

**From:** shawn.pensoneau@bia.gov  
**Sent:** 2017-12-08T14:46:20-05:00  
**Importance:** Normal  
**Subject:** OPA-IA Daily News Clips for December 8, 2017  
**Received:** 2017-12-08T14:46:32-05:00  
[December 7 - The Biggest Native American Law Rulings Of 2017.docx](#)  
[December 7 - Third Federal Judge Exits Tribe's Dispute With Ex-Worker.docx](#)  
[December 7 - Trump Overstepped On Monuments, Enviro Group Insists.docx](#)

## Daily News Clips

### HOT TOPICS

**St. Regis Mohawk Tribe ‘disappointed, but not surprised’ by Trump’s national monument action** – [The Malone Telegram](#) (12/08)

**Senate confirms Alaska’s Balash to Interior Department** – [Daily News-Miner](#) (12/08)

**Interior Department’s return to the ‘Robber Baron’ years** – [High Country News](#) (12/08)

**Op-Ed: Zinke Betrayed the Tribal Nations** – [Outside Online](#) (12/07)

**Wampanoag Tribe Takes More Land Into Trust Federal Trust** – [Vineyard Gazette](#) (12/07)

**Emergency FEMA Funding Went to Old Casino** – [The Washington Free Beacon](#) (12/07)

**Republicans Turn to Industry for Advice on how to Reorganize Interior Department** – [Huffington Post](#) (12/07)

### INDIAN LEGISLATIVE, LEGAL, JUSTICE AND PUBLIC SAFETY ISSUES

**Navajo Nation Under Heightened Police Patrol** – [Native News Online](#) (12/08)

**Senate committee approves bill to fund victim services programs in Indian Country** – [Indianz.com](#) (12/07)

**Authorities identify two victims in shooting at Aztec High School** – [The Durango Herald](#) (12/07)

**Trump administration throws up hurdles for first new tribal water rights settlements** – [Indianz.com](#) (12/07)

**Tribal employment measure officially presented to President Trump for his signature** – [Indianz.com](#) (12/07)

**The Biggest Native American Law Rulings Of 2017** – *Law360/Attached* (12/07)

**Third Federal Judge Exits Tribe's Dispute With Ex-Worker** – *Law360/Attached* (12/07)

**Trump Overstepped On Monuments, Enviro Group Insists** – [Law360/Attached](#) (12/07)

LAND, ENERGY, NATURAL RESOURCES AND ENVIRONMENT

**Native American students and faculty submit inquiry to Bio Station land** – [The Michigan Daily](#) (12/07)

**Confederated Salish and Kootenai Tribes are a key component of halting the spread of Aquatic Invasive Species in Flathead Basin** – [Char-Koosta News](#) (12/07)

