal.alfred@bia.gov]; Mike Black[mike.black@bia.gov]; Nedra Darling[nedra.darling@bia.gov]; Nedra Darling[nedra_darling@ios.doi.gov]; Robin Shield[robin.shield@bia.gov]; Sarah Walters[sarah.walters@sol.doi.gov]; Sharee Freeman[sharee.freeman@bia.gov]; Shawn Pensoneau[shawn.pensoneau@bia.gov]; Weldon Loudermilk[weldon.loudermilk@bia.gov]; Gavin Clarkson[gavin.clarkson@bia.gov]; Julia Smola[julia.smola@bia.gov]
From: shawn.pensoneau@bia.gov
Sent: 2017-07-27T16:13:03-04:00
Importance: Normal
Subject: OPA-IA Daily News Clips
Received: 2017-07-27T16:13:17-04:00
July 26 - 10th Circuit Finds HUD Illegally Recouped $19.5M From Tribes.docx
July 26 - Wash. Groups Urge Justices To Hear Tribal Treaty Tax Case.docx
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Mandan, Hidatsa and Arikara Nation shares energy message with Trump administration (The Bismarck Tribune, July 26, 2017)

Trump hire at Bureau of Indian Affairs makes big promises on tribal taxation (Indianz.com, July 26, 2017)

Tribes fight trade groups' intervention in pipeline (KWZC News, July 26, 2017)

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Chinle police, school security ge active shooter drill (Navajo Times, July 27, 2017)

Editorial: After Bearheel's death and Rice's firing, leaders must do more to repair damage to public trust (The Omaha-Herald, July 27, 2017)

Tribes team up to address northern border issues at conference in August (Indianz.com, July 26, 2017)

Officials say Pine Ridge water is safe despite rumors (KOTA News, July 26, 2017)

Rosebud Sioux Tribe extends gaming compact for 11th time in five years (Indianz.com, July 26, 2017)

An Update from the National Indian Gaming Association's Annual Legislative Summit (The National Law Review, July 26, 2017)

Comanche Nation hails indictment against former tax commission worker (Indianz.com, July 26, 2017)

10th Circuit Finds HUD Illegally Recouped $19.5M From Tribes – **See Attachment 1** (Law360 July 26, 2017)

Washington Groups Urge Justices To Hear Tribal Treaty Tax Case – **See Attachment 2** (Law360 July 26, 2017)

Alaska Native Corporation Slams Email Request in False Claims Act Suit – **See Attachment 3** (Law360 July 26, 2017)

Montana Federal Judge lets Wyoming into Coal Leasing Case – **See Attachment 4** (Law360 July 26, 2017)

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Entrepreneurial workshop for Native Americans offered (Billings Gazette, July 26, 2017)

Jamestown S'Klallam Tribe welcomes new Economic Development Authority Director (Sequim Gazette, July 25, 2017)

Tribes growing casino portfolios and diversifying economies (Global Gaming Business Magazine, July 25, 2017)

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Nation closely watching health care issue (Navajo Times, July 27, 2017)

Pamunky Tribe secures designation of Indian Health Service delivery area (Indianz.com, July 27, 2017)

American Indian College Fund announces new program (Native Sun News Today, July 7, 2017)

Cherokee Nation Councilor Warner to Represent Indian Country on CDC Advisory Committee (Native News Online, July 27, 2017)

How Medicaid Cuts Would Hurt People of Color: A State-by-State Breakdown (Center for American Progress, July 25, 2017)

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Office of Public Affairs - Indian Affairs
Office of the Assistant Secretary - Indian Affairs
U.S. Department of the Interior
1849 C St., N.W., MS-4004-MIB
Washington, D.C. 20240
Main Phone: 202-208-3710
Press Line: 202-219-4152
as-ia_opa@bia.gov

Alaska Native Co. Slams Email Request In FCA Suit

 By **Andrew Westney**

Law360, New York (July 26, 2017, 5:06 PM EDT) -- An Alaska Native corporation has urged a federal judge to reject a bid for emails and other documents in a suit claiming the corporation took unfair advantage of a Small Business Administration contracting program for disadvantaged groups, saying the request would cost millions of dollars to fulfill and is far out of line with what's needed in the case.

