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HOT TOPICS

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[Trumps plan to put fragile national monuments in danger](#) (The Washington Post, August 27, 2017)

[Monumental Majesty – As review winds down, these sites are in administration’s sights](#) (The Washington Post, August 27, 2017)

[Mark Trahant: Congress needs more time to finish spending bills: Shutdown Ahead?](#) (Native News Online, August 28, 2017)

[Washington State’s national monuments not targeted, but others on chopping block](#) (Yakima Herald, August 28, 2017)

[Tribes, green groups prepare for national monument court fight](#) (The Washington Times, August 27, 2017)

[Ugly Precursor to Auschwitz: Hitler Said to Have Been Inspired by US Indian Reservation System](#) (Indian Country Today, August 27, 2017)

[Kevin Brown re-elected to Mohegan Tribal Council, Bozsum ousted](#) (The Day, August 27, 2017)

[Akron considering changing name of Columbus Day](#) (TWWT News, August 27, 2017)

[Exploring Red Power in the 1960’s Discussion to be held on Wednesday in San Francisco](#) (Native News Online, August 27, 2017)

[Pokanoket Tribe says Brown University’s response to land dispute is ‘nonsense’](#) (Providence Journal, August 26, 2017)

[Steve Russell: Trump Throws Law Under the Bus with Joe Arpaio Pardon](#) (Indian Country Today, August 26, 2017)

[Lawmakers say BLM inhibiting oil and gas development to protect view from Native American sites](#) (Casper Star-Tribune, August 26, 2017)

[Tune out noise](#) (Ketchikan Daily News, August 26, 2017)

[Illinois must finally remove all links to Chief Illiniwek](#) (Chicago Tribune, August 26, 2017)

[Interior's High-Profile Whistleblower Gets a Boost from OSC and Legal Community](#) (Government Executive, August 25, 2017)

[Pipeline company response to settlement offer not disclosed](#) (The Associated Press, August 25, 2017)

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[Police kill man who shot officer's badge](#) (Navajo Times, August 27, 2017)

[FBI identifies body found in eastern Utah](#) (The Salt Lake Tribune, August 27, 2017)

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[Whiteclay dries up for the summer after beer stores close](#) (WOWT News, August 27, 2017)

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[Police Escort Fallen Officer](#) (Native News Online, August 27, 2017)

['They took my world from me,' says boyfriend of missing Fargo woman](#) (The Bemidji Pioneer, August 26, 2017)

[Civil Rights Commission Reviews Alaska Native Voting Rights](#) (KYUK News, August 25, 2017)

[Exploring Native American law](#) (University of Chicago, August 24, 2017)

[Senator inquires about Elko County fires](#) (Elko Daily Free Press, August 24, 2017)

Tribal-State Weed Deals Stay Hot in Spite of Feds – **See PDF** (Law360, August 25, 2017)

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New report shows economic benefits of tribal colleges in North Dakota (The Bismarck Tribune, August 28, 2017)

Navajo Nation President Begaye Consults with FCC to close the digital divide (Native News Online, August 27, 2017)

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AISES Enrichment Camp Makes Science Fun (Indian Country Today, August 28, 2017)

How a high-achieving school in one of America's poorest areas is saving the local community (Business Insider, August 26, 2017)

Author explores reservation problems (The Bismarck Tribune, August 25, 2017)

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Menominee Tribe requests government to government consultation with the EPA and Army Corps on the Back Forty Mine project (Native News Online, August 26, 2017)

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Northern Cheyenne remains returned to reservation after 138 years (Billings Gazette, August 27, 2017)

Cultural events foster healing after Dakota Access protests (The Bismarck Tribune, August 26, 2017)

Nanticoke Indian Tribe to host 40th Annual Powwow September 9-10 (Cape Gazette, August 24, 2017)

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[Oklahoma City Council to vote on Indian Cultural Center agreements](#) (The Oklahoman, August 28, 2017)

[Top American Indian stylemaker's home base: a tiny North Dakota town, population 29](#) (Grand Forks Herald, August 27, 2017)

[Most Arizona Native Americans now speak only English at home](#) (Eastern Arizona Courier, August 26, 2017)

[Native American Rodeo: More Than Sport, It's 'A Way Out'](#) (Voice of America, August 25, 2017)

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Tribal Leaders 'Outraged' Over Rumored Monument Shrinkage

Share us on: By **Christine Powell**

Law360, New York (August 25, 2017, 5:12 PM EDT) -- The Bears Ears Inter-Tribal Coalition expressed “outrage” Thursday over rumblings that U.S. Department of the Interior Secretary Ryan Zinke has recommended President Donald Trump scale back the Bears Ears National Monument.

