

**To:** Sally Butts[sbutts@blm.gov]  
**From:** Moore, Nikki  
**Sent:** 2017-06-22T10:17:13-04:00  
**Importance:** Normal  
**Subject:** Re: Mojave Trails NM Initial Data Request Exec Summary, Data Summary, New Information Request Responses  
**Received:** 2017-06-22T10:17:24-04:00

Ok thats helpful. So the response should be something like.. (b) (5) - DPP

[REDACTED]

Nikki Moore  
Acting Deputy Assistant Director, National Conservation Lands and Community Partnerships  
Bureau of Land Management, Washington D.C.  
202.219.3180 (office)  
202.740.0835 (cell)

On Thu, Jun 22, 2017 at 9:17 AM, Sally Butts <sbutts@blm.gov> wrote:

Nikki,

Here's the response from Byron.

Sally

(b) (5) - DPP

[REDACTED]

Sent from my iPhone

On Jun 20, 2017, at 5:14 PM, Nikki Moore <nmoore@blm.gov> wrote:

Can u help clarify this. I think I have a better response in the bears ears summary I did but can add what u come up with. Maybe reach out to Byron?

Nikki Moore  
Acting Deputy Assistant Director,  
National Conservation Lands and Community Partnerships

Bureau of Land Management, Washington DC  
202.219.3180 (office)  
202.288.9114 (cell)

Begin forwarded message:

**From:** "Bowman, Randal" <[randal\\_bowman@ios.doi.gov](mailto:randal_bowman@ios.doi.gov)>  
**Date:** June 20, 2017 at 5:08:17 PM EDT  
**To:** "Moore, Nikki" <[nmoore@blm.gov](mailto:nmoore@blm.gov)>  
**Cc:** John Ruhs <[jruhs@blm.gov](mailto:jruhs@blm.gov)>, Kathleen Benedetto  
<[kathleen\\_benedetto@ios.doi.gov](mailto:kathleen_benedetto@ios.doi.gov)>, "McAlear, Christopher"  
<[cmcalear@blm.gov](mailto:cmcalear@blm.gov)>, Aaron Moody <[aaron.moody@sol.doi.gov](mailto:aaron.moody@sol.doi.gov)>  
**Subject:** Re: Mojave Trails NM Initial Data Request Exec Summary, Data  
Summary, New Information Request Responses

I have few questions on this, and will be going through the others in  
the coming days now that the public comment review is going  
smoothly, so may have more.

(b) (5) - DPP

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

(b) (5) - DPP

On Wed, Jun 14, 2017 at 8:53 AM, Moore, Nikki <[nmoore@blm.gov](mailto:nmoore@blm.gov)> wrote:

Hi Randy,

We have completed our review of the initial responses provided in response to the April 26, 2017 Executive Order 13792 and initial data request for the Mojave Trails National Monument. Please find attached an executive summary and data summary. These two summary documents along with the requested data and supporting sources of information have been uploaded to the respective Google Drive folder for the Mojave Trails National Monument.

Per your request, I have also attached the responses to the new, additional information requested in a word document. ("Mojave Trails\_New Information Request\_6\_12\_2017")

Nikki Moore  
Acting Deputy Assistant Director  
National Conservation Lands and Community Partnerships  
Bureau of Land Management, Washington D.C.  
202.219.3180 (office)  
202.740.0835 (cell)

# NM Slams Feds' Bid To Rid High Court Of Colo. Gold King Suit

Share us on: By **Adam Lidgett**

Law360, New York (June 13, 2017, 4:26 PM EDT) -- The state of New Mexico has shot back at a bid from the United States that told the U.S. Supreme Court it shouldn't consider the state's suit that claims Colorado should pay for damage caused by the Gold King mine disaster, saying the federal government has turned its back on facts showing damage wrought on New Mexico.

New Mexico responded last week to the federal government's amicus curiae brief that said the pollution impacting New Mexico does not need to be remedied via a lawsuit brought against another state because there are a number of other, more appropriate remedies available. New Mexico said that Colorado authorized and allowed hundreds of millions of gallons of acidic mine water and heavy metals to pollute the Animas and San Juan Rivers in New Mexico for more than a decade, and additionally fought federal efforts to commence a Superfund cleanup.

"Simply put, Colorado placed its parochial economic interests ahead of the health, safety and welfare of New Mexico's citizens, environment and other downstream communities," New Mexico said. "The concrete injuries to New Mexico's environment, natural resources, and economy deserve complete redress, which only this court can provide, and which the Solicitor General's brief passes over without so much as a word of explanation."