**Western wildfires are bigger, more frequent since the 80s** – [The Weather Network](#) (12/07)

**Critics sue over mine exploration near Alaska eagle preserve** – [Associated Press](#) (12/06)

ECONOMIC DEVELOPMENT/FINANCE AND TECHNOLOGY IN INDIAN COUNTRY

**MGM ‘welcomes’ Bridgeport casino competition** – [Hartford Business](#) (12/07)

**Anti-gambling coalition opposes Bridgeport’s MGM, tribal bids** – [Stamford Advocate](#) (12/07)

**The Political Battle – Interview with MGM Chairman Jim Murren** – [wtn.com](#) (12/07)

**“A win for all of us”: Leech Lake officials break ground at site of new casino** – [The Bemidji Pioneer](#) (12/07)

**Pechanga Band of Luiseño expected to open resort expansion December 22** – [Gaming Today](#) (12/07)

HEALTH, EDUCATION & YOUTH IN INDIAN COUNTRY

**Gladstone third grade students learn about Native American culture** – [Daily Press](#) (12/08)

**Students take ownership of their voice** – [Char-Kootsa News](#) (12/07)

**King County Council to Vote on Banning Solitary for Juveniles** – [The Stranger](#) (12/06)

TRIBAL LEADERSHIP & COMMUNITY NEWS

**Prominent Native American Politician Announces Bid for Idaho Governor** – [NW News Network](#) (12/07)

**Saginaw Chippewa Tribe selects Ronald Ekdahl for chief as council takes office – [Indianz.com](#) (12/06)**

**MISCELLANEOUS**

**Museum adds Native American works to collection – [The Blade](#) (12/07)**

**All-American Indian Shootout finds a home in Billings – [montanasports.com](#) (12/07)**

**Diné UFC champ credits her ancestors – [Navajo Times](#) (12/07)**

--

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](mailto:as-ia_opa@bia.gov)

# Trump Overstepped On Monuments, Enviro Groups Insist

Share us on: By **Michael Phillis**

Law360, New York (December 7, 2017, 3:36 PM EST) -- A coalition of environmental groups added its suit Thursday to a slew of challenges to President Donald Trump's decision to shrink national monuments in Utah, asserting that the White House does not have the authority to remove special protections for large swaths of land.

The Natural Resources Defense Council Inc., the National Parks Conservation Association and several other groups filed the suit in D.C. district court, arguing that Trump did not have the authority under the Antiquities Act to reduce Bears Ears National Monument by about 85 percent. Congress has that authority, but the law does not provide the president with the same right, the groups argued.

A separate suit filed Monday by a similar coalition of groups challenged the presidential proclamation that reduced the size of Grand Staircase-Escalante national monument. Native American organizations have also sued to stop Trump's actions, as have other conservation organizations. The challenges are the start of a legal battle that could have an impact on the country's conservation policy and the executive branch's power to reverse prior protected designations for lands.

"President Trump's action is contrary to the Antiquities Act, which authorizes presidents to create national monuments, but not to abolish them in whole or in part. Only Congress — not the president — has the power to revoke or modify a national monument. President Trump's proclamation purporting to dismantle Bears Ears National Monument exceeded his authority," the suit filed Thursday said.

Heidi McIntosh, an Earthjustice lawyer on the brief, said that the legal principle behind the challenge was pretty straightforward: they do not believe that Trump possesses the power he is trying to exercise.

The White House has argued that past presidents had also taken action to remove designations. The administration said this had happened on several prior occasions, including when President Woodrow Wilson made major cuts to Mount Olympus National

Monument.

“None of those adjustments had been challenged in court before, so there is no legal precedent that would uphold that authority,” McIntosh said. And Congress moved to restore protections to counter Wilson’s reductions of Mount Olympus, she said. There are also new federal laws on land management. In all, there is “water under the bridge” since the last time a reduction occurred, she said.

The suit says that President Barack Obama, who designated Bears Ears late in his term, protected land with important archaeological artifacts that are especially valuable to some Native American communities. Undoing protections could open the area up to mining or other activities that could harm those objects, the suit said.

When Trump **announced** that he was slashing the two Utah monuments, he called the use of the Antiquities Act by prior administrations abusive.

“These abuses ... give enormous power to faraway bureaucrats at the expense of the people who actually live here, work here and make this place their home,” Trump said, adding that this would no longer be the case.

On Tuesday, Interior Secretary Ryan Zinke **released recommendations** that he sent to the White House in which he agreed that past administrations had misused the Antiquities Act. He also recommended reductions for some other monuments, but advised keeping many others as they are.

Zinke’s 20-page report reviewed Antiquities Act designations made by presidents since 1996 that were larger than 100,000 acres. The review said that contrary to assertions by environmentalists that the Antiquities Act only allows presidents to protect land, Trump can and should alter the size of some monuments. The law calls for designations that are the “smallest area compatible” with preserving the “object,” but that limitation hasn’t always been followed, according to the report.

The White House did not immediately return a request for comment.