Relator Ben Ferris, Afognak Native Corp.'s former chief compliance officer, **asked the court** on July 5 to force the company and its unit Alutiiq LLC to produce a slew of documents in his False Claims Act suit alleging the company exploited the SBA program, saying they would prove that the subsidiaries at the heart of the matter don't operate as independent businesses but rather, are sham entities the defendants use to win government contracts.

Afognak said in an opposition to Ferris' motion on Monday that all of Ferris' discovery requests failed to meet discovery requirements of "relevance, proportionality, or reasonable particularity," and that reviewing the emails Ferris is seeking would cost the company about $3.6 million.

Ferris "makes no showing that the 1.9 million additional documents are relevant, much less that they (or the costs of processing and review) would be proportional to the needs of the case," Afognak said.

The would-be whistleblower's motion to compel is the latest step in a lawsuit that Ferris originally filed in Alabama federal court in 2013 and was transferred to Alaska in August 2015. The federal government has declined to step into the dispute.

Ferris, who began working for Afognak in 2008 and became its chief compliance officer three years later, alleges that the company creates "sham 8(a) entities" that bid for special 8(a) contracts, making a "mockery of laws that are meant to remedy the historical treatment of Native Alaskans through favorable consideration for government contracts."

He claims that by setting up fake subsidiaries, Afognak has received an unfair competitive advantage over other Alaska Native corporations.

Last month, U.S. District Judge H. Russel Holland **denied a motion to dismiss** the suit as a sanction for abusive litigation tactics — in which Afognak had argued that Ferris tainted the case "beyond repair" by secretly copying confidential documents while he was still working for it — after finding unpersuasive the contention that the company was prejudiced by the conduct of Ferris or his attorneys.

In his July 5 motion to compel, Ferris claimed that the documents he's asking for, including intercompany service agreements, are nonprivileged and Afognak has refused to hand them over in response to his prior requests for them, in part on the ground that the agreements are not relevant to the special contracting program.

Afognak said in its filing Monday that discovery is "proper only if it is both relevant and proportionate to the needs of the case," but Ferris "seeks to compel documents not relevant to the case, or grossly disproportionate to the needs of the case, or both."

In particular, reviewing the emails Ferris requested would cost between $3.2 million and $3.9 million using search terms provided by Ferris, and would still cost about $330,000 using Afognak's narrower search terms, according to the filing.

Ferris' request to extend discovery past the date of the filing of his original complaint also "is not proportional to the needs of the case," Afognak said.

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

Ferris is represented by William H. Narwold and Mathew P. Jasinski of Motley Rice LLC, John P. Cashion of Cashion Gilmore LLC, Sarah M. Frazier of Berg & Androphy and Charles H. Rabon Jr. of the Rabon Law Firm PLLC.

Afognak Native Corp. and Alutiiq LLC are represented by David F. Taylor, Angela R. Jones, Kathleen M. O'Sullivan and James N. Leik of Perkins Coie LLP.

The case is USA ex rel. Ben Ferris v. Afognak Native Corp. et al., case number 3:15-cv-

00150, in the U.S. District Court for the District of Alaska.

--Additional reporting by Adam Lidgett, Kat Sieniuc and Bryan Koenig. Editing by Catherine Sum.

Wash. Groups Urge Justices To Hear Tribal Treaty Tax Case

 By **Christine Powell**

Law360, New York (July 26, 2017, 7:23 PM EDT) -- A petroleum alliance and a business organization have backed a request that the U.S. Supreme Court review Washington state's top court's ruling that a tribal wholesale fuel distribution company is exempt from paying taxes on fuel brought to the Yakama Indian Reservation from Oregon under a treaty between the federal government and the tribe.

The Washington Oil Marketers Association and the Washington Association of Neighborhood Stores chimed in to support the Washington State Department of Licensing's certiorari petition over a split ruling by the Washington Supreme Court in which the majority held that the Yakama Nation's right "to travel upon all public highways" under an 1855 treaty with the U.S. government exempted Cougar Den Inc. from state wholesale fuel taxes.

