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[December 19 - Indian Child Act Suit Rightly Tossed, Feds Tell 9th Circuit.docx](#)  
[December 19 - Nebraska Regulators Won't Budge On Keystone XL Route Ruling.docx](#)  
[December 19 - Enviros Sue BLM To Stop Methane Venting Rule Delay.docx](#)  
[December 19 - Contractor Looks To Escape Suit Over Gold King Mine.docx](#)  
[December 19 - NY Times Sues DOI Over Utah Monument Doc Request.docx](#)

## Daily News Clips

### HOT TOPICS

**Tribal Jobs program becomes permanent with President Trump's signature** – [Indianz.com](#) (12/19)

**Zinke wanted to expand critical minerals production, saying: 'We are vulnerable as a nation'** – [LMTonline.com](#) (12/19)

**Bad River Tribal Members Upset With Deputy Status** – [wxpr.com](#) (12/19)

**A Native American tribe on the Easter Shore received Maryland Indian Status** – [The Washington Post](#) (12/19)

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

**Commissioners answer tax questions** – [Cut Bank Press Pioneer](#) (12/20)

**Ex BIA Police Officer in Montana Pleads Guilty in Sex Case** – [Associated Press](#) (12/19)

**Document reveals federal government paid \$13K to settle Haskell student's lawsuit** – [Lawrence Journal-World](#) (12/19)

**Indian Child Act Suit Rightly Tossed, Feds Tell 9th Circuit** – *Law360/Attached* (12/19)

**Nebraska Regulators Won't Budge On Keystone XL Route Ruling** – *Law360/Attached* (12/19)

**Enviros Sue BLM To Stop Methane Venting Rule Delay** – *Law360/Attached* (12/19)

**Contractor Looks To Escape Suit Over Gold King Mine** – *Law360/Attached* (12/19)

**NY Times Sues DOI Over Utah Monument Doc Request** – *Law360/Attached* (12/19)

LAND, ENERGY, NATURAL RESOURCES AND ENVIRONMENT

**John Berrey: Politico got it wrong on Tar Creek** – [The Joplin Globe](#) (12/19)

**Arizona's national monuments spared, for now** – [The Daily Courier](#) (12/19)

**Oversight Energy: Senate close to approving Arctic drilling/EPA Cancels media tracking contract/Trump officials sounds alarm on mineral imports** – [The Hill](#) (12/19)

**DOJ files appeal in UKB trust land case** – [Cherokee Phoenix](#) (12/19)

**Oneida Nation seeks to transfer more Green Bay land into tax-exempt federal trust** – [Green Bay Press-Gazette](#) (12/19)

ECONOMIC DEVELOPMENT/FINANCE AND TECHNOLOGY IN INDIAN COUNTRY

**Carter Lake casino proponents confident despite lawsuit** – [The Daily Nonpareil](#) (12/20)

**Ho-Chunk Nation committed to off-reservation casino despite uncertainty in Trump era** – [Indianz.com](#) (12/19)

**Foxwoods November slot revenues up 8%** – [Hartford Business](#) (12/18)

**Mohegan Sun November slot revenue inches up** – [Hartford Business](#) (12/15)

HEALTH, EDUCATION & YOUTH IN INDIAN COUNTRY

**University of Wyoming Graduate is New Native American Program Advisor** – [Native News Online](#) (12/20)

**High School Students Receive Amazing Opportunity at American Indian Graduate Center Program** – [Native News Online](#) (12/20)

**NAU partners with Navajo schools to develop innovative new Teachers Institute** – [NAU News](#) (12/19)

**Series of overdoses on White Earth Reservation** – [KFGO.com](#) (12/19)

TRIBAL LEADERSHIP & COMMUNITY NEWS

**Tribal leaders old and new** – [Red Wing Republican Eagle](#) (12/19)

**Southern Ute Tribe elects woman as chair for only second time in recent history** – [Indianz.com](#) (12/18)

MISCELLANEOUS

**Congratulations to Rodeo World Champion Erich Rogers – [Native News Online](#) (12/19)**

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# NY Times Sues DOI Over Utah Monument Doc Request

Share us on: By **Shayna Posses**

Law360, New York (December 19, 2017, 1:14 PM EST) -- The New York Times Co. hit the U.S. Department of the Interior with a Freedom of Information Act suit Monday in New York federal court, alleging that the agency has failed to fork over documents related to a national monument in Utah that the federal government plans to shrink dramatically.

