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**Subject:** OPA-IA Daily News Clips for October 30, 2017  
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## Daily News Clips

### HOT TOPICS

**Trump says he will shrink Bears Ears National Monument, sacred tribal site in Utah –**  
[Washington Post](#) (10/27)

**Life and Death at Chemawa Indian School –** [KUOW News](#) (10/30)

**Native Americans, among the most harmed by the opioid epidemic, are often left out of conversation –** [The Washington Post](#) (10/30)

**Supreme Court won't take up race-based challenge to Indian Child Welfare Act –**  
[Indianz.com](#) (10/30)

**Department of the Interior Releases Energy Burdens Report, Outlines Trump Administration's Bold Approach to Achieving American Energy Dominance –** [Sierra Sun Times](#) (10/30)

**Trump Likes Everything Big, Except National Monuments –** [Newsweek](#) (10/28)

**University of North Dakota agrees to Dakota Access lecture after Mark Trahan complained –** [Indianz.com](#) (10/30)

**Native American psychologist slam police tactics a year after Standing Rock –** [Indianz.com](#) (10/30)

**Investigation concludes tribal leaders received payments in failed brokerage deal –** [Argus Leader](#) (10/27)

**Enviroslam Trump's Promise to Hatch to Shrink Bears Ears –** *Law360/Attached* (10/27)

**Texas AG Says Indian Child Welfare Act Is Unconstitutional –** *Law360/Attached* (10/27)

INDIAN LEGISLATIVE, LEGAL, JUSTICE AND PUBLIC SAFETY ISSUES

**Senate Committee on Indian Affairs schedules hearing on tax reform policy** – [Indianz.com](http://Indianz.com) (10/30)

**Alaska Native Groups and leaders double down on criminal justice reform, citing over-incarceration** – [Alaska News Dispatch](http://Alaska News Dispatch) (10/29)

**American Indian Caucus Cries Foul at Budget Buts** – [Daily Inter Lake](http://Daily Inter Lake) (10/28)

**Hundreds of bodies found near the border remain unidentified** – [Cronkite News](http://Cronkite News) (10/26)

**9th Circuit Urged to Call Off Extra Water for Threatened Fish** – *Law360/Attached* (10/27)

**Seminoles Ask 11th Circuit For Sanctions In Subpoena Appeal** – *Law360/Attached* (10/27)

**Keweenaw Tribe Defends Claims In Tobacco Seizure Case** – *Law360/Attached* (10/27)

**Utes Back Government Against Unrecognized Tribe's License Sales** – *Law360/Attached* (10/27)

**Navajo Resident Says Government Medical Center Botched Surgery** – *Law360/Attached* (10/27)

ENERGY, NATURAL RESOURCES AND ENVIRONMENT

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**Major Water Rights Settlement for Arizona Tribe Goes to Congress** – [Water Deeply](http://Water Deeply) (10/27)

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**NORA Coalition Improves Lives in Northeast Oklahoma** – [Native News Online](http://Native News Online) (10/30)

**Navajo Nation finalizes purchase of south-central Colorado ranch** – [Associated Press](http://Associated Press) (10/28)

HEALTH, EDUCATION & YOUTH IN INDIAN COUNTRY

**Roots to Wings: Pacific Northwest University program aims to increase number of Native Americans, Hispanics in medical, science fields** – [Yakima Herald](http://Yakima Herald) (10/29)

**Pine County, Mille Lac Band will hire cultural coach to help at-risk youth** – [Star Tribune](http://Star Tribune)

(10/28)

**When federal health care falls short, tribes improvise** – [High Country News](#) (10/27)

**Los Pinos partners with Higher Education for internship opportunities** – [The Southern Ute Drum](#) (10/27)

#### TRIBAL LEADERSHIP & COMMUNITY NEWS

**AIM Leader Dennis Banks Walks On** – [Native News Online](#) (10/30)

**Gun Lake Tribe donates \$35K to Red Cross in memory of deceased members** – [Michigan Live](#) (10/30)

**John Kane: End of Casino sharing will be good for Western New York** – [The Buffalo News](#) (10/29)

**Bill proposes to amend Tribe's fiscal year budget** – [Farmington Daily Times](#) (10/28)

#### MISCELLANEOUS

**Looking back at the tribes featured in 'Century of Dishonor' book** – [Indianz.com](#) (10/30)

**Native American interpretive area may be developed near Correctionville** – [Sioux City Journal](#) (10/30)

**So-Called Retired Chief Illniwek Makes Appearance in University of Illinois Homecoming Parade: Met by Protest** – [Native News Online](#) (10/29)

**Artists to return to show while status of law pending** – [Muskogee Phoenix](#) (10/29)

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# Navajo Resident Says Gov't Medical Center Botched Surgery

Share us on: By **Darcy Reddan**

Law360, New York (October 27, 2017, 6:29 PM EDT) -- A resident of the Navajo Indian Reservation has hit the federal government with a \$5 million suit in Arizona federal court, contending that a health care facility and doctors under its umbrella botched a surgery on her gallbladder, which triggered a prolonged hospital stay and numerous procedures to fix the damage.