The United States has **argued that** New Mexico's multiple allegations, which include common law and Comprehensive Environmental Response, Compensation and Liability Act claims, aren't appropriate for the Supreme Court to exercise its exclusive jurisdiction to hear disputes between states. It has said in addition that because the U.S. Environmental Protection Agency has begun comprehensive efforts to respond to the contamination, the remediation New Mexico wants through injunctive relief would interfere with federal efforts.

Last year, New Mexico asked the high court for **permission to** file a bill of complaint, alleging that two decades' worth of Colorado's "disastrous environmental decision making" set the stage for the Gold King mine catastrophe, which sent 3 million gallons of toxic mine waste downstream from Colorado into New Mexico.

In October, Colorado told the justices that the suit was “fraught with legal errors” and unworthy of the high court’s attention. The Supreme Court asked the United States to weigh **in on the** matter in November.

According to New Mexico’s suit, Colorado created the conditions for the disaster by approving environmental remediation work at the nearby Sunnyside Gold Mine, work that would later prove disastrous. New Mexico criticized Colorado for allowing that mine's owner to plug up an abandoned mine tunnel with concrete bulkheads rather than continue costly perpetual wastewater treatment.

Plugging up this tunnel pushed the water into the connected Gold King Mine, where the water accumulated until the EPA's contractor inadvertently let it loose, according to court documents.

The contaminated waters flowed downstream into the Animas River and eventually into the San Juan River, which courses through the northwest portion of New Mexico. The San Juan River flows through the Navajo Nation, which has also filed suit over the disaster.

"The New Mexico Office of the Attorney General will continue to hold the EPA and the state of Colorado accountable for the damages done to New Mexican families, our environment and our economy, regardless of the venue," New Mexico Attorney General’s Office Spokesman Matt Baca said in a statement.

The federal government and the Colorado Attorney General’s Office declined to comment.

The United States is represented by acting Solicitor General Jeffrey B. Wall, acting Assistant Attorney General Jeffrey H. Wood, Deputy Solicitor General Edwin S. Kneedler, Assistant to the Solicitor General Ann O’Connell and attorneys Brian H. Lynk and Meghan E. Greenfield.

New Mexico is represented by William J. Jackson and John D.S. Gilmour of Kelley Drye & Warren LLP, Marcus J. Rael Jr. of Robles Rael & Anaya PC, and Hector Balderas and P. Cholla Khoury of the New Mexico Attorney General's Office.

Colorado is represented by Cynthia Hoffman, William V. Allen, Kathleen Spalding, Frederick

R. Yarger, Jeff M. Fugate, David Blake, Jason King and Glenn E. Roper of the Colorado Attorney General's Office, and Carolyn L. McIntosh and Peter S. Gould of Squire Patton Boggs LLP.

The case is New Mexico v. Colorado, case number 220147-ORG, in the Supreme Court of the United States.

--Additional reporting by Michael Phillis, Stan Parker. Editing by Joe Phalon.

# Zinke Says Gov't Is Failing Tribes, Deflects Budget Concerns

Share us on: By **Andrew Westney**

Law360, New York (June 13, 2017, 9:59 PM EDT) -- Interior Secretary Ryan Zinke told a National Congress of American Indians conference Tuesday that federal programs serving tribes aren't working, as NCAI officials and tribal leaders raised concerns about funding cuts to such programs in the Trump administration's proposed budget.

Speaking at the Mohegan Tribe of Indians' Mohegan Sun casino in Connecticut, Zinke said that the U.S. Department of the Interior's Bureau of Indian Affairs and Bureau of Indian Education, as well as federal Indian health programs, would likely receive a failing grade from many tribes.

Interior Secretary Ryan Zinke, left, and NCAI President Brian Cladoosby, in hat, on stage Tuesday after speaking to the group's conference. (Andrew Westney/Law360)

"We live in a great nation. We should not accept failure as a standard. We should not accept failure as normal," Zinke told an assembly of tribal leaders from around the country.

But just before those remarks, NCAI President Brian Cladoosby slammed the Trump administration's **2018 budget for the Interior Department**, which he told attendees would include heavy cuts and the outright elimination of some programs, insisting that federal funding for tribes must be sustained.

"Indian Country is not discretionary," Cladoosby said.