Leaders of the coalition, composed of members of the Hopi Tribe, Navajo Nation, Ute Indian Tribe, Ute Mountain Tribe and Pueblo of Zuni, criticized Zinke’s reported recommendation that Trump shrink the size of the 1.35-million-acre monument in southeastern Utah.

“As tribes, we are firm in our dedication to protect Bears Ears National Monument,” Ute Indian Tribe Business Committee member Shaun Chapoose said in a statement. “We had hoped that Secretary Zinke would listen to tribal voices and preserve Bears Ears National Monument. Instead, he has chosen a fight, and we have no choice but to continue the fight for our ancestors and for contemporary uses of the lands by our tribal members.”

Meanwhile, Zuni Councilman Carleton Bowekaty called Zinke’s apparent recommendation to reduce Bears Ears, the designation of which the coalition has described as 80 years in the making and an acknowledgment of the “hundreds of thousands” of sacred sites in the area, an “insult to tribes.”

Zinke announced Thursday that he had sent Trump a draft report concerning a review of monuments designated or expanded by presidents under the Antiquities Act over roughly the last two decades — a report he was tasked with compiling under an April executive order by the president, who has called previous administrations’ use of the law “abusive.”

However, Zinke stayed mum about exactly what findings and recommendations his report contained, publishing a summary that merely recapped the process that has occurred since the executive order was signed rather than the full report itself.

“The recommendations I sent to the president on national monuments will maintain federal ownership of all federal land and protect the land under federal environmental regulations,

and also provide a much needed change for the local communities who border and rely on these lands for hunting and fishing, economic development, traditional uses, and recreation,” Zinke said in a statement.

Yet news articles citing leaked copies and congressional aides quickly reported that, while Zinke had not recommended eliminating any national monuments, he had recommended cutbacks to a handful of them, including Bears Ears.

As those rumors drew fire, so did Zinke’s decision to keep the report a secret, with Sen. Tom Udall, D-N.M., saying that he was “disappointed” the Interior secretary’s summary of the report did not “provide any real information to the public” and that the summary “is not transparent” and “is not how our government should do business.”

Zinke has “badly misjudged the authority granted to the administration under the Antiquities Act” if the report does recommend reductions to monuments, the senator continued, adding that he does not “believe the administration can legally shrink any monument designation” and that he intends “to pursue all available avenues to fight what would be an unprecedented attack on our public lands.”

Meanwhile, Drew Caputo, Earthjustice’s vice president of litigation for lands, wildlife and oceans, called on Zinke to “level with the American people.”

“It’s only right that Secretary Zinke now tells the American people what he is thinking about doing to some of our most cherished protected lands, instead of keeping his recommendations shrouded in secrecy,” Caputo said.

Additionally, the Sierra Club said that it had already filed a Freedom of Information Act request for details about the recommendations in Zinke’s report.

“Secretary Zinke’s slapdash summary report on his recommendations for the future of some of the country’s most spectacular and important public lands is deeply disturbing,” Sierra Club Executive Director Michael Brune said. “The only real information conveyed in the report was Zinke’s willingness to sweep aside overwhelming support for preserving public land safeguards. We won’t be hustled. The truth is in the details, which is what we plan to find out with this request.”

Representatives for the Department of the Interior did not respond to requests for comment Friday.

--Editing by Alanna Weissman.

Tribal-State Weed Deals Stay Hot In Spite Of Feds

Share us on: By **Andrew Westney**

Law360, New York (August 25, 2017, 7:07 PM EDT) -- Native American tribes are enjoying success with marijuana businesses launched under compacts with states where the drug has been legalized, and attorneys say those deals are likely to keep growing in popularity as tribes look to boost their bottom lines and ally with states as a bulwark against potentially unfriendly federal authorities.