Arizona resident Berdie Johnson said in a complaint filed Wednesday that she was experiencing epigastric pain and nausea when she was admitted to Tsehootsooi Medical Center, which is operated by the U.S. Department of Health and Human Services and Indian Health Service. But the facility later mishandled the excision of her gallbladder by failing to close up a hole created during surgery, which led to a four-month hospital stay, according to the complaint.

Johnson, who is bringing her claims under the Federal Torts Claims Act, was scheduled to undergo the excision procedure in December 2015, the complaint said. The surgery was performed by Dr. Moaz Waleed Albulfaraj and assisted by Dr. James Maurice Langevin, who were contracted by the federal government to work at the center.

However, upon beginning the surgery, the doctors allegedly had to cut Johnson's abdomen and conduct a more invasive procedure due to a lack of insufflation, a process that creates a route to administer drugs, the complaint said. Upon opening the abdomen, the doctors allegedly sealed the initial hole from the insufflation procedure, sealed a second hole that was also created by the surgery and removed the gallbladder.

On the fifth day after the operation, Johnson's bandages were saturated from bile that was leaking from an undetected third wound that was not sealed during the initial procedure, resulting in her being transferred to Rust Presbyterian Hospital in Albuquerque, New Mexico, to have the hole closed, according to the complaint.

The oversight by the contracted physicians led to Johnson needing more than four months of hospitalization at various locations and resulted in multiple wound revisions, clean out

surgeries, management of an open wound and numerous other forms of treatment, according to the complaint. She also developed sepsis which is the presence of harmful bacteria in tissue due to an infected wound.

Counsel for Johnson told Law360 on Friday that he has seen several cases similar to this at Native American health facilities and said Indian Health Service faces a number of hurdles in providing high quality health care, such as budget issues.

A representative for Tsehootsooi Medical Center did not immediately return a request for comment Friday.

Counsel information for the federal government was available at the time of publication.

Johnson is represented by Scott Eugene Borg of Barber & Borg LLC.

The case is Johnson v. United States of America et al., case number 3:17-cv-08218, in the U.S. District Court for the District of Arizona.

--Editing by Alyssa Miller.

*Update: This article has been updated to include comment from Scott Eugene Borg.*

# Keweenaw Tribe Defends Claims In Tobacco Seizure Case

Share us on: By **Michael Phillis**

Law360, New York (October 27, 2017, 4:05 PM EDT) -- The Keweenaw Bay Indian Community asked a Michigan federal judge on Thursday to reject a bid by state officials to kill two claims over the seizure of a tribe-owned truck carrying tobacco products and the resulting prosecution, saying those allegations in a wider case over the state's tax power should stay intact.

The community responded to a bid to nix claims against a local prosecutor and detective stemming from the December 2015 seizure of a tribe-owned vehicle that contained 56 cases of cigarettes. The two members of the community who were in the vehicle were prosecuted for allegedly not paying the taxes on those cigarettes in violation of the Michigan Tobacco Products Tax Act, causing the tribe to claim the seizure and prosecution were outside of law enforcement's authority.

As a federally recognized tribe, the community is not subject to the TPTA, it said. Law enforcement knew this and acted anyway, the community alleges. So the only claims against state Assistant Attorney General Daniel C. Grano and Detective Timothy Sproull should remain despite arguments by state officials that they hold prosecutorial immunity and testimonial immunity, respectively.

The community brought the case against state officials saying the state wrongly denied hundreds of tax exemption and refund claims for taxes the tribe says it is not obligated to pay in the first place. The tribe also makes accusations over the seizure of the tobacco from the truck and the resulting criminal prosecutions against the two tribal members in state court.

"The state's law enforcement activity on the reservation — the surveillance and any other actions they may have taken — was unlawful, and no state official had jurisdiction to carry it out," the response filing said. "Grano cannot claim absolute immunity for his role in the unlawful investigations and other police activity on the community's reservation."