The complaint alleges that the agency has yet to respond to Times reporter Julie Turkewitz's request for information related to President Donald Trump's decision to slash large tracts of land safeguarded by predecessors — even after the journalist took a DOI representative's advice and narrowed the scope of her request to seek details about only Bears Ears National Monument.

“The DOI has no lawful basis for declining to release the records requested by plaintiffs under FOIA,” the suit says. “Accordingly, plaintiffs are entitled to an order compelling the DOI to produce records responsive to their FOIA request.”

Turkewitz, who covers the Rocky Mountain region for the Times, submitted a FOIA request to the DOI in late August, seeking all emails to and from Interior Secretary Ryan Zinke about national monuments, according to the complaint.

However, the suit alleges, a DOI representative called Turkewitz the next month and suggested she narrow her request to get the information more quickly. The reporter took the advice, informing the agency that she would like all emails to and from Zinke, the agency's acting deputy chief of staff and other staff members about Bears Ears from Jan. 20 to the present, the complaint says.

But the DOI failed to respond in a timely manner, which the Times and Turkewitz say violates FOIA. The news organization and reporter seek an order requiring the agency to search for and turn over records responsive to her request about Bears Ears, which the federal government plans to open up to mining and drilling, according to the complaint.

The lawsuit comes on the heels of another **FOIA suit** filed last week by the Conservation

Lands Foundation in D.C. federal court, seeking documents relating to what it called the president's "sweeping attack on public lands."

In late April, the nonprofit said, the president took the "unprecedented step" of ordering Zinke to review national monuments covering more than 100,000 acres that have been designated or expanded since 1996 under the Antiquities Act. Then, in early December, Trump **officially reduced** the size of Bears Ears and Grand Staircase-Escalante National Monument, which is also in Utah, according to the complaint.

The foundation began requesting related documents over the summer, but has received little to no response beyond initial messages acknowledging receipt of the requests it submitted to the DOI and other agencies, the complaint alleged.

The nonprofit also numbers among **the legal challengers** contesting the administration's decision to shrink the Utah monuments. The determination has drawn **a number of lawsuits** from environmental activists and Native American groups, who say that only Congress, not the president, can go back on land protections handed down under the Antiquities Act. The outcome of the litigation could have an impact on not only the two Utah monuments, but also on other areas that have received Antiquities Act protections without being separately protected by Congress.

One of those lawsuits says then-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, and undoing those protections could open the area up to mining or other activities that could harm those objects.

Trump went to Utah to sign the two presidential proclamations removing large areas of acreage from Bears Ears and Grand Staircase-Escalante, which was designated by then-President Bill Clinton in 1996 and includes large fossil deposits and stunning red rock formations.

The White House has argued that previous administrations have abused the Antiquities Act, which says the designated area must be the "smallest area compatible" for protecting landmarks. The administration also said that past presidents have shrunk monuments before.

The U.S. Department of Justice declined to comment on The Times' suit Tuesday. Representatives for the news organization and Turkewitz didn't immediately return a request for comment.

The Times and Turkewitz are represented by Charles S. Sims and John Langford of Yale Law School's Media Freedom & Information Access Clinic.

Counsel information for the DOI wasn't immediately available Tuesday.

The case is The New York Times Co. et al. v. U.S. Department of the Interior, case number 1:17-cv-09883, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Bryan Koenig, Michael Phillis and Kat Greene. Editing by Bruce Goldman.

*Update: This story has been updated to reflect that the DOJ declined to comment.*

# Neb. Regulators Won't Budge On Keystone XL Route Ruling

Share us on: By **Adam Lidgett**

Law360, New York (December 19, 2017, 5:19 PM EST) -- Nebraska utility regulators on Tuesday shot down bids to reconsider approval of the portion of the controversial Keystone XL pipeline that runs through the state — an approval that rejected developer TransCanada Corp.'s preferred route in favor of an alternative route.

The brief decision from the Nebraska Public Service Commission declined to revisit a Nov. 20 order that gave the green light, by a vote of 3-2, to the alternative route for the long-gestating pipeline.

TransCanada had asked the commission to reconsider its order after evaluating the company's filing of an amended application. The company had said that it did not seek reconsideration of the route itself, but wanted the commission to allow it to address some questions raised by the decision.

Additionally, **landowners** in the state had urged the commission to reconsider the **Nov. 20** order and to clarify it by unanimously denying TransCanada's February application for approval of its preferred route, which the landowners said was the only route for which studies required by law had been done.