Amid concerns about whether Attorney General Jeff Sessions will maintain the Obama administration's hands-off approach to tribal and state marijuana businesses, tribes have continued to sign compacts with states, with the Las Vegas Paiute Tribe the first to take advantage of a Nevada law signed by Gov. Brian Sandoval in July to break ground on the tribe's nearly 16,000-square-foot Nuwu Cannabis Marketplace in the city.

Even though tribes can risk launching their own cannabis businesses without having to make any concessions in state compacts over taxes, licensing or other issues, the deals offer the surest way forward for tribes entering the murky legal realm by making sure there's no conflict between tribal operations and state practices and relying on that collaboration to help keep the U.S. Department of Justice at bay, experts say.

"If states are making it explicitly clear through compacts that they're happy with what tribes are doing, it ratchets down the concerns of the U.S. attorneys about tribal marijuana activities," according to Ted Kelleher, head of Drummond Woodsum's regulated substances practice.

A December 2014 DOJ memorandum that implicitly allowed tribes to operate marijuana businesses in states where it's legal, subject to the same enforcement priorities applied to states under the department's August 2013 Cole memorandum, encouraged some tribes to think that the marijuana business could be the second coming of tribal gaming in its economic impact.

But early tribal marijuana ventures — like those that resulted in high-profile 2015 raids on tribal marijuana crops in California and Wisconsin and the destruction of a tribal pot crop in

South Dakota — quickly put tribes on notice that "states are going to have a lot to say about what [staying within the memos] means within your jurisdiction," said Lael Echo-Hawk of Hobbs Straus Dean & Walker LLP, who serves as general counsel of the National Indian Cannabis Coalition.

"Those tribes went out way too hard, way too fast, and they got beat up for it," she said.

While tribes may envision operating and regulating their own fully integrated marijuana production, distribution and retail businesses, that idea has in many areas yielded to an approach that integrates a tribal business involved in one part of the marijuana supply chain with nontribal companies handling other segments, attorneys say.

In Washington, the first state to pass a law allowing compacts in 2015, the agreements have allowed tribes to reckon with the consequences of the state's 2012 legalization of marijuana and plug into the existing marijuana system.

Port Madison Enterprises General Counsel Rion Ramirez, who negotiated the first tribal-state marijuana compact anywhere in the United States for Washington's Suquamish Tribe, said the agreement has helped both the tribe and state counter the threat of diversion of the drug from the state to the tribe's reservation.

Under the 10-year compact, the Suquamish Tribe now operates the Agate Dreams store on reservation land, selling products from nontribal state licensees, with the tribe taking in taxes for its government services on sales to nontribal customers that are on a par with the state's taxes on marijuana products.

"The benefit of compacting is two governments coming together on a government-to-government basis and working out an agreement," Ramirez said. "In this area, where [marijuana] is still federally prohibited and a Schedule 1 drug, when you have states legalizing it and tribes working in cooperation, it's a situation where you have a lot more consistency and a lot better regulation."

Oregon, which legalized recreational marijuana in 2014, was next to get into the compacting act, passing a law in March 2016 that allowed the Confederated Tribes of Warm Springs to operate a medical and recreational cannabis facility on its reservation in exchange for imposing regulations on the industry like those enforced by the state.

While marijuana sales are actually illegal on the tribe's reservation, the tribe's agreement with the state allowed Warm Springs to sell their products in the larger markets of Portland and Bend, Oregon.

"Compacts have a lot to do with a tribe being able to sell cannabis off their reservation, which is a big deal for tribes because they view it as a moneymaker," said Vince Sliwoski, an attorney in Harris Bricken's Portland office. "If you have a tribe that doesn't have [access to] a high-traffic corridor, it's not going to be."

For all the advantages of compacts, tribes still have to compromise with states to reach deals, whether that's in the ability to determine their own regulatory schemes or other requirements, attorney say.

But amid warnings from Sessions about the dangers of marijuana and potentially stricter federal enforcement for marijuana under the Controlled Substances Act, state compacts continue to appeal to tribes, with Nevada the latest to put a compacting regime in place.

Pointing to the success of the Washington compacts at avoiding conflicts between tribal and state regulation schemes for marijuana, Nevada enacted a bill on June 2 to allow the governor's office to negotiate with tribes, with the Las Vegas Paiutes agreeing to a compact on July 18 to open their marijuana megastore.