Zinke claimed that funding for Indian schools and infrastructure has been suffering because the Obama administration imposed restrictions on offshore oil and gas drilling that reduced revenue from those programs from about \$18 billion to less than \$3 billion yearly.

According to the DOI's Office of Natural Resources Revenue, while offshore oil and gas drilling revenues have declined in recent years, part of that drop is likely due to a steep drop in oil and gas prices. Offshore drilling revenue peaked for the Obama years at \$9 billion in 2013, but has steadily declined since then, falling to \$2.8 billion in 2016, ONRR statistics

show.

The Trump administration has already moved to expand offshore drilling, with Zinke issuing a May 1 order directing the Bureau of Ocean Energy Management to develop a new five-year plan for offshore oil and gas exploration under an **April 28 order** from Trump.

In an interview with Law360 later Tuesday, Cladoosby said this was “the first that we’ve heard of the government making money to hopefully pay for tribal programs,” and wondered just how much of the billions of dollars Zinke pointed to in lost offshore drilling revenue actually went to tribal programs.

The secretary did say in response to a tribal leader’s question that coming up with the budget was “painful,” but added, “this is what a balanced budget would look like.”

However, Zinke also said that the proposed budget is “absolutely not” the budget he expects to emerge from Congress, and that the eventual budget would likely be “very similar” — apparently meaning it would come close to the DOI’s current funding levels.

Sounding a familiar Trump administration note, he also said that federal bureaucracy has imposed an “enormously heavy” regulatory burden on tribes, and that more money needed to flow to those directly involved in implementing programs if the department is to meet its treaty obligations to tribes.

The NCAI’s current conference centers on tribal infrastructure, and group president Cladoosby urged tribal leaders Tuesday to stay “ahead of the curve” as the Trump administration pushes for more infrastructure, saying that tribes often missed out on stimulus programs put in place early in the Obama administration.

Cladoosby told Law360 he is “very happy” that Zinke, who has touted his relationship with the Crow Nation and others in his home state of Montana, understands tribal issues, including the importance of the federal government consulting with tribes, tribal treaty rights, the government’s trust responsibility to tribes and tribal sovereignty.

Cladoosby said that if he had the opportunity to speak with Trump, he’d remind the president that he’s the highest federal trustee for tribes and “needs to set the example for his administration on how he’s going to deal with Native Americans and Native American



issues.”

That includes bringing officials on board who know tribes, Cladoosby added.

“That’s the key to a successful leader, always surround yourself with people smarter than you,” Cladoosby said. “Don’t be a prima donna, don’t think you need to know everything. You pay them good money, use them to help you become a stronger and better leader.”

The NCAI's conference continues with a speech from Federal Communications Commission Chairman Ajit Pai on Wednesday and concludes Thursday.

--Additional reporting by Christine Powell. Photo by Andrew Westney. Editing by Mark Lebetkin.

# McKesson, CVS Look To Toss, Pause Cherokee Opioid Suit

Share us on: By **Christine Powell**

Law360, New York (June 13, 2017, 7:55 PM EDT) -- McKesson, CVS Health and other companies targeted by the Cherokee Nation's tribal court lawsuit seeking to hold them accountable for the opioid crisis plaguing its citizens moved on Monday to dismiss the dispute and, separately, to pause it while a federal court considers their attempt to block it from proceeding.

McKesson Corp., CVS Health Corp., AmerisourceBergen Corp., Cardinal Health Inc., Walgreens Boots Alliance Inc. and Wal-Mart Stores Inc. each filed motions to dismiss the Cherokee Nation's tribal court **lawsuit accusing them** of allowing "massive amounts" of opioid pills to be diverted to the black market, fueling an epidemic of drug abuse within the tribe.

Among other things, the companies contended in their motions that tribal courts do not have jurisdiction over actions by non-Indians that take place outside of Indian Country and, also, that tribal courts lack jurisdiction to enforce the federal Controlled Substances Act, upon which they characterized the tribe's claims as being predicated.

"The problem of opioid abuse is real, and members of the Cherokee Nation ... are not immune," Cardinal Health said in its motion. "The Cherokee Nation has chosen to devote its resources to this litigation, rather than pursuing doctors who write questionable prescriptions, patients who divert drugs, and those persons who prey on the addicted. But this lawsuit does not address the true causes of the problem, which is driven by addiction, demand, and the diversion of medications for illegitimate use."