PSC Chairman Tim Schram and Commissioners Rod Johnson and Frank Landis Jr. voted in favor of the alternative route, while Commissioners Crystal Rhoades and Mary Ridder voted against it. Rhoades said the route violates the landowners' rights to due process, wasn't adequately evaluated by state and federal regulators, crosses environmentally sensitive areas and offers little economic benefit to Nebraska.

Terry Cunha, a spokesperson for TransCanada, said in a statement that the company "will take the time to review the decision and determine the appropriate next steps for the project in Nebraska."

"More importantly, Keystone XL remains a viable project with strong commercial support," he said. "The project continues to have widespread support of the U.S. and Canadian

federal governments as well as state and provincial governments in Montana, South Dakota, Nebraska, Saskatchewan and Alberta.”

David A. Domina, an attorney for the landowners, told Law360 on Tuesday that either the project has to be abandoned or the company would face an appeal that it “is highly unlikely” they would win.

“It’s a huge setback to TransCanada and probably puts the landowners in the very best position they can be in,” he said of Tuesday’s decision.

The landowners are represented by David A. Domina and Brian E. Jorde of Domina Law Group PC LLO.

TransCanada is represented by James G. Powers and Patrick D. Pepper of McGrath North Mullin & Kratz PC.

The case is In the Matter of the Application of TransCanada Keystone Pipeline LP, Calgary, Albert, seeking approval for Route Approval of the Keystone XL Pipeline Project Pursuant to the Major Oil Pipeline Siting Act, application number OP-0003, before the Nebraska Public Service Commission.

--Additional reporting by John Kennedy and Keith Goldberg. Editing by Marygrace Murphy.

# Contractor Looks To Escape Suit Over Gold King Mine

Share us on: By **Adam Lidgett**

Law360, New York (December 19, 2017, 1:53 PM EST) -- U.S. Environmental Protection Agency contractor Environmental Restoration LLC urged a federal judge on Monday to let it out of Utah's suit over the company's role in the 2015 Gold King Mine spill, saying that the state's claims under a federal Superfund law should get tossed.

Environmental Restoration filed a motion to dismiss the state's July complaint over the spill, which occurred when a dam was breached, allowing more than 3 million gallons of heavy-metal-laden water to rush into a tributary of the Animas River in Colorado, impacting areas in Arizona, New Mexico and Utah, along with the Navajo Nation and Southern Ute Indian Tribes reservations.

The dismissal bid said, among other things, that it isn't possible for Environmental Restoration to be held liable as an operator under the Comprehensive Environmental Response, Compensation, and Liability Act because Utah never pled any facts that would show the company had the "requisite control over the actions that plaintiff alleges caused a release of hazardous substances."

"As to 'operator' liability, plaintiff does not allege any facts showing that ER controlled the relevant activities at Gold King," the dismissal bid said. "To the contrary, plaintiff admits that ER was a contractor for the U.S. Environmental Protection Agency, which had the authority to control ER's work under the parties' contract and oversaw ER's alleged activities at Gold King."

The state's suit was filed against a host of defendants and claimed that Environmental Restoration was liable for monetary damages, civil penalties and injunctive relief under CERCLA, as well as state laws.

The spill occurred on Aug. 5, 2015, when EPA workers assessing a leak at the Colorado mine accidentally destroyed a dam holding back water contaminated with various substances such as arsenic, mercury and cadmium.

The state of Utah's **suit was filed** against **numerous parties**, such as Harrison Western Corporation — Environmental Restoration's subcontractor — and nearby Sunnyside Mine owners Sunnyside Gold Corp.; Kinross Gold Corp.; and its subsidiary, Kinross Gold USA. Sunnyside, Kinross and Harrison Western have filed motions to dismiss as well, according to court documents.

"SGC was not involved and has no responsibility regarding the incident on August 5th, 2015," Sunnyside Gold Corp. spokesperson Larry Perino said in a statement. "SGC never owned or operated the Gold King Mine and we will vigorously defend ourselves from this legal action."

Representatives for the other parties did not immediately respond to requests for comment on Tuesday.

Utah is represented by Sean D. Reyes, Spencer E. Austin and Craig L. Barlow of the state attorney general's office, and Peter Hsiao and Matthew L. Hofer of Morrison & Foerster LLP.

Environmental Restoration is represented by Terry D. Avchen, Peter C. Sheridan and Andriy R. Pazuniak of Glaser Weil Fink Howard Avchen & Shapiro LLP, and John A. Adams and E. Blaine Rawson of Ray Quinney & Nebeker PC.