Police surveilled the tribe, and that's what led to the move by law enforcement to stop the

truck carrying the cigarettes, the Keweenaw allege. State law enforcement does not have the authority to carry out operations in Indian country, the response filing argued. That's true even if the offense "was committed off-reservation," which was the case for the truck stop, the community added.

The limits of Grano's immunity as a prosecutor are not boundless, the tribe argued. Grano participated in the investigation of the community without the authority to do so. And, the two tribal members in the vehicle, John Davis and Gerald Magnant, weren't required to obtain TPTA licenses, the response said.

"By commencing criminal prosecutions of Davis and Magnant even though the TPTA did not authorize such prosecutions, Grano acted outside the scope of his lawful authority and therefore cannot claim absolute immunity against claims arising from those prosecutions," the community's filings said.

Sproull should not be given a quick win either despite the fact that he gave testimony in a judicial hearing in the state case against David and Magnant. The state may allege that testimony exempts him from the claims under testimonial immunity, but it doesn't, the community said.

The community said Sproull was an investigator and is therefore not able to receive absolute immunity.

The defendants also have said the claims against Grano and Sproull should be dismissed or stayed in the wake of a June opinion that said the court would "abstain from issuing declaratory or injunctive relief against the enforcement of criminal liability for violations of the Tobacco Act."

But the community disagreed, asking that the abstention order be lifted.

And even if the abstention order isn't lifted, "the court need only abstain from issuing judgment; that does not mean that the discovery or other litigation activity should be curtailed," the response said.

In July, U.S. District Judge Paul L. Maloney **refused to reconsider** a decision eliminating some claims asserted by the community that challenged the state's authority to tax tribal

tobacco products. The judge in June dismissed allegations of violations of sovereign immunity and requests for injunctive relief based on the seizures of tobacco.

The tribe's complaint says that although Michigan previously agreed to allow members of the Keweenaw community to forgo paying 6 percent taxes on a wide variety of purchases, the parties have been unable to reach a new exemption agreement.

A representative for the community declined to comment. A representative for the state did not respond to a request for comment.

The tribe is represented by James K. Nichols, Skip Durocher and Mary J. Streitz of Dorsey & Whitney LLP.

Michigan is represented by state Attorney General Bill Schuette and Jaclyn Shoshana Levine and Kelly M. Drake with the AG's office.

The case is Keweenaw Bay Indian Community v. Nick A. Khouri, case number 2:16-cv-00121, in the U.S. District Court for the Western District of Michigan.

--Additional reporting by Bryan Koenig, Jimmy Hoover and Michael Macagnone. Editing by Jack Karp.



## 9th Circ. Urged To Call Off Extra Water For Threatened Fish

Share us on: By **Andrew Westney**

Law360, New York (October 27, 2017, 7:59 PM EDT) -- The federal government, two states, two tribes and others urged the Ninth Circuit on Thursday to overturn a lower court ruling that the government must boost water spill and monitoring at a series of dams along the Columbia and Snake rivers to help imperiled fish, arguing that an Oregon district judge abused his discretion in ordering the water releases.

In March, U.S. District Judge Michael Simon ruled that, beginning in the spring of 2018, the government **must increase releases** over spillways at eight dams in the Federal Columbia River Power System, or FCRPS, to increase the survival of threatened salmon and steelhead that migrate up and down the waterways.

The National Marine Fisheries Service and the U.S. Army Corps of Engineers argued in a brief to the Ninth Circuit on Thursday that the judge had improperly “ordered wholesale changes” in how the dams are operated “that were not shown to be necessary to avoid irreparable harm to [Endangered Species Act]-listed salmon and steelhead,” and didn’t consider the economic harm to local communities from the additional spill ordered.

“The district court has gone too far,” the government said. “The extraordinary and drastic remedy of an injunction should not be used as a tool to conduct experiments or collect data that the court thinks might be useful. The court’s injunction order should be vacated.”

In his ruling, Judge Simon partially granted injunctive relief sought by the National Wildlife Federation and other conservation organizations and fishing business associations, the state of Oregon and the Nez Perce Tribe in a long-running lawsuit challenging the NMFS’ so-called biological opinion determining that the dam system, which is composed of dams and their associated powerhouses and reservoirs, does not jeopardize the vulnerable fish.