The coalition was collectively represented by Sharon Buccino, Jacqueline M. Iwata, Katherine Desormeau, Ian Fein and Michael E. Wall of the Natural Resources Defense

Council, James Pew, Heidi McIntosh and Yuting Yvonne Chi of Earthjustice, and Stephen H.M. Bloch, Landon C. Newell and Laura E. Peterson of the Southern Utah Wilderness Alliance.

Representation information for the federal government was not immediately available Thursday.

The case is Natural Resources Defense Council Inc. et al. Donald Trump et al., case number 1:17-cv-02606, in the U.S. District Court for the District of Columbia.

--Editing by Dipti Coorg.

# The Biggest Native American Law Rulings Of 2017

Share us on: By **Andrew Westney**

Law360, New York (December 7, 2017, 10:57 AM EST) -- The U.S. Supreme Court's ruling that a Mohegan Tribe limousine driver didn't share the tribe's sovereign immunity to a tort suit caught the attention of Native American law practitioners in 2017, but major decisions also came in on offensive trademarks, water rights in the West, and Oklahoma tribal jurisdiction.

Here, Law360 reviews some of the highest-profile decisions in Native American law in 2017.

## **Lewis v. Clarke**

The U.S. Supreme Court ruled in April that a limousine driver working for the Mohegan Tribe wasn't protected by the tribe's sovereign immunity from claims over an off-reservation car accident, potentially inviting more suits against tribal employees as a way to skirt tribal immunity.

The justices in their April 25 ruling unanimously reversed a Connecticut Supreme Court decision that Mohegan Tribal Gaming Authority employee William Clarke was immune to claims over injuries a Connecticut couple sustained after his limo pushed their car into a concrete highway median, saying a Mohegan tribal code provision indemnifying tribal gaming employees against negligence suits didn't confer the tribe's immunity onto Clarke.

The ruling was a "troubling one" for tribes as the high court "jumped through hoops to conclude that tribal sovereign immunity does not apply here," according to Pipestem Law Firm PC partner Mary Kathryn Nagle, an enrolled citizen of the Cherokee Nation.

While the ruling was relatively narrow in its focus on the indemnity issue, it's still important because it "once again signals there are areas of sovereign immunity that are not fully settled" and that "where we get to the edges the courts are willing to assess what they believe is the best rule of decision," said Kilpatrick Townsend & Stockton LLP partner Keith M. Harper.

The case is Brian Lewis et al. v. William Clarke, case number 15-1500, in the Supreme Court of the United States.

### **Coachella Valley Water District et al. v. Agua Caliente Band of Cahuilla Indians et al.**

The Supreme Court recently rejected a petition from two California water agencies in a water rights dispute with the Agua Caliente Band of Cahuilla Indians, leaving in place a Ninth Circuit ruling that established tribes' right to groundwater on their reservations.

A circuit court panel had ruled in March that the federal government established the tribe's federal right to groundwater when it created the tribe's reservation in the 1870s. The high court denied petitions by the Coachella Valley Water District and the Desert Valley Water Agency to overturn that ruling on Nov. 27.

The courts' decisions emphasize the "continuing vitality" of the so-called reserved-rights doctrine, according to Hogen Adams PLLC member Jessica Intermill.

The doctrine, which holds that tribes' treaties with the federal government reserved rights the tribes held instead of granting tribes new rights, "will be an important tool as tribes look toward protection of sacred spaces and cultural properties, regulations to combat climate change and other contemporary issues that are critical to use and protection of a tribal homeland — even though they weren't spelled out in treaties creating reservations," Intermill said.

The case is Coachella Valley Water District et al. v. Agua Caliente Band of Cahuilla Indians et al., case number 16A958, in the Supreme Court of the United States.

### **Murphy v. Royal**

A Tenth Circuit decision in August tossing the Oklahoma state murder conviction and death sentence of Muscogee Creek Nation member Dwayne Patrick Murphy could have an impact on tribal jurisdiction far beyond the circumstances of that case.