Additionally, the companies jointly filed a motion to stay the Cherokee Nation's tribal court lawsuit pending the outcome of another lawsuit they **recently filed** in Oklahoma federal court, in which they seek to pump the breaks on the tribe's claims based on similar jurisdictional arguments.

They assert in their federal court suit that tribal courts cannot hear CSA claims and "this issue of exclusive jurisdiction in federal courts is something that, in all instances, should be

first determined by the federal court," their motion to stay said. "If the federal court determines that this court lacks jurisdiction, any proceedings in this court will have been wasteful and will not conserve judicial resources."

Further, given that they are neither tribe members or tribal corporations, nor did their alleged conduct occur in Indian Country, the companies argued that they "face the prospect of irreparable harm should the proceedings in [the] court continue" and that a stay "is necessary to prevent the unrecoverable waste of defendants' time and resources."

The Cherokee Nation filed its tribal court lawsuit against the companies in April, contending that they have "habitually turned a blind eye to known or knowable problems in their own supply chains," creating "conditions in which vast amounts of opioids have flowed freely from manufacturers to abusers and drug dealers — with distributors regularly fulfilling suspicious orders from pharmacies and pharmacies regularly ignoring 'red flags' in prescription presentation."

The tribe, which has pointed out that opioid-related overdoses more than doubled between 2003 and 2014 in the 14 counties in northeast Oklahoma comprising the nation, asserted claims of negligence, unjust enrichment, civil conspiracy and nuisance against the companies in its petition.

Additionally, the tribe asserted that their alleged actions flout the federal CSA and that each such violation contravenes the Cherokee Nation Unfair and Deceptive Practices Act.

In the federal court complaint they filed last week against Attorney General of the Cherokee Nation Todd Hembree and Cherokee Nation District Court Judge Crystal Jackson, the companies shot back that the tribe's case is an "an attempt to civilly enforce a federal statute, the CSA, under the guise of claims asserted under the tribe's statutory and common law."

Representatives for Wal-Mart declined to comment on Tuesday, while representatives for the other parties did not respond to requests for comment.

The Cherokee Nation is represented by its own M. Todd Hembree, Chrissi Ross Nimmo, John Young and Chad Harsha, Richard Fields of Fields Law PLLC, William Ohlemeyer, Stephen N. Zack, Tyler Ulrich and Patricia A. Melville of Boies Schiller Flexner LLP, Curtis

"Muskrat" Bruehl of The Bruehl Firm, and Lloyd B. Miller, Donald J. Simon and Frank S. Holleman of Sonosky Chambers Sachse Endreson & Perry LLP.

CVS Health Corp. is represented by G. Calvin Sharpe of Phillips Murrah PC.

Walgreens Boots Alliance Inc. is represented by Stuart P. Ashworth of Holden & Carr.

Cardinal Health Inc. is represented by Ryan A. Ray of Norman Wohlgemuth Chandler Jeter Barnett & Ray PC, James J. Proszek and Timothy S. Posey of Hall Estill Hardwick Gable Golden & Nelson PC, and Enu Mainigi, F. Lane Heard and Steven M. Pyser of Williams & Connolly LLP.

AmerisourceBergen Corp. is represented by D. Michael McBride III and Susan E. Huntsman of Crowe & Dunlevy.

McKesson Corp. is represented by Stuart D. Campbell and J. Patrick Mensching of Doerner Saunders Daniel & Anderson LLP.

Wal-Mart Stores Inc. is represented by Karen P. Hewitt, Claire E. Castles and Laura Jane Durfee of Jones Day and Larry D. Ottaway and Amy Sherry Fischer of Foliat Huff Ottaway & Bottom.

The case is McKesson Corp. et al. v. Hembree et al., case number 4:17-cv-00323, in the U.S. District Court for the Northern District of Oklahoma.

--Editing by Katherine Rautenberg.

# DOI Blasts Nooksack Group's Bid For Redo In Funding Row

Share us on: By **Christine Powell**

Law360, New York (June 13, 2017, 7:57 PM EDT) -- The U.S. Department of the Interior urged a Washington federal judge Monday to stay firm on a recent decision dismissing the purported Nooksack Indian Tribal Council's lawsuit claiming that the agency has wrongly refused to pay roughly \$14 million in funding, saying there's no reason to reconsider.

The DOI pressed U.S. District Judge John C. Coughenour to reject a motion by the tribe's so-called holdover council for **reconsideration** of a ruling dismissing its lawsuit claiming that the agency has improperly withheld nearly \$14 million in funding due under Indian Self-Determination and Education Assistance Act contracts with the tribe.