Last year, the judge invalidated a 2014 biological opinion — the latest of six biological opinions and supplemental biological opinions to be invalidated in the case by three different judges since it was filed in 2001 — after finding that the NMFS violated the Endangered Species Act by adopting it and concluding that the continued operation of the

dam system is likely causing harm to the species, according to the ruling.

As a judge who previously oversaw the case held in 2005, “spill is something that can offer immediate survival benefit and is worth trying,” Judge Simon said in his March opinion. The previous judge’s conclusion has “proven accurate,” Judge Simon said, finding it “similarly applicable today, if implemented appropriately.”

To that end, Judge Simon held that an injunction should be granted, but delayed the increase in spill from April 2017 until the 2018 spring migration season.

The federal agencies said in their brief Thursday that a court must “be mindful of the enormity and complexity” of the dam system as well as the “uncertainty of the science” around the threatened fish species, but that Judge Simon “failed to heed these core principles in ordering increased spring spill and monitoring activities.”

In a separate brief, the states of Idaho and Montana said the court wrongly found that federal rules didn’t block the Endangered Species Act motions for an increased spill, as the “requisite exceptional circumstances” necessary to support the court’s injunction weren’t present.

Nonprofit group Northwest RiverPartners said in its own brief Thursday that the district court’s “experiment will cost ratepayers an estimated \$40 million, put the integrity and reliability of the FCRPS and its infrastructure at risk, and increase regional greenhouse gas emissions by an estimated 840,000 metric tons,” despite potentially harmful effects on the fish the spill is meant to assist.

The Kootenai Tribe of Idaho and the Confederated Salish and Kootenai Tribes filed a joint brief Thursday arguing that the district judge had erred by failing to require the plaintiffs to show that they were likely to suffer irreparable harm without an injunction.

And Inland Port and Navigation Group, a nonprofit trade group that represents ports, ship companies, utilities, public agencies and others in Idaho, Oregon and Washington, said in its brief Thursday that the spill injunction could make it harder for ship operators to safely navigate through locks in the dam system.

Representatives for the parties were not immediately available for comment Friday.

The plaintiff groups, Oregon and the Nez Perce Tribe are represented by Todd D. True and Stephen D. Mashuda of Earthjustice, Daniel J. Rohlf of the Earthrise Law Center at Lewis & Clark Law School, Oregon Attorney General Ellen F. Rosenblum and Assistant Attorneys General Stephanie M. Parent and Nina R. Englander, and David J. Cummings and Geoffrey M. Whiting of the Nez Perce Tribe Office of Legal Counsel.

The federal government is represented by Gayle Lear of the U.S. Army Corps of Engineers, Jeremiah Williamson of the U.S. Department of the Interior, Ryan Couch of the U.S. Department of Commerce, and Jeffrey H. Wood, Eric Grant, Michael Eitel, Emily A. Polachek and Ellen J. Durkee of the U.S. Department of Justice.

Idaho is represented by Attorney General Lawrence G. Wasden and Darrell Early, Clay R. Smith and Steven W. Strack of the attorney general's office. Montana is represented by Attorney General Timothy C. Fox and Jeremiah D. Weiner of the attorney general's office.

Northwest RiverPartners is represented by Beth S. Ginsberg and Jason T. Morgan of Stoel Rives LLP.

The Kootenai Tribe of Idaho is represented by Attorney General William K. Barquin and Julie A. Weis of Haglund Kelley LLP. The Confederated Salish and Kootenai Tribes are represented by Stuart M. Levit and John Harrison of the tribe's legal department.

The Inland Port and Navigation Group is represented by Jay T. Waldron, Carson Bowler and Sara Kobak of Schwabe Williamson & Wyatt PC.

The case is National Wildlife Federation et al. v. National Marine Fisheries Service et al., case numbers 17-35462, 17-35463, 17-35465, 17-35466, 17-35467 and 17-35502, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Juan Carlos Rodriguez and Christine Powell. Editing by Aaron Pelc.

# Utes Back Gov't Against Unrecognized Tribe's License Sales

Share us on: By **Derek Major**

Law360, New York (October 27, 2017, 4:22 PM EDT) -- The Ute Indian Tribe on Thursday threw its support behind the federal government's suit alleging a group of mixed European and Native American ancestry not recognized by the government is illegally selling hunting and fishing licenses on the Ute Indian Tribe's Uintah and Ouray Reservation.

The Ute Tribal Business Committee, which represents a tribal membership of 2,970 people and oversees more than 1 million acres of land, issued a statement supporting the U.S. attorney's efforts to have the Uintah Valley Shoshone Tribe of Affiliated Ute Citizens, or UVST, permanently banned from selling or issuing hunting and fishing licenses, to nullify any they've already sold and award any relief the court deems appropriate.