In their July 17 amicus brief, WOMA and WANS echoed the department's arguments that the Washington Supreme Court's ruling in favor of Cougar Den — a corporation of the Yakama Nation, of which the company's owner is a member — conflicts with longstanding Supreme Court principles about interpreting tribal treaties, in addition to Ninth Circuit precedent.

"Further, the Washington court's interpretation will effectively confer tax-exempt status on tribal businesses that will blow gaping holes in the state's fuel tax revenues and budgets," the brief said. "The opinion's analysis cannot simply be confined to fuel taxes and will also affect numerous other areas of taxation. This will provide unfair advantage to tribal businesses over nontribal business entities who must comply with state tax imperatives."

WOMA is a nonprofit made up of members that market petroleum products in the state and others that sell products and services that support the petroleum industry, while WANS is a business organization that provides assistance to the state's convenience store industry, according to the brief.

According to the state's certiorari petition, Cougar Den did not apply for a license from Washington to distribute wholesale fuel but secured a fuel dealer license from Oregon,

which has no sales tax, and began buying fuel there, transporting it back to the Yakama Indian Reservation and selling it to gas stations on the tribal land.

The department assessed $3.6 million in unpaid taxes, interest and penalties against Cougar Den in December 2013 after learning it had hauled "millions of gallons" of fuel over the state's borders sans tax over a seven-month period that year, the petition said, prompting a challenge by the company.

But the assessment was upended by an administrative law judge, only for that decision to be reversed by the department's director. Cougar Den then took the dispute to Yakima County Superior Court, which tossed the director's order in a decision that was ultimately affirmed by the Washington Supreme Court in March.

In that ruling, Justice Charles W. Johnson, writing for the majority, said that "any trade, traveling and importation that requires the use of public roads fall within the scope of the right to travel provision of the treaty. The department taxes the importation of fuel, which is the transportation of fuel. Here, it was simply not possible for Cougar Den to import fuel without traveling or transporting that fuel on public highways. Based on the historical interpretation of the tribe's essential need to travel extensively for trade purposes, this right is protected by the treaty."

But in a dissent, Chief Justice Mary E. Fairhurst wrote that the at-issue tax burdens the trade, not the transport, of fuel and that the majority's finding, "if taken to its logical conclusion, would create a hole, bigger than that required to drive a tanker truck, in Washington's ability to tax goods consumed within the state, without legal basis."

In its June 14 petition urging the Supreme Court to take up the case, the Washington State Department of Licensing noted that while $3.6 million in state tax revenue is directly connected to the dispute, its ultimate outcome has "enormous tax consequences" and impacts tens of millions of dollars in taxes asserted against Cougar Den since the initial charge, plus taxes from other Yakama businesses.

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

The Washington State Department of Licensing is represented by Robert W. Ferguson,

Noah G. Purcell, Jay D. Geck and Fronda C. Woods of the state's attorney general's office.

Cougar Den is represented by Brendan V. Monahan and Mathew L. Harrington of Stokes Lawrence Velikanje Moore & Shore.

The Washington Oil Marketers Association and the Washington Association of Neighborhood Stores are represented by Philip A. Talmadge of Talmadge/Fitzpatrick/Tribe.

The case is Washington State Department of Licensing v. Cougar Den Inc., case number 16-1498, in the U.S. Supreme Court.

--Editing by Jack Karp.

Montana Federal Judge Lets Wyoming Into Coal Leasing Case

Share us on: By **Michael Phillis**

Law360, New York (July 26, 2017, 7:25 PM EDT) -- A Montana federal judge on Tuesday granted Wyoming's request to take part in a case challenging U.S. Department of the Interior Secretary Ryan Zinke's decision to lift the moratorium on the federal coal leasing program, saying that Wyoming had a compelling and unique reason to take part in the suit.

Judge Brian Morris in a brief order said that Wyoming could take part in a case in which states including California and New York allege that the federal government flouted the National Environmental Policy Act by **lifting the moratorium**. Wyoming wants to defend against the freeze being reinstated.