In the **underlying ruling**, the judge said that in the "exceedingly rare situation" presented by the suit — in which no Nooksack leadership group has been recognized by the federal government since the DOI issued decisions refusing to recognize the council and the actions it has taken since March 2016, when it had enough members to act for the tribe — the court owes deference to the agency's decisions.

The council argued in its reconsideration bid that Judge Coughenour "inappropriately" deferred to the DOI's decisions when holding that it lacks authority to file suit on the tribe's behalf, but the agency shot back Monday that the council has shown no basis for reconsideration given that its motion "simply rehashes arguments that were unsuccessful in opposing dismissal and, in any event, demonstrates neither manifest error nor manifest injustice."

While the reconsideration motion contended that the judge should have instead deferred to the Nooksack Tribal Court's "reasonable construction of its own law" holding that holdover council positions are allowed, the DOI said that there are "numerous" problems with that argument by the council, which the agency calls the Kelly faction, in reference to Chairman Robert Kelly Jr.

"Reduced to its essentials, the Kelly faction's manifest error argument amounts to an

assertion that the Nooksack law is what it says it is, and this court is required to simply fall in line,” the DOI said. “The secretary [of the DOI] disagrees. The Kelly faction’s representations about Nooksack law have been shown to be nothing more than a convenient litigating position to which no deference is required.”

Additionally, the DOI criticized the council’s reliance on the Second Circuit’s decision in an appeal dealing with a tribal leadership dispute within the Cayuga Nation — in which the appellate court held that the BIA’s decision to recognize a particular tribal representative gave the man authority to file suit on behalf of the tribe — to argue that it can bring the lawsuit.

According to the DOI, in the Cayuga Nation case, the Second Circuit said that when an individual’s authority to initiate litigation on a tribe’s behalf is called into dispute, the question courts should address is whether there is sufficient basis in the record to conclude, without resolving disputes about tribal law, that the individual can bring such litigation.

And, in the instant case, “the evidence in the record establishes unequivocally that the Kelly faction is unrecognized by the secretary,” the DOI continued. “That should be the end of the story and, consistent with Cayuga Nation, this court has already so ruled.”

As for the topic of manifest injustice, the DOI said that the judge’s ruling is in no way fundamentally unfair and that, to the contrary, it is the “natural consequence” of the council’s actions, citing the fact that it has “unilaterally discarded” the government established by the Nooksack Constitution and has been “faithless” to its own people.

“The path forward to legitimacy, and recognition, is in its own hands,” the DOI said, adding that, “underscoring its own illegitimacy and its evident lack of faith in the democratic process to determine the future course of the tribe, the Kelly faction would prefer to sue here for recognition rather than expose the faction’s members to a fair vote of the Nooksack people.”

The lawsuit is part of a stormy battle between the holdover council and roughly 300 tribe members facing disenrollment, regarding which the DOI has **repeatedly backed** the members by declaring that the council has lacked a quorum to act for the tribe.

The underlying February **complaint** contends that while the DOI has said it will not recognize any actions by the council since March 2016, when it suspended elections for

expiring council seats, council members have continued to hold office in holdover status while an election was held or new council members waited to be sworn in numerous times throughout the tribe's history.

The council has had authority and quorum from that time until January, when an election and swearing-in took place to fill all seats, yet based on the DOI's determination that the council has lacked such authority, the federal government has erroneously withheld funding that the tribe needs to provide services under ISDEAA contracts with the Indian Health Service and other federal agencies, the complaint said.

In April, Judge Coughenour allowed roughly 270 of the tribe members facing disenrollment to **step into** the lawsuit.

Representatives for the council and for the tribe members were not immediately available for comment Tuesday. The federal government does not comment on pending litigation.

The holdover council is represented by Connie Sue Martin of Schwabe Williamson & Wyatt PC and Rickie Wayne Armstrong of the Office of the Tribal Attorney.

The federal government is represented by Brian C. Kipnis of the U.S. Department of Justice.

The intervenors are represented by Gabriel S. Galanda, Anthony S. Broadman, Ryan D. Dreveskracht and Bree R. Black Horse of Galanda Broadman PLLC.

The case is Nooksack Indian Tribe v. Zinke et al., case number 2:17-cv-00219, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Andrew Westney. Editing by Alyssa Miller.