"We encourage the U.S. attorney to continue to pursue all civil and criminal actions necessary to prevent this group of mixed-bloods from continuing to disrupt the governmental activities of the Ute Indian Tribe and prevent their ongoing trespass on the Uintah and Ouray Reservation lands," the committee said in a statement.

The tribe could be handed a federal court injunction "to stop its continued disruptive activities on the U&O Reservation," said the U.S. attorney's office, which also has the support of the Ute Tribal Business Committee.

According to the complaint, in 2016 Ute Fish and Wildlife Department officers and Utah Division of Wildlife Resources officers learned the UVST had been selling licenses to be used on the Ute Tribe's reservation in Northeastern Utah as well as approximately 68 licenses to kill deer and elk on Ute Tribal Trust lands.

Dora Van, chairwoman of the UVST, and Ramona Harris, director of the UVST, who have also been named in the suit, have been telling people who've been purchasing UVST hunting and fishing licenses that Ute Tribal Trust Lands actually belong to the UVST, and therefore no entity can prevent licensees from hunting or fishing on those lands, the complaint states.

Members of the group voted to terminate their relationship with the federal government and gave up their membership in the Ute Indian Tribe in exchange for a payout of their share of money and assets of the Ute Indian Tribe in 1954, according to a statement.

Representatives for UVST could not be reached for comment.

Counsel for the government did not respond to comment.

The federal government is represented by Jared C. Bennett and John W. Huber of the U.S. Department of Justice.

Counsel information for the Uinta Valley Shoshone Tribe was not immediately available.

The case is the United States of America v. Uinta Valley Shoshone Tribe, et al., case number 2:17-cv-01140, in the U.S. District Court for the District Of Utah.

--Editing by Richard McVay and Vincent Sherry.

# Seminoles Ask 11th Circ. For Sanctions In Subpoena Appeal

Share us on: By **Andrew Westney**

Law360, New York (October 27, 2017, 9:47 PM EDT) -- The Seminole Tribe of Florida Inc. asked the Eleventh Circuit on Thursday not to revive a suit by a group associated with a Florida energy company who are seeking to escape tribal court subpoenas, saying they should be sanctioned for trying to run up the tribe's costs with "needless, vexatious litigation."

A Florida district judge in May tossed a suit by a group led by Asker B. Asker challenging the Seminole Tribe of Florida Trial Court's right to compel American Express to turn over their individual credit card and private financial records in a tribal court dispute, saying the group had failed to challenge the tribal court's authority in that venue before bringing suit in federal court.

In its July opening brief appealing that ruling to the Eleventh Circuit, the Asker group contended that its appeal only involved the procedural claim that the judge improperly tossed the case without giving the group enough notice, rather than the group's arguments regarding the tribal court's reach.

The tribe responded Thursday that the district judge didn't have to give the Asker group notice because the case was dismissed on jurisdictional grounds, as the group was "trying to usurp the well-established authority of the tribal court to rule on its jurisdiction before a federal court action."

And the group had plenty of notice anyway, the tribe said, as the judge only tossed the suit after two motions to dismiss were filed that the group didn't answer, the tribe said.

The Asker group **filed a complaint in March**, claiming the Seminole tribal court had overstepped its jurisdiction by ordering American Express, which it said does not reside or do business in Seminole tribal lands, to turn over the credit card and private financial records of non-Native citizens who live outside the tribe's boundaries.

The Seminole tribe does business as oil distribution company Askar Energy, which it

acquired from Evans Energy in 2013. According to the underlying complaint, filed in June 2016, part of that purchase included the signing of a loan agreement and management agreement, under which Evans was required to pay back \$1.5 million the tribe loaned Evans and continue running certain portions of the company.

However, “it appears Evans had no intention of ever abiding by these agreements and instead has been self-dealing and profiteering at the expense of STOFI,” the tribe said, including skipping its loan payments, racking up \$2.2 million in back-taxes, and using Askar Energy company money to try to start a competing business.

American Express was subpoenaed by the Seminole court on Feb. 17 for financial documents pertaining to Asker and eight other individuals who were believed to be associated with Evans in some way, though they were not named as defendants in the underlying complaint.

The district court’s clerk granted a default judgment against American Express after it didn’t respond to a notice in the case, according to court records. The Asker group then voluntarily dismissed the tribe and its court as defendants — a move the tribe contends would keep it from continuing to defend its interests in the suit, even though it would be impacted by any judgment against American Express.