"The state of Wyoming contains a number of coal leases that would be affected by the coal moratorium and potential injunction at issue in this case," Judge Morris wrote. "The state of Wyoming also occupies a different position than that of the United States on the basis that the state of Wyoming has unique interest as a high-volume coal producing state."

Wyoming argued **earlier this month** that it had an interest in the suit because if the moratorium was reinstated, it would hurt an important state revenue stream. Wyoming wants to prevent other states from winning an injunction on federal coal leasing until Zinke complies with his alleged NEPA obligations, the state's memorandum said.

Zinke's predecessor, Sally Jewell, imposed the at-issue federal coal leasing moratorium in January 2016 so that the agency could overhaul the program for the first time since the late 1970s. President Donald Trump in March, however, directed the Interior Department to lift the moratorium immediately as part of an executive order aimed at boosting domestic energy production and rolling back climate change regulations enacted by former President Barack Obama.

Zinke's move to lift the coal moratorium ended the pause on new leasing and directed the Bureau of Land Management to expeditiously process coal lease applications.

The coal leasing program had come under fire for allegedly undervaluing coal produced on

public lands and not taking climate change sufficiently into account. Just prior to the end of Obama's second term, the Interior Department unveiled a review of the program and identified several potential revisions.

The case by California, New Mexico, New York and Washington was **recently consolidated**with another similar case by the Northern Cheyenne tribe, the Center for Biological Diversity, the Sierra Club and other environmental groups.

In making its case to be part of the suit, Wyoming argued that it could be harmed if Zinke's action wasn't allowed.

"If this court grants the states' the relief they seek, federal coal leasing in Wyoming will grind to a halt. The unleased, unrecoverable coal reserves in Wyoming will not be available for leasing and mining," Wyoming's memorandum said. "As a result, Wyoming will be deprived of the anticipated revenues on which its programs rely until the federal government completes the lengthy NEPA process the states desire."

Representatives for Wyoming and the states did not immediately respond to a request for comment on Wednesday. The federal government does not comment on pending litigation.

The federal government is represented by John S. Most of the U.S. Department of Justice.

Wyoming is represented by its attorney general's office and by David C. Dalthorp of Jackson Murdo & Grant PC.

California, New York, New Mexico and Washington are represented by their respective attorneys general offices and Roger Sullivan and Dustin Leftridge of McGarvey Heberling Sullivan & Lacey PC.

The case is State of California et al. v. Ryan Zinke et al., case number 4:17-cv-00042, in the U.S. District Court for the District of Montana, Great Falls Division.

--Additional reporting by Christine Powell, Keith Goldberg and Kat Sieniuc. Editing by Stephen Berg.

10th Circ. Finds HUD Illegally Recouped $19.5M From Tribes

Share us on: By **Christine Powell**

Law360, New York (July 26, 2017, 7:18 PM EDT) -- The Tenth Circuit on Tuesday in a precedential ruling held that the U.S. Department of Housing and Urban Development illegally recouped $19.5 million in affordable housing grants from certain Native American tribes after finding that they had been overpaid, but questioned whether the tribes could recover the funds, in light of the agency's sovereign immunity.

In the 60-page ruling, the three judges on the panel considering the consolidated appeals unanimously reversed the portions of a lower court's order concluding that HUD lacked the authority to repossess the money without first providing the tribes with administrative hearings, finding that the agency had not taken the funds back under a statute or regulation that imposes a hearing requirement.

The rest of the issues in play, however, divided the panel. In particular, two judges agreed that HUD could not recover the money via administrative offset, rejecting the agency's argument that it was able to take the funds back under its "long-standing, common law authority to recover payments made by mistake" and affirming the parts of the lower court's orders characterizing the agency's recoup as illegal.

"The rules that traditionally govern contractual relationships don't necessarily apply in the context of federal grant programs," the ruling said. "Based on the government's 'unique trust responsibility to protect and support Indian tribes and Indian people,' we think it would be particularly 'unfair' to apply common law contract principles to HUD's recapture of [Native American Housing Assistance and Self–Determination Act] funds."

Yet that victory for the tribes is "largely a hollow one" because HUD is shielded by sovereign immunity from claims for money damages and "at least some" of the lower court's orders directing the agency to return the funds appear to award such damages, according to the ruling.