With the DOJ's Task Force on Crime Reduction and Public Safety reviewing potential changes to federal marijuana enforcement, it's all the more valuable for tribes to be on board with states, attorneys say.

Although Sessions is prone to "saber rattling" about marijuana — the attorney general last month sent a letter to Washington questioning the effectiveness of its marijuana regulation — "I'm not sure the Trump administration is willing to jeopardize its commitment to states' rights by going after states that have legalized it or going after tribes who, in a state paradigm, have also legalized it," said Gabe Galanda of Galanda Broadman PLLC.

The next, and by far the biggest, state prize is California's recreational marijuana market. There is as yet no tribal compacting system in place, but that route remains "perhaps the most reliable way" to gain access to the cover of state law in the face of federal authority,

he added.

Yet unlike in Washington, where tribes had to find a way to fit into an existing recreational marijuana industry, tribes may actually have the opportunity to get in on the ground floor of recreational marijuana in California and establish a solid footing with the state that might be less cumbersome than having to work out individual compacts, according to Echo-Hawk.

"In states like California that are developing their own regulations right now, there's nothing to prevent the legislature and regulators from writing in a quick little provision in the regulations that says an entity that's licensed by a federally recognized tribe in California shall be considered a California state licensee, and then you don't need the compacts," she said.

But where Washington has had a fairly healthy history of working out compacts with tribes for the gaming industry as well as for gasoline and cigarettes, it's harder to say how things will shake out in the Golden State, according to Galanda.

"California remains the Wild West when it comes to marijuana," he said.

--Editing by Rebecca Flanagan and Katherine Rautenberg.

Chinook Tribe Sues For Federal Recognition

Share us on: By **Kat Sieniuc**

Law360, New York (August 25, 2017, 2:49 PM EDT) -- The Chinook Indian Nation hit the U.S. government with a lawsuit in Washington federal court on Thursday to force the Interior Department to give the tribe federal status, saying after 40 years of trying to get formal recognition it has exhausted all other remedies.

In the complaint brought under the U.S. Constitution and the Administrative Procedure Act, the Chinook pointed to a decadeslong relationship with the U.S. government, including land treaties dating back to the 1850s and congressional action informally ratifying those treaties, among other actions, as evidence of the Chinook's rightful tribal status.

“Almost 40 years after they began the recognition process, over 200 years after Lewis and Clark landed on their shores (and almost 120 years after hiring their first lawyer), and surviving strategies designed to eliminate their very existence, the Chinook have come full circle,” the complaint said. “They seek simple justice by petitioning this court to affirm what was internationally recognized at the time of first contact: The Chinook are a respected and legitimate Indian tribe with a long and proud history, entitled to formal acknowledgment as such by our federal government.”

The suit, which is filed against the U.S. Department of the Interior and all government agencies and officers overseeing native affairs, says the Chinook have “diligently but unsuccessfully” sought for federal recognition while satisfying all the criteria needed to achieve such recognition, including “through treaties, through executive orders and congressional legislation, and through a very lengthy course of dealing with the federal government.”

The suit seeks a declaration from the court that the tribe has been deprived of its rights, privileges and immunities under the U.S. Constitution and should be formally acknowledged as a federal tribe, claiming “the actions of Congress and the over 100-year course of dealing between the defendants and the Chinook has resulted in de facto or constructive federal acknowledgment of the Chinook as an Indian tribe.”

The complaint says Congress has informally recognized the Chinook as a tribe in several ways over the past century, including authorizing two series of treaty negotiations with the Chinook in 1851 and 1855 and twice allocating money to compensate the tribe for land the federal government seized following the 1851 treaties. The tribe noted that despite no formal ratification of land treaties signed in 1851, the federal government still took and sold the tribe's land under those treaties as if they had been ratified.

The complaint also points out that Congress has authorized the tribe's lawsuits against the government, constituting tribal recognition. The government has "informally" treated the Chinook with federal recognition in other ways as well, including removing children from the tribe and sending them to boarding schools as was federal assimilation policy, treating Chinook members at BIA hospitals and giving the Chinook funding that only federally recognized tribes are eligible for to renovate tribal offices and improve the tribe's operations, among other economic development.

"Congress has been clear: The Chinook are a tribe deserving of federal recognition — an action which would simply formalize their long-existing government-to-government relationship with the United States," the complaint said.