But U.S. District Judge Beth Bloom tossed the case entirely on May 4 and refused to vacate that decision May 10, saying that the Asker group lacked standing because it failed to state a claim against American Express and “cannot simply circumvent this court’s jurisdictional requirements by attempting to take advantage of the procedural posture in this case.”

The Asker group said in its July 26 opening brief to the Eleventh Circuit that the judge had “dismissed the action entirely without advising appellants of any perceived deficiencies in the complaint,” which prevented them seeking relief against American Express, the only defendant remaining after the Seminole defendants were dismissed.

The Seminole tribe in its answering brief Thursday called for oral arguments in the appeal, saying it would “aid the court by helping to illuminate the frivolous and vexatious nature of this appeal, justifying an award of sanctions against appellants.”

In a separate brief, the Seminole trial court said that the Asker group’s dismissal of the

Seminole defendants and bid for relief against American Express were “gamesmanship” that the district judge properly rejected. And the claims against American Express must be dismissed anyway because the tribal court is an indispensable party to the suit but can’t be joined due to its sovereign immunity to lawsuits, according to the court’s brief.

Representatives for the parties were not immediately available for comment Friday.

Asker and the group are represented by Donald G. Peterson and Jonathan M. Weirich of Parrish White & Yarnell PA.

The Seminole Tribe of Florida is represented by Peter W. Homer and Christopher King of Homer Bonner Jacobs.

The Seminole trial court is represented by Harriet Retford, Caran Rothchild and Jennifer H. Weddle of Greenberg Traurig LLP.

The case is Asker B. Asker et al. v. Seminole Tribe of Florida Inc. et al., case number 17-12535, in the U.S. Court of Appeals for the Eleventh Circuit.

--Additional reporting by Steven Trader. Editing by Adam LoBelia.



# Texas AG Says Indian Child Welfare Act Is Unconstitutional

Share us on: By **Adam Lidgett**

Law360, Dallas (October 27, 2017, 7:24 PM EDT) -- The state of Texas and a foster family have sued the U.S. government over a federal law they say unconstitutionally dictates rules for adoption and custody cases involving Native American children.

Chad and Jennifer Brackeen and the state attorney general mounted a challenge Wednesday to the Indian Child Welfare Act, alleging it contradicts the Texas Family Code, which focuses on the best interest of the child as the deciding factor for custody and adoption cases. Texas Attorney General Ken Paxton said in a statement Thursday that the ICWA's racial requirements can jeopardize children.

"The Constitution makes clear that people are more than just their racial background," Paxton said. "But ICWA elevates a child's race over their best interest in a way that could endanger Texas children. Such an unconstitutional and dangerous law cannot stand."

Filed in Texas federal court, the lawsuit centers on an adoption dispute the Brackeens are facing. They are not Native American and had fostered a Native American boy — now 2 years old — since he was 10 months old, but a Texas family court refused their petition to adopt him after applying federal law, according to Wednesday's complaint.

Even though the adoption was supported by the unnamed boy's biological parents and grandparents, the Brackeens say, the family court removed the boy from their home to live with a couple he does not know, in a state he has never seen. The family court decision is now on appeal.

The Brackeens say that the ICWA and the enabling regulations that the Bureau of Indian Affairs has put out are racially discriminatory. The ICWA puts children at risk, requiring that preference be given, absent good cause, to a member of the child's extended family, other members of their tribe or other Native American families in state-law-governed adoption placements of Native American children, according to Wednesday's suit.

"The Indian Child Welfare Act is unconstitutional, discriminatory and invades every aspect

of Texas family law as applied to Native American children,” Paxton additionally said. “It coerces state agencies and courts to carry out unconstitutional and illegal federal policy, and make child custody decisions based on racial preferences.”

Counsel for the Brackeens declined to comment beyond the complaint.

The federal government did not immediately respond to requests for comment Friday.

Texas is represented by Ken Paxton, Jeffrey C. Mateer, Brantley D. Starr, James E. Davis and David J. Hacker of its attorney general's office. The Brackeens are represented by Rebekah Perry Ricketts, Matthew D. McGill and Lochlan F. Shelfer of Gibson, Dunn & Crutcher LLP.

Counsel information for the federal government was not immediately available.

The case is Brackeen et al. v. Zinke et al., case number 4:17-cv-00868, in the U.S. District Court for the Northern District of Texas.