HUD cannot pay the tribes back using funds from the years during which it allegedly overpaid them if it has already distributed that money to other eligible tribes, but if the

agency repays them using “all available sources,” as directed by the lower court, that constitutes money damages, the ruling said.

Holding that HUD’s sovereign immunity, therefore, precludes the lower court from directing the agency to return the illegally recouped money to the tribes, two other judges reversed those portions of the lower court’s orders with the exception of remanding for the lower court to figure out whether the agency still has at its disposal funding from the pertinent years.

“This distinction may seem pedantic,” the ruling said. “After all, money is money. And surely the tribes don’t care whether HUD repays them using funds that remain from 2003’s NAHASDA appropriation, or if it instead repays them from some other source. But ‘the fungibility [of] money’ can easily ‘obscure’ the difference between (1) ‘relief that seeks to compensate a plaintiff for a harm by providing a substitute for the loss’ and (2) ‘relief that requires a defendant to transfer a specific res to the plaintiff.’”

According to the ruling, NAHASDA is meant to help tribes provide affordable housing to their members and HUD allocates grant funding to recipient tribes every year from a finite pool of money.

The agency relies on the tribes to provide an accurate yearly count of its eligible housing units when calculating how, exactly, to allocate the funds, the ruling said.

HUD accused the tribes that are party to the appeal of inflating their eligible unit counts during various relevant years, causing them to receive too much money and to reduce the funding available for other eligible tribes, according to the ruling.

After the agency took back roughly $19.5 million total in such alleged overpayments, the tribes sued in an effort to recover the money, the ruling said.

The tribal entities in the consolidated cases are Modoc Lassen Indian Housing Authority, Tlingit-Haida Regional Housing Authority, Choctaw Nation of Oklahoma, Housing Authority of the Choctaw Nation of Oklahoma, Navajo Housing Authority, Fort Peck Housing Authority, Sicangu Wicoti Awanyakapi Corp., Oglala Sioux (Lakota) Housing, Turtle Mountain Housing Authority, Winnebago Housing and Development Commission, Lower Brule Housing Authority, Spirit Lake Housing Corp., Trenton Indian Housing Authority,

Blackfeet Housing, the Zuni Tribe, Isleta Pueblo Housing Authority, Pueblo of Acoma Housing Authority, Association of Village Council Presidents Regional Housing Authority, Northwest Inupiat Housing Authority, Bristol Bay Housing Authority, Aleutian Housing Authority, Chippewa Cree Housing Authority and Big Pine Paiute tribe.

Circuit Judges Scott M. Matheson Jr., Robert E. Bacharach and Nancy L. Moritz sat on the panel for the Tenth Circuit.

Representatives for the tribal entities did not respond immediately to requests for comment on Wednesday. The federal government does not comment on pending litigation.

Modoc Lassen Indian Housing Authority is represented by David J. Rapport of Rapport And Marston Law Offices. Tlingit-Haida Regional Housing Authority is represented by Jonathan K. Tillinghast of Simpson Tillinghast Sorensen & Sheehan. Navajo Housing Authority is represented Craig H. Kaufman of Quarles & Brady LLP. Choctaw Nation of Oklahoma and Housing Authority of the Choctaw Nation of Oklahoma are represented by J. Frank Wolf III of Rabon Wolf & Rabon, and Louis W. Bullock and Patricia Whittaker Bullock of Bullock Law Firm. Fort Peck Housing Authority and Blackfeet Housing are represented by John Fredericks III and Peter J. Breuer of Fredericks Peebles & Morgan LLP. Sicangu Wicoti Awanyakapi Corp. is represented by David V. Heisterkamp II, Amber Leigh Hunter and James F. Wagenlander of Wagenlander & Heisterkamp, and Blain David Myhre of Blain Myhre LLC.

The U.S. Department of Housing and Urban Development is represented by Gerard Sinzdak of the U.S. Department of Justice.

The lead case is Choctaw Nation et al. v. HUD et al., case number 14-1338, in the U.S. Court of Appeals for the Tenth Circuit.

--Editing by Stephen Berg.