Sunnyside is represented by Blake Klinkner, Jeff Oven, Chris Stoneback, Pam Garman and Neil Westesen of Crowley Fleck PLLP.

Kinross is represented by Craig D. Galli, Steven G. Jones, Jill H. Van Noord and Bradford C. Berge of Holland & Hart LLP.

Harrison Western is represented by Stephen J. Trayner and Ryan P. Atkinson of Strong & Hanni and Brian Molzahn of Hall & Evans LLP.

The case is the State of Utah v. Environmental Restoration et al., case number 2:17-cv-00866, in the U.S. District Court for the District of Utah.

--Additional reporting by Christine Powell. Editing by Jack Karp.

# Indian Child Act Suit Rightly Tossed, Feds Tell 9th Circ.

Share us on: By **Michael Phillis**

Law360, New York (December 19, 2017, 4:33 PM EST) -- The federal government told the Ninth Circuit that a lower court was right to throw out a putative class action alleging several portions of the Indian Child Welfare Act discriminated based on race and violated the U.S. Constitution, arguing that adoptions in the case had made it entirely moot.

All of the four unnamed children at issue in this case have been adopted, the government said in its response brief Friday. This fact alone meant that the plaintiffs' allegations were moot, it said. In addition, the brief said, U.S. District Judge Neil V. Wake was right **to dismiss the case** in March on grounds that the alleged harm wasn't particular enough.

The suit was brought by a group of three non-Native American couples who sought to adopt children, most of whom had Native American ancestry, the children and two "next friends" of off-reservation children with Indian ancestry in Arizona custody proceedings. They argue that parts of the ICWA are racially biased in violation of various constitutional principles and that "being subject to a different set of procedural and substantive law" based on race provides them with standing to sue.

"The challenged provisions of ICWA apply only in child-custody proceedings, and none of the plaintiffs is a party to any such proceeding because children have been adopted by their foster parents," the federal government's response brief said. "Plaintiffs thus cannot be awarded any effective relief."

The suit said parts of the ICWA are racially discriminatory because they differentiate between children with Indian ancestry and those without it. It also said that Congress cannot force citizens to undergo proceedings dealing with the termination of parental rights and other parental proceedings without the necessary constitutional protections in place.

The government countered, however, that the ICWA was put in place in the 1970s on top of state law and was meant to protect tribes that suffered from a large number of their children being taken away and adopted by non-Indian families.

Paul Spruhan, an attorney for the Navajo Nation that filed an intervenor brief with the Gila River Indian Community agreeing with the government, said that the lower court's decision should hold and that the ICWA was sound.

"ICWA continues to be immensely important to protect the present and future of Indian tribes by protecting Indian children when they enter into state child welfare and judicial systems," Spruhan said in a statement.

In addition, the director of the Arizona Department of Child Safety filed a brief saying that the lower court decision should stand.

The federal government also said that there was no evidence the ICWA had any direct impact on the plaintiffs, adding that general allegations that adoption took longer wasn't enough to sustain the case. Its brief detailed the specific provisions of the ICWA, such as its preference that children with Indian ancestry be placed in foster care preferably with a member of the tribe, and detailed how the plaintiffs allegedly did not suffer from any of the law's provisions.

Judge Wake said the plaintiffs' case was grounded on "vague or narrow allegations of their own experience with" the law, adding that they could not show a direct injury.

"The legal questions plaintiffs wish to adjudicate here in advance of injury to themselves will be automatically remediable for anyone actually injured," Judge Wake said in March.

According to the plaintiffs' opening brief filed in September, the law sets up a process with race at its core.

"Thus, solely as a result of their racial profile, the children plaintiffs — who are, after all, citizens of the United States, entitled to 'the protection of equal laws,' — are subjected to different rules, both procedural and substantive, than would apply to their white, black, Hispanic or Asian peers," the opening brief said.

Aditya Dynar, an attorney for the plaintiffs, said the government was improperly focusing on the end result of the adoptions and not the process.

"You can't just look at the final outcome, you have to see how people got there," Dynar told

Law360 on Tuesday.

At its core, the law is discriminatory, Dynar said.

The plaintiffs are represented by Aditya Dynar and Timothy Sandefur of the Goldwater Institute and Michael W. Kirk, Brian W. Barnes and Harold S. Reeves of Cooper & Kirk PLLC.

The U.S. Department of the Interior and the Bureau of Indian Affairs are represented by William B. Lazarus, Matthew Littleton and Christine W. Ennis of the U.S. Department of Justice.

The director of the Arizona Department of Child Safety is represented by Mark Brnovich, Dawn R. Williams and Paul S. Bickett of the state's attorney general's office.

The Navajo Nation is represented by Katherine Belzowskia and Paul Spruhan of the Navajo Nation Department of Justice.

The Gila River Indian Community is represented in-house by Linus Everling and Thomas L. Murphy and by Donald R. Pongrace, Merrill C. Godfrey and Pratik A. Shah of Akin Gump Strauss Hauer & Feld LLP.

The case is Carter et al v. Washburn et al, case number 2:15-cv-01259, in the U.S. District Court of the District of Arizona.

--Additional reporting by Christine Powell. Editing by Dipti Coorg.

# Enviros Sue BLM To Stop Methane Venting Rule Delay

Share us on: By **Michael Phillis**

Law360, New York (December 19, 2017, 7:51 PM EST) -- A coalition of environmental groups filed suit on Tuesday in California federal court alleging that the U.S. Bureau of Land Management's decision to suspend several provisions of a rule limiting oil and gas companies from venting and flaring methane on public lands wasn't supported by the evidence.

The Sierra Club, the Center for Biological Diversity and a slew of other groups said when the BLM delayed certain requirements of the Obama-era waste prevention rule for a year until January 2019, it was done in a hurried and arbitrary way. The groups said the move violated the Administrative Procedure Act along with other regulations and asked the court to reinstate the original deadlines.

The BLM **published its delay** in the federal register on Dec. 8. Delayed elements of the rule include the requirement for producers to submit a waste minimization plan to capture a higher percentage of gas. When the BLM announced the publication of the delay earlier this month, the bureau said the move "avoids compliance costs on operators." The BLM has also said it is looking at rescinding or significantly revising the 2016 rule.

"BLM fails to offer a reasoned explanation for its claim that the rule's provisions 'add considerable regulatory burdens that unnecessarily encumber energy production, constrain economic growth and prevent job creation,' which conflicts with its prior conclusions and evidence in the record," the complaint said.

In addition, California and New Mexico jointly filed a "nearly identical" lawsuit challenging the BLM's delay of the waste prevention rule on the same day in the same court.

The BLM **posted a notice** in June that it intended to postpone compliance of key portions of the rule after congressional efforts to repeal the regulation failed. The move is one of several actions taken by the U.S. Department of the Interior and the U.S. Environmental Protection Agency to suspend the effective date of regulations while they are being looked at for their impact on industry.

The environmental groups said that pattern stems from President Donald Trump's **executive order in March** urging the BLM to make a change to the rule. The BLM's actions on this rule show it pushed forward with changes without going through the correct process, the suit said. It hasn't properly considered past analysis that said the rule was worth it and the BLM hasn't engaged sufficiently with the public, the suit said.

"BLM failed to keep an open mind during the notice and comment process and instead committed to revising the compliance deadlines in the rule before taking public comment, rendering the public comment period meaningless," the suit said.

The Obama-era rules were developed for a reason — it was determined the previous rules were "not sufficient to adequately limit waste" and would impose "modest" compliance costs, the suit said.

"BLM has not explained how a one-year suspension of the rule constitutes all reasonable precautions to prevent waste," the environmentalists' suit said.

According to the lawsuit, the delay the BLM introduced will add 175 tons of methane to the atmosphere.

The BLM declined to comment on the suits.

Michael Saul, an attorney with the Center for Biological Diversity, said the delay was a giveaway to the oil and gas industry.

"It's wasteful and harmful to public health, and the Trump administration is trying to let them get away with it," Saul said in a statement.

The environmental groups are collectively represented by Stacey Geis, Robin Cooley and Joel Minor of Earthjustice, Susannah L. Weaver of Donahue & Goldberg LLP, Peter Zalzal, Rosalie Winn, Thomas Carbonell and Samantha Caravello of the Environmental Defense Fund, Laura King, Shiloh Hernandez and Erik Schlenker-Goodrich of the Western Environmental Law Center, Darin Schroeder and Ann Brewster Weeks of the Clean Air Task Force, Scott Strand and Rachel Granneman of the Environmental Law & Policy Center, and Meleah Geertsma of the Natural Resources Defense Council.

California is represented by Xavier Becerra, David A. Zonana, George Torgun and Mary S. Tharin of the state attorney general's office.

New Mexico is represented by Hector Balderas, Ari Biernoff and Bill Grantham of the state attorney general's office.

Counsel information for the federal government was not immediately available Tuesday.

The cases are Sierra Club et al. v. Ryan Zinke et al., case number 3:17-cv-07