--Editing by Edrienne Su.

# Enviros Slam Trump's Promise To Hatch To Shrink Bears Ears

Share us on: By **Michael Phillis**

Law360, New York (October 27, 2017, 9:44 PM EDT) -- In the wake of reports that President Donald Trump promised Republican Sen. Orrin Hatch, R-Utah, that he would shrink Bears Ears National Monument, environmental groups criticized the move and said they would sue if the president took action.

The National Resources Defense Council weighed in with a tweet when the news broke, saying, "Executive action to change the boundaries of a monument is illegal. If Trump acts on this, we'll defend our national monuments in court."

Ashley Soltysiak, the director for the Utah chapter of the Sierra Club, criticized any move to reduce the size of the 1.35 million-acre monument located in southeastern Utah and reiterated the importance of protecting the land.

"The history, culture and landscape of Bears Ears National Monument remains as important today as when it was recognized as a national monument," she said in a statement. "To eliminate or reduce protections in any way is an affront to the tribal nations who called for its creation and to everyone who loves and depends on our public lands."

There is debate over whether a president has the authority to rescind monument protections. In May, 86 Democratic U.S. representatives **told** Interior Secretary Ryan Zinke that Congress, not the president, has the authority to revoke or shrink national monuments. The letter said Congress has "not delegated the authority to significantly diminish or abolish an existing national monument."

Trump's promise to shrink the monument was first reported in the Salt Lake Tribune.

Hatch is an advocate for rescinding Bears Ears, which was designated by former President Barack Obama in December 2016. He was part of a delegation of elected officials that wrote a letter to Zinke in May, pushing for action.

"We stand unified in our recommendation for a full rescission of Utah's most excessive

monuments,” the letter said.

Trump **signed an executive order** in April that launched a review of certain land and marine national monuments designated for protection under the Antiquities Act, calling the act’s use by previous administrations “abusive.” The order instructed Zinke to review monuments designated by presidents going back to 1996, which included Bears Ears.

In June, Zinke said that Bears Ears should be **reduced and “right sized”** in an interim report to the White House.

“There is no doubt that it is drop-dead gorgeous country and that it merits some degree of protection, but designating a monument that — including state land — encompasses almost 1.5 million-acres where multiple-use management is hindered or prohibited is not the best use of the land and is not in accordance with the intention of the Antiquities Act,” Zinke said in a statement at the time.

Zinke announced in August that he had sent Trump a draft report concerning a review of monuments, although he did not say exactly what his recommendations were. Some were leaked, however, including a reported recommendation to shrink Bears Ears.

In **response** to the leaked recommendations, the Bears Ears Inter-Tribal Coalition expressed “outrage.”

“Secretary Zinke’s recommendation is an insult to tribes,” Carleton Bowekaty, a Zuni councilman and Bears Ears Inter-Tribal Coalition co-chair, said in an August statement. “He has shown complete disregard for sovereign tribes with ancestral connections to the region, as well as to the hundreds of thousands of people who have expressed support for Bears Ears National Monument.”

Hatch’s office and the White House did not respond to requests for comment.

--Additional reporting by Christine Powell, Adam Rhodes and Michael Macagnone. Editing by Adam LoBelia.

**From:** Hinson, Alex  
**Sent:** 2017-11-01T11:49:59-04:00  
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## INTERIOR DAILY COMMUNICATIONS REPORT

### NEWS TO SHARE:

#### Morning Consult: House GOP Sees Smooth Sailing for Forest Management Bill

*“House Republicans expect to pass a bipartisan bill tackling forest resilience on Wednesday, with further action likely in the Senate, as California’s wildfires add urgency to finding a comprehensive solution. But many Democrats, and almost half of California’s delegation in the House, support competing legislation, which has more than four times as many co-sponsors, that’s focused solely on funding and doesn’t try to roll back environmental regulations that limit logging. The bill introduced by Rep. Bruce Westerman (R-Ark.) that’s scheduled for a Wednesday floor vote would reduce the risk of wildfire by offering different options to the U.S. Forest Service to fund fire suppression, without changing funding levels, and by creating access for loggers to thin overgrown forests.”*