Oklahoma has said it plans to ask the Supreme Court to review a circuit panel's ruling that found that the Creek reservation hadn't been reduced or eliminated and that the location of Murphy's alleged crime was therefore still part of the reservation and subject to federal



jurisdiction. The Tenth Circuit in November rejected a bid by Oklahoma and the federal government to rehear that ruling.

If the Tenth Circuit's decision stands, it could have an impact on the criminal and civil jurisdiction of the so-called Five Civilized Tribes in Oklahoma — the Cherokee, Chickasaw, Choctaw and Seminole tribes alongside the Creek — in its determination that Congress didn't show a clear intent to disestablish the Creek reservation through a series of eight late 19th century and early 20th century statutes.

"There have long been discussions in legal circles regarding whether or not these set of laws passed vis-à-vis the five tribes have diminished their reservations, and we have now the most significant case that answers that definitively as a no," Harper said.

And the Cherokee Nation has already told an Oklahoma federal court that the *Murphy v. Royal* ruling backs the jurisdiction of the Cherokee courts over the tribe's suit against CVS, Walgreens, McKesson and other companies seeking to hold them financially responsible for the tribe's opioid crisis.

Still, while the *Murphy* decision has "a certain amount of persuasive value," it remains to be seen how far the ruling on tribal jurisdiction in a criminal context may extend into questions of civil jurisdiction, said Dorsey & Whitney LLP senior attorney James Nichols.

### **Matal v. Tam**

The U.S. Supreme Court's decision striking down a federal ban on registering offensive trademarks secured the right of Washington, D.C.'s NFL team to use the term "Redskins" as a trademark, turning the focus of those who consider the term a racial slur to the public arena.

In June, the high court ruled in *Matal v. Tam*, a separate case brought by a rock band called The Slants, that the Lanham Act's ban on offensive trademark registrations ran afoul of the First Amendment, allowing the football team to prevail in a battle over its marks with Native American activists that had been stayed in the Fourth Circuit.

"Morally, what the Supreme Court is saying is we are going to uphold a framework of laws that protects the property rights of a white business owner to make money off and

commodify a racial slur that harms Native Americans,” Nagle said.

But there is a reluctance on the part of the courts to act with respect to such issues, according to Harper.

“I think the right way to seek a change is really political in nature,” he said. “One thing the Slants decision does is make clear that that’s going to be the best route, and now Indian Country should focus on that route.”

The case is *Matal v. Tam*, case number 15-1293, in the Supreme Court of the United States.

--Editing by Christine Chun and Rebecca Flanagan.

# Third Federal Judge Exits Tribe's Dispute With Ex-Worker

Share us on: By **Shayna Posses**

Law360, New York (December 7, 2017, 4:18 PM EST) -- A Utah federal judge recused herself Wednesday from hearing the Ute Indian Tribe's action looking to prevent a former employee of the tribe's energy and minerals department from pursuing an underlying contract dispute in state court, becoming the third jurist to bow out of the federal suit since it was filed last year.

U.S. District Judge Jill N. Parrish removed herself from the tribe's suit against ex-employee Lynn D. Becker and Third District Court Judge Barry G. Lawrence, who is overseeing the state-court action, without offering any explanation, just one week after U.S. District Judge Robert J. Shelby recused himself in an equally brief order that provided no details about his reasons.

"I recuse myself in this case, and ask that the appropriate assignment equalization card be drawn by the clerk's office," each judge said in their respective one-page orders.

Judge Shelby himself was the second judge to tackle the suit, stepping in after U.S. District Judge Bruce S. Jenkins recused himself on April 14, 2016, one day after the litigation was filed. Like his colleagues, Judge Jenkins didn't go into detail about his decision, instead simply stating, "I find I must recuse myself from this case."

Court filings provide no insight about what inspired the recusals. A representative for Utah's Administrative Office of the Courts, which is representing Lawrence, declined to comment Thursday, and representatives for the other parties didn't return requests for more information.

The dispute is back in Utah federal court after the Tenth Circuit **held in August** that the lower court shouldn't have concluded it lacked jurisdiction over the tribe's lawsuit seeking to block Becker's state-court dispute claiming the tribe owes him money under an employment contract. The tribe maintains it's the state court that lacks jurisdiction over Becker's claims.

"We hold that the tribe's claim — that federal law precludes state-court jurisdiction over a

claim against Indians arising on the reservation — presents a federal question that sustains federal jurisdiction,” the panel said, remanding for further proceedings.

Becker promptly moved for rehearing or rehearing en banc the next month, arguing that the judges had improperly relied upon a law that neither the parties, nor the district court, had cited: Public Law 280, which provides for state-court jurisdiction over litigation arising in Indian country in which an Indian is a party only when a state or tribe has taken certain actions.

The Tenth Circuit partly granted rehearing in early November for the limited purpose of tweaking some of the language in the ruling to address several concerns raised by Becker, although its broad strokes remain the same.

The Ute Indian Tribe, which resides on the Uintah and Ouray Indian Reservation in northeastern Utah, had **alleged in June 2016** that from 2000 to 2007, a “cabal of unscrupulous non-Indians” — including Becker — inserted themselves into the tribe's government and its energy and minerals department through “fraud, subterfuge and bullying” in order to transfer interests in the tribe’s oil and gas mineral estate to themselves.

Becker came to work for the tribe as a petroleum landman in 2003 and inked an independent contractor agreement in April 2005 that applied retroactively to March 2004 for his employment as the land division manager of the Ute Indian Tribe’s energy and minerals department, according to the federal complaint.

The complicated, “multi-tiered, convoluted commercial transactions” the group carried out to take interest in the tribe’s mineral estate resulted, among other things, in Becker receiving a \$68,000 distribution of net proceeds from the \$4 million that Laminar Direct Capital LP paid to acquire a 10 percent interest in one of the tribe’s energy companies, according to the tribe.

Becker sued in Utah state court in December 2014, alleging the tribe breached his employment contract by failing to pay him the required monthly compensation after his employment was terminated, and seeking damages for the violation, according to a copy of the state complaint.

The tribe, its tribal business committee and a holding company for its oil and gas assets

filed the instant case shortly after Becker asked the state court to enter a \$23 million default judgment against the Ute Indian Tribe as a discovery sanction, according to court documents.

They told the federal court that the agreement Becker purported to sue under was null and void and that the state court lacked subject matter jurisdiction over his case, asking for an order enjoining Judge Lawrence from presiding over the state court suit and blocking Becker from pursuing his claims.

Judge Shelby **granted Becker's request** to dismiss for lack of subject-matter jurisdiction in August 2016, but the Tenth Circuit ultimately disagreed with his decision roughly a year later.

The same day the appeals court handed down the reversal in the present suit, the panel also found for the tribe in a separate decision, reversing a Utah district court's grant of a preliminary injunction in favor of Becker in another lawsuit he filed, which blocked the tribe from proceeding with a separate attempt in its tribal court to halt the state-court row.

The panel took stock in the tribe's argument that the so-called tribal exhaustion rule prevents a district court from determining a tribal court's jurisdiction until a tribal court has ruled on its own jurisdiction, meaning the underlying district court should not have found that the tribe waived tribal court jurisdiction by signing the employment contract and that it instead should have "abstained on the issue."

Becker has also asked for rehearing of that decision, and the request remains pending.

Becker is represented by David K. Isom of Isom Law Firm PLLC.

Judge Lawrence is represented by Brent M. Johnson and Keisa L. Williams of Utah's Administrative Office of the Courts.

The tribe is represented by Thomas W. Fredericks, Jeremy J. Patterson, Jeffrey S. Rasmussen and Frances C. Bassett of Fredericks Peebles & Morgan LLP.

The case is Ute Indian Tribe of the Uintah and Ouray Reservation et al. v. Lawrence et al., case number 2:16-cv-00579, in the U.S. District Court for the District of Utah.

--Additional reporting by Christine Powell. Editing by Orlando Lorenzo.