The tribe argues the government's lack of willingness to grant the Chinook official federal recognition violates the due process and equal protection clauses of the Fifth Amendment, among other claims, saying over the last four decades "virtually all other Pacific Northwest tribes have been recognized or restored in a variety of ways to the point that presently, the Chinook are among the very few historic tribes in the Northwest that have not had their tribal status acknowledged, despite the fact that they, historically, were 'the most powerful nation on the entire Pacific Coast.'"

The parties were not immediately reachable for comment on Friday.

The tribe is represented by Thane W. Tienson of Landye Bennett Blumstein LLP.

Counsel information for the government was not immediately available.

The case is Johnson et al. v. Zinke et al., case number 2:17-cv-01287, in the U.S. District Court for the Western District of Washington.

--Editing by Jack Karp.

US Seeks Approval Of \$43M Peabody Pollution Cleanup Deal

Share us on: By [Cara Salvatore](#)

Law360, New York (August 25, 2017, 4:10 PM EDT) -- The [U.S. Department of Justice](#) has asked a Missouri bankruptcy court for approval of a \$43 million settlement with coal miner [Peabody Energy Corp.](#) over environmental liabilities at 13 Superfund sites.

Peabody, which exited bankruptcy in April, will pay \$20 million under the deal and its insurers will provide another \$12 million, according to the government's Wednesday motion for approval of the settlement. A tax payment setoff of \$11.2 million is also part of the package between the U.S., Peabody, seven Native American tribes and five states in Indian Country.

The U.S. will keep the whole of the \$11.2 million tax payment, according to the motion. The remainder of the money will be shared among the U.S., the five states and the seven tribes based on factors like the extent of pollution at each site and the urgency with which that pollution needs to be addressed.

"The proposed settlement agreement is fair, reasonable, and consistent with [the Comprehensive Environmental Response, Compensation and Liability Act]," the DOJ said. "The presumption in favor of settlement remains, and the proposed settlement agreement should be approved."

The agency added, "Given the debtors' limited ability to pay, the settlement adequately obtains an important contribution towards actual and anticipated remedial measures and restoration ... significantly reducing the need for government funds to complete selected remedial actions and restoration."

The settlement was subject to public comment, but the Justice Department said it received only three comments after publishing notice of the deal on July 20. No comment suggested that the settlement went against the public interest, according to the agency.

The pollution is a legacy of a company called Gold Fields Mining LLC and became Peabody's responsibility. The comments dealt with the personal injury liability of residents in the Tri-State mining district — Missouri, Kansas and Oklahoma — where many energy companies, including Gold Fields, created pollution.

"The proposed settlement agreement does not address nor foreclose private party damage actions for personal injury claims," the government noted.

The sites are composed of three in Illinois, one in Oklahoma, four in Kansas, one in Missouri, one in Montana, one in Arizona, and two in Washington; the tribes involved are the Eastern Shawnee Tribe of Oklahoma, the Ottawa Tribe of Oklahoma, the Peoria Tribe of Indians of Oklahoma, the Seneca-Cayuga Nation, the Wyandotte Nation, the Miami Tribe of Oklahoma and the Cherokee Nation.

Hedge-fund-backed Peabody **exited Chapter 11** bankruptcy protection this spring after its reorganization plan received 93 percent overall approval from its creditors, and began **trading its stock** publicly again. As part of its reorganization plan, Peabody emerged from bankruptcy with the erasure of \$5 billion in debt and a new capital stock structure.

Peabody's April 2016 bankruptcy was one of several bankruptcy filings by energy companies at the time due to significant declines in coal demand and prices. Fellow coal producer Arch Coal filed for Chapter 11 protection in Delaware in January 2016 and emerged in October.

Peabody was represented in its bankruptcy by Steven N. Cousins and Susan K. Ehlers of Armstrong Teasdale LLP and Heather Lennox, Amy Edgy and Daniel T. Moss of Jones Day.

The government is represented by Jeffrey Wood, Alan Tenenbaum and Patrick Casey of the U.S. Department of Justice.

The case is In re: Peabody Energy Corp. et al., case number 4:16-bk-42529, in the U.S. Bankruptcy Court for the Eastern District of Missouri.

--Additional reporting by Tom Zanki.