### CORRECTING THE RECORD:

#### Huffington Post: Trump’s ‘Review’ Of Utah Monument Was Over Before It Started

*“For anyone following the Trump administration’s months-long review of America’s national monuments, Friday likely felt like the punchline to a joke they’d already heard. Six months after signing a pair of executive orders threatening the future of 27 national monuments, President Donald Trump reportedly phoned Sen. Orrin Hatch (R-Utah) to inform him that he would follow through on Interior Secretary Ryan Zinke’s recommendation to shrink Bears Ears National Monument, a 1.35 million-acre area in southern Utah that President Barack Obama declared a national monument in 2016. “I’m approving the Bears Ears recommendation for you, Orrin,” Trump reportedly told the senator, according to The Washington Post. Hatch, who has called the monument a “travesty,” said the call left him feeling “incredibly grateful.” The site is named after a pair of buttes and is home to thousands of Native American archaeological and cultural sites. It has been at the center of the monuments controversy, and Trump requested an expedited, 45-day review. It remains unclear how many acres the administration plans to strip from the monument, although the state is reportedly pushing for a 90 percent reduction.”*

- **Secretary Zinke’s statement:** “No President should use the authority under the Antiquities Act to restrict public access, prevent hunting and fishing, burden private land, or eliminate traditional land uses, unless such action is needed to protect the object. 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.”

#### High Country News: Scandals pile up for Interior secretary

*“In recent weeks, Interior Secretary Ryan Zinke has taken a lot of heat for his decisions.*

*Conservation groups have lambasted him over the secretiveness of his department's monuments review. The final review has yet to be made public, though a draft of the report leaked to the press in September. Conservationists have also critiqued his moves to undo years of collaborative planning for sage grouse protection. Amid all this, several events have come to light that raise questions about Zinke's ethical practices. The now-revoked Whitefish Energy contract for grid repair in Puerto Rico — though the tiny firm hails from his hometown, Zinke denies any involvement — is only the latest example. Some of his rumored transgressions have quickly dissipated; for example, he reportedly laughed off claims that he threatened Alaska senators Lisa Murkowski and Dan Sullivan before a health care vote. He tweeted a photo of himself and Murkowski sharing beers a few days later. But some of the controversies — including allegations that Zinke has mixed professional and personal business, dodged campaign finance laws and generally demonstrated dubious ethics — have led watchdog groups to call for investigations."*

- **DOI statement on travel:** "The Interior Department under the Trump Administration has always and will always continue to work to ensure all officials follow appropriate rules and regulations when traveling, including using government coach class fare options at all times appropriate and feasible, to ensure the efficient use of government resources."
- **Secretary Zinke's statement on Whitefish Energy:** "I had absolutely nothing to do with Whitefish Energy receiving a contract in Puerto Rico. Any attempts by the dishonest media or political operatives to tie me to awarding or influencing any contract involving Whitefish are completely baseless. Only in elitist Washington, D.C., would being from a small town be considered a crime. Neither myself nor anyone in my office has advocated for this company in any way. After the initial contract was awarded, I received a single email from the company, on which I took no action. All records, which are being made available, will prove no involvement. I welcome any and all investigations into these allegations, and encourage the Interior Department's Inspector General to investigate this matter fully."

## OTHER TOP STORIES:

### The Times-Picayune: Bill Cassidy balks at Trump administration's offshore oil revenue figure, seeks review

*"Concerned that Louisiana is getting only half of the \$140 million it expected under the federal Gulf of Mexico Energy Security Act, U.S. Sen. Bill Cassidy, R-La., has asked his staff to review the Trump administration's accounting of the money. He said aides are examining the 2006 law itself, revenue from offshore oil leases and how the Interior Department calculated the payout. "We're trying to do our own individual verification of those numbers," Cassidy said in an interview Friday (Oct. 27). "I'm not saying they're wrong. I'm not saying they're right." Cassidy's comments came a week after the state Coastal Protection and Restoration Authority learned Louisiana would receive only \$70 million under the act in the federal fiscal year that began Oct. 1. That will require scaling back coastal restoration and hurricane protection projects in fiscal 2019 or finding the money elsewhere, they said."*

**Connecticut Mirror: Tribes' lawyers tell Interior it must accept casino deal**

*"Two national law firms representing the Mashantucket Pequot and Mohegan tribal nations pressed the federal government Tuesday with a letter insisting the Interior secretary has no choice but to approve their gaming agreements with Connecticut and clear the way for them to jointly develop a commercial casino in East Windsor. The letter comes just days after a meeting at the Bureau of Indian Affairs within the Department of the Interior, where the tribes and the state's congressional delegation failed to move the department off its puzzling stance of neither rejecting nor approving amendments to the tribes' gaming compacts."*

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Alex Hinson

Deputy Press Secretary  
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