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Subject: OPA-IA News Clips for Monday, November 6, 2017
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[Enviros Sue DOI For Docs In National Monument Review - Law360.pdf](#)
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[Pruitt Names EPA Advisory Board Members Under New Rules - Law360.pdf](#)

Here are your OPA-IA news clips for today:

HOT TOPICS

[Trump administration erodes environmental protections](#) (High Country News)

[Trump Administration: Get Ready for Uranium Mining Around Grand Canyon](#)
([readersupportednews.org](#))

[DOI Report Identifies Energy Use and Development Obstacles](#) (EHS Daily Advisor)

[Lawsuit Filed Over Administration's National Monument Review](#) (National Parks Traveler)

[Fate of National Monuments Remains Shrouded in Secrecy](#) ([environmentguru.com](#))

[While you weren't looking](#) ([mic.com](#)) – *Scroll to 5th item.*

[Seabury Blair Jr.: Raising fees not the way to fix maintenance backlog at national parks](#) (Kitsap Sun)

[BLM requests input for future planning](#) (Valley Courier)

Enviros Sue DOI For Docs In National Monument Review (Law360) – *PDF of story is below.*

INDIAN LEGISLATIVE/JUSTICE & PUBLIC SAFETY ISSUES

[Tribal leaders call land-use bill step in right direction](#) (Cherokee Phoenix)

[BIA targets 2018 to reopen Two Rivers Detention Facility in Hardin](#) ([kpax.com](#))

[Bureau of Indian Affairs planning to re-open Montana jail](#) (The Herald)

[Grazing Fraud Lands South Dakota Woman 5 Years Probation](#) ([drovers.com](#))

[Quileute Tribe gaining ground on facilities' move to higher elevation](#) (Peninsula Daily News)

Up Next At High Court: Clawbacks And Congressional Power (Law360) – *PDF of story ("Is the Gun Lake Act Unconstitutional?") is below.*

2nd Circ. Upholds Verdict In 'Onondaga 15' Suit Against Cops (Law360) – *PDF of story is below.*

Homeowners' Property Tax Suit Against Wash. Tribe Tossed (Law360) – *PDF of story is below.*

ECONOMIC DEVELOPMENT IN INDIAN COUNTRY

Second pronghorn release on Colville Indian Reservation (Okanogan Valley Gazette-Tribune)

Briefcase: Welcome: Geraldene Blackgoat has joined Greer Stafford/SJCF Architecture Inc.
(Albuquerque Journal)

HEALTH & EDUCATION IN INDIAN COUNTRY

FDL teacher named National Teacher of the Year (pinejournal.com)

Faculty member condemned for wearing headdress on Halloween — even though she's Native American (The College Fix)

Pruitt Names EPA Advisory Board Members Under New Rules (Law360) – *PDF of story is below.*

LEADERSHIP & TRIBAL POLITICS

Soldier's Solo Effort Defeats Dozens of Germans in WWII Battle (dodlive.mil)

Wounded Knee siege leader Dennis Banks dies (The Sydney Morning Herald)

The Legacy of Dennis Banks (opednews.com)

MISCELLANEOUS

Great American Indian Expo celebrates Native American culture (wric.com)

35th Annual AISES Pow Wow celebrates culture, traditions at CSU (The Rocky Mountain Collegian)

Locals identify Native American mound on Fairfield Union Local Schools property (Lancaster Eagle-Gazette)

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Enviros Sue DOI For Docs In National Monument Review

By **Michael Phillis**

Law360, New York (November 3, 2017, 2:53 PM EDT) -- The U.S. Department of the Interior has refused to comply with public records law and is withholding documents related to the Trump administration's review of national monuments, a lawsuit filed by several environmental groups in D.C. federal court alleged on Thursday.

The Southern Utah Wilderness Alliance, the Sierra Club and other environmental groups said that their Freedom of Information Act requests for information on the national monument review being conducted by the Trump administration were being unlawfully delayed. Several requests for information either produced no documents or very little information, and officials at the U.S. Department of the Interior were unresponsive to requests about when they would be filled, the suit says.

President Donald 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 Interior Secretary Ryan Zinke to review monuments designated by presidents going back to 1996. Environmental groups want information on that review and have not received it, the suit says.

"None of the defendants have provided plaintiffs with the determination required by FOIA and the governing regulations, and none have completed or in all but one case even commenced the production of requested records," the complaint said.

At issue are seven requests submitted between March and September that environmental groups say are past the initial 20 business day deadline and any pertinent extensions allowed by law. The requests were made to the Bureau of Land Management, the DOI and the Council on Environmental Quality.

A number of the requests asked for information related to Bears Ears National Monument in Utah, which was subject to an expedited review by the Trump administration. Utah Republican Sen. Orrin Hatch **said last month** that President Trump had called him and said he would shrink Bears Ears, a move sharply criticized by environmental groups.

There were also requests related generally to the monument review and Zinke's monument review report.

The complaint goes through each FOIA request and lists the actions taken and the alleged lack of response.

For a request "seeking all records dated or created after Jan. 20, 2017, related to the Bears Ears National Monument, including communications," the DOI acknowledged the request and extended the deadline by 10 days.

Four days past the deadline, however, the DOI turned over one 15-page file a small portion of the overall request. The plaintiffs said they asked about the request on multiple occasions. "Each time, [the Bureau of Land Management] failed to answer the call or return counsel's voicemail message,"

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the complaint said.

The lawsuit asks for the court to order the government to fulfill the requests.

Yvonne Chi of EarthJustice, counsel for the environmental groups, said the government needs to follow FOIA. The Trump Administration's monument review is unprecedented, Chi said, and the public needs to see what the decision-making process looks like.

Some of the requests at issue were for broad sets of documents. When Chi was asked about the scope of the requests and whether they presented a obstacle, she said that wasn't the problem.

"If volume is an issue, then why haven't the agencies responded to our simple, specific request to release Secretary Zinke's final report to President Trump that included recommendations to change national monuments protected by the Antiquities Act? No, volume is not the issue here," Chi said. "We don't have the records because the Trump administration doesn't want the American people to have access to them."

A representative for the White House did not immediately respond to a request for comment on Friday.

The environmental groups are represented by Laura Dumais, Heidi McIntosh and Yuting Chi of EarthJustice.

Counsel information for the federal government was not immediately available on Friday.

The case is Southern Utah Wilderness Alliance et al. v. U.S. Department of the Interior et al., case number 1:17-cv-02314, in the District of Columbia court.

--Editing by Stephen Berg.

Update: This story has been updated with additional comments from EarthJustice.



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2nd Circ. Upholds Verdict In 'Onondaga 15' Suit Against Cops

By Michael Phillis

Law360, New York (November 3, 2017, 9:19 PM EDT) -- The Second Circuit said on Thursday no reversible error occurred in a trial where 15 members of the Onondaga Nation accused New York law enforcement of using excessive force against protesters in a 1997 incident, rejecting allegations the judge was biased and improperly changed the rules.

A Second Circuit panel said in a summary order that allegations by the "Onondaga 15" that there wasn't a fair trial didn't hold weight. The trial, which included 15 pro se plaintiffs and dozens of defendants, required special rules for it to proceed properly, the panel said. Their appeal faulted the trial judge's rules, but their claims of bias and improper jury instructions were largely unsubstantiated, the panel said.

Andrew Jones and scores of mostly Native American plaintiffs sued New York state troopers for allegedly violent arrests during a 1997 protest of the legitimacy of the Onondaga Nation's council of chiefs in a dispute over taxes. All but 15 of the plaintiffs settled. Those 15 plaintiffs went to trial, **lost**, and have now lost their appeal, too.

"The trial transcript reveals that the trial was at times contentious. There are numerous examples of individual members of the Onondaga 15 heckling the presiding judge by calling him 'racist,' 'prejudiced,' a 'little baby,' and a 'racist pig,'" the order said. "Yet, there is simply no evidence in the record to support a claim for bias."

District Judge Frederick J. Scullin Jr. established special rules at the trial that resulted in a judgment in October 2016 against the Onondaga 15. The Onondaga said they had to submit questions in writing to the judge to make sure they were admissible, and that their allotted time for statements was too short, among other issues. The Second Circuit said, however, that for a trial with 15 pro se plaintiffs "and more than 50 defendants," special rules were necessary.

"We think it is clear that the district court acted well within its bounds by managing the questioning of witnesses in a way designed to elicit relevant testimony," the order said. "The district court was faced with a formidable task in managing this unwieldy trial and did not abuse its discretion in making these changes to standard trial procedure."

The Onondaga 15 also found fault with the jury instructions, but while the Second Circuit said one included an error, it didn't upset the "integrity of the trial."

The 15 plaintiffs were pro se because their counsel withdrew, and the judge's approval of the withdrawal wasn't a reversible error either, the panel said.

The Onondaga 15 accused New York state troopers of violating their First Amendment rights to assemble and to speak freely by arresting them as they protested along Interstate 81, as well as their Fourth Amendment right to be free from the use of excessive force. Some also claimed troopers assaulted them and arrested them without probable cause.

The jury said those claims weren't proven. The judge dismissed the case.

Gabriel M. Nugent, who represented one of the defendants, praised the Second Circuit's order.

"This was a difficult trial to be sure," he said. "However, Judge Scullin did his very best to balance the interests of all parties, and the jury was able to make an objective decision after all proof was in."

Circuit Judges Jon O. Newman, John M. Walker Jr. and Rosemary S. Pooler sat on the panel for the Second Circuit.

The majority of the defendants were represented by Assistant Solicitor General of New York Frederick A. Brodie.

Defendant Joseph W. Smith was represented by Gabriel M. Nugent of Barclay Damon LLP.

The Orondaga 15 were represented by John R. Mann III.

The case is Jones et al. v. Parmley et al., case number 16-3603, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Andrew Westney. Editing by Adam LoBelia.

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Homeowners' Property Tax Suit Against Wash. Tribe Tossed

By **Derek Major**

Law360, New York (November 3, 2017, 3:00 PM EDT) -- A Washington federal judge on Thursday dismissed a suit brought by three nontribal couples challenging the tribe's property tax, saying the couples cannot sue yet since the tax has not been enforced.

In his decision, U.S. District Judge John Coughenour did not address the issue of sovereign immunity, which generally grants tribal nations freedom from lawsuits, but did say the couples did not try to resolve the issue with the Tulalip Tribes of Washington and that the tax and the claim that the tax makes the properties unmarketable are contingent on future events.

"The tribes have not attempted to enforce the regulatory ordinance or real estate tax against homeowners," the judge said. "There is no evidence the parties have attempted to adjudicate the dispute through the tribes' court system or administrative process."

The homeowners, Thomas Mitchell and Patricia S. Johanson-Mitchell, Buckley Evans and Tina Evans and Robert Dobler and Lizbeth Dobler, made the argument the tax would render their property unmarketable if they chose to sell it. However, the judge said that for a sale to occur, a real estate transaction and a second contract that would require a marketable transaction title in order to close the transaction have to take place, which may or may not occur.

Additionally, the judge noted that the homeowners do not allege that there is a pending transaction or even an anticipated future transaction for their properties that would implicate either of the ordinances and do not allege that the ordinances have prevented them from developing or conveying their property.

The three married couples all own homes within the boundaries of the Tulalip Tribes of Washington reservation. In 1999, the tribe recorded a memorandum of ordinance that stated the tribe has land use regulatory authority over all properties located within the reservation's boundaries. This regulatory ordinance appears as a special exception to coverage on homeowners' titles.

The Tulalip Tribal Code also contains a real estate excise tax provision that requires payment of 1 percent of the sale price of any transfer of real property within the boundaries of the Tulalip Reservation.

Representatives for both sides did not immediately respond to a request for comment.

Thomas Mitchell, Patricia S. Johanson-Mitchell, Buckley Evans, Tina Evans, Robert Dobler and Lizbeth Dobler are represented by Paul Edward Brain of the Brain Law Firm.

The Tulalip Tribes of Washington is represented by Anthony Jones and Timothy Brewer of the Tulalip Tribes of Washington.

The case is Thomas Mitchell, et al., v. Tulalip Tribes Of Washington, case number 2:17-cv-01279 , in the court of U.S. District Court of the Western District of Washington.

--Editing by Richard McVay and Vincent Sherry.

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Up Next At High Court: Clawbacks And Congressional Power

By **Jimmy Hoover**

Law360, Washington (November 3, 2017, 5:00 PM EDT) -- An attorney's unexpected medical leave in one case and the possible settlement of another has whittled the U.S. Supreme Court's docket down to just two oral arguments this week: a dispute over safe harbors from bankruptcy clawbacks and a question about Congress' power to define federal court jurisdiction.

The justices originally planned to hear four cases this week, which marks the second half of the high court's Oct. 30 oral argument session. But the court **dropped one of those**, an investor suit against Leidos Inc., on Oct. 17 so the parties can finalize a settlement and submit it to a lower court for approval.

Then on Oct. 27, the high court struck from its calendar a closely watched case over how Ohio maintains its voter rolls after the arguing attorney, Brenda Wright of Demos, went on medical leave and the argument was handed off to her co-counsel Stuart Naifeh, who asked for additional time to prepare.

That leaves just two cases on the justices' plate for Monday and Tuesday. Here's what they'll deal with.

Which Transfers Are Safe From Bankruptcy Clawbacks?

The justices will hold court Monday on an issue of monumental importance to any party that inks a major deal with a company that goes belly up: Under what circumstances are those transfers from the company to the party safe from a bankruptcy trustee's clawback?

The case, Merit Management Group LP v. FTI Consulting Inc., involves a relatively minor transaction over a horse track, but the prospect of a Supreme Court ruling has generated significant noise from the bankruptcy bar. St. Louis-based bankruptcy attorney Brian Walsh of the firm Bryan Cave will argue for petitioner Merit, an investor seeking to shield a \$16.5 million payment from trustee FTI.

The specific legal question in the case is whether the "safe harbor" provision of Section 546(e) of the U.S. Bankruptcy Code covering transfers to financial institutions applies in instances where the institution did not directly benefit but was only a conduit to another party that ultimately received the money. The petitioners argue there is a split between the Seventh Circuit and the Second, Third, Sixth, Eighth and Tenth circuits on the answer to this question.

Section 546(e) states that a trustee may not avoid, or claw back, transfers "by or to (or for the benefit of)" financial institutions and various other types of entities — a provision that Congress enacted to protect the integrity of capital markets.

In the present case, the Seventh Circuit held that the provision did not apply to a \$55 million stock purchase that involved financial institutions, because the financial institutions were mere conduits for the deal and not the ultimate beneficiaries. The dispute over the provision arose following Pennsylvania racetrack Valley View Downs LP's Chapter 11 filing in 2009. Before declaring bankruptcy, Valley View had taken over Bedford Downs, a rival racetrack, in a deal worth \$55 million.

Valley View borrowed money from Credit Suisse AG to make the purchase, and the transaction was directed through Citizens Bank of Pennsylvania. A year after Valley View's bankruptcy and the subsequent Chapter 11 filing of Valley View parent Centaur LLC, Centaur trustee FTI sought to recover \$16.5 million of the purchase price from Merit, one of Bedford Downs Management Corp.'s investors.

Former shareholders facing billion-dollar clawbacks in the Tribune Co. and Lyondell Chemical Co. bankruptcies **have asked the high court** to rule that those claims are prohibited by the safe harbor. But the National Association of Bankruptcy Trustees said such a holding would be "terrible policy" and hamper the ability of trustees to maximize payouts to creditors.

Representing FTI is Supreme Court veteran Paul Clement, a former U.S. solicitor general currently with Kirkland & Ellis LLP. The case will be Clement's third argument before the justices this term, which kicked off just last month.

The case is Merit Management Group LP v. FTI Consulting Inc., case number 16-784, in the Supreme Court of the United States.

Is the Gun Lake Act Unconstitutional?

On Tuesday, the Supreme Court will hear oral arguments about whether a federal law barring court challenges to a Michigan tribe's casino violates constitutional separation-of-powers principles.

The law at issue is the Gun Lake Act, which was enacted to remove federal court jurisdiction from suits challenging the Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians' Gun Lake Casino.

Congress passed the law in 2014 in response to a Supreme Court ruling that Michigan resident David Patchak could pursue his administrative challenge to the government's decision to take a parcel of land into trust for the tribe's casino. Now, Patchak is back at the high court arguing that Congress' Band-Aid fix intruded upon judicial power by ordering that the case be "promptly dismissed" without changing any substantive or procedural laws.

"It is difficult to imagine a more direct invasion of the judicial power than occurred here," Patchak wrote in his opening merits brief to the court.

The federal government has fought back against Patchak's high court appeal and received support from the U.S. House of Representatives and the National Congress of American Indians. The U.S. Solicitor General's Office has argued that it is well within Congress' constitutional authority to define federal court jurisdiction over certain claims, and that the Gun Lake Act merely restored the government's sovereign immunity that was waived by the Administrative Procedure Act.

Arguing for petitioner Patchak on Tuesday will be Boies Schiller Flexner LLP partner Scott E. Gant. He will face off against Assistant Solicitor General Ann O'Connell and Akin Gump Strauss Hauer & Feld LLP partner Pratik A. Shah, who is arguing for the tribe.

The case is Patchak v. Zinke et al., case number 16-498, in the Supreme Court of the United States.

--Additional reporting by Jack Newsham, Alex Wolf, Ryan Boysen and Andrew Westney. Editing by Edrienne Su.



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Pruitt Names EPA Advisory Board Members Under New Rules

By **Melissa Daniels**

Law360, Los Angeles (November 3, 2017, 6:04 PM EDT) -- Environmental Protection Agency Administrator Scott Pruitt on Friday named more than 130 scientists from academia, nonprofits, and the public and private sectors to three scientific advisory committees on the condition they won't be eligible for any grant money during their terms.

Pruitt **on Oct. 31** said that he wouldn't name anyone to the agency's advisory committees unless they agreed to not receive any grant money during their tenure. He cited more than \$77 million in grant funding that had gone to sitting committee members in a three-year period.

But **some criticized the move** as boxing out the most qualified and sought-after scientists from the EPA's committees, undercutting its scientific integrity.

Friday's announcement encompassed appointees to the Board of Scientific Counselors, the Clean Air Science Advisory Committee and the Science Advisory Board. The committee members come from a variety of backgrounds including nongovernmental organizations, academia, industry, and state, tribal and local government.

"To ensure that EPA is receiving the best independent scientific advice, I am appointing highly qualified experts and scientists to these important committees," Pruitt said in a press release.

Pruitt's announced on Tuesday that any advisory committee members must be "financially independent" from the EPA, meaning they will not take any grants from the agency although the provision doesn't apply to government agency representatives who are named to the boards. A memo accompanying Pruitt's directive said that when nongovernmental and nontribal members receive EPA grants while serving on a federal advisory committee, there can be the appearance or reality of "potential interference with their ability to independently and objectively serve as a FAC member."

Liz Perera, the climate policy director of the Sierra Club, told Law360 that preventing scientists who receive EPA grants from sitting on the boards keeps the most qualified researchers out of the running at the detriment of public health and safety. For years, private industry has pushed to see more of its own researchers on the boards, she said, and preventing grant-funded researchers from participating paves the way for larger industry involvement.

"This is an extremely insidious and extremely effective way of stacking the deck against public health and for industry," she said.

The EPA has 23 advisory committees that provide insight on environmental science, public health, safety and other areas of the agency's purview. Members are term-limited.

The nominations that Pruitt announced on Friday were the result of an application process. The largest of the three committees, the Board of Scientific Counselors, received 431 applications. Out of 83 members, 28 are reappointments, according to an EPA spokesperson. The BOSC advises the EPA's Office of Research and Development about its research programs on a variety of topics.

Paul Gilman, who is the chief sustainability officer of Covanta, is nominated to be the new chair of the 18-member BOSC executive committee. The board also encompasses the Sustainability and Healthy Communities Subcommittee, to be chaired by Utah State University professor Courtney Flint; the Air, Climate and Energy Subcommittee, to be chaired by Charlette Geffen, director of research strategy at the Pacific Northwest National Laboratory; the Chemical Safety for Sustainability Subcommittee, to be chaired by Katrina Waters of the Pacific Northwest National Laboratory; and the Homeland Security Subcommittee, to be chaired by Paula Olsiewski of the Alfred P. Sloan Foundation.

Forty-two applicants applied for seven spots on the Clean Air Science Advisory Committee. Four members announced Friday have already served on the committee, while three are new members, according to an EPA spokesperson.

Tony Cox, the president of Denver-based consulting firm Cox Associates, was named as the new chair. The CASAC is charged with giving advice, information and recommendations on the scientific and technical aspects of air quality criteria and National Ambient Air Quality Standards, according to the EPA's website.

The Science Advisory Board saw 132 applicants with 44 members named 18 of whom are new appointments. The board provides insight on the scientific bases for the EPA's actions and programs across disciplines.

The new SAB chair is Michael Honeycutt, who is the director of the toxicology division of the Texas Commission on Environmental Quality.

When Pruitt announced the eligibility requirements on Tuesday, the move was instantly slammed by environmental groups and congressional Democrats. U.S. Senators Tom Carper, D-Del., the ranking Democrat on the Environment and Public Works Committee, and Sheldon Whitehouse, D-R.I., said they are concerned Pruitt plans to replace current members with Republican state officials and representatives from the fossil fuel and chemical industries.

Whitehouse accused Pruitt of "trying to restock the EPA's science panels with industry hacks."

Representatives for the senators didn't immediately respond to requests for comment on Friday.

In addition to the financial independence directive, Pruitt's new advisory board guidelines said he intended to "increase geographical diversity" of the members.

Stuart Spencer, president of the Association of Air Pollution Control Agencies, said that the new makeups include senior air quality officials from state agencies in Arkansas, Georgia, Texas, Wyoming, and North Carolina.

"We appreciate Administrator Pruitt's willingness to encourage nominations and select qualified experts from state and local environmental agencies for service on critical advisory panels like the Clean Air Scientific Advisory Committee, Science Advisory Board and the Board of Scientific Counselors," said Spencer, who also works for the Arkansas Department of Environmental Quality. "Geographically diverse state and local officials have a unique, independent perspective as a result of their on-the-ground experience carrying out the Clean Air Act and other environmental statutes."

--Additional reporting by Juan Carlos Rodriguez. Editing by Bruce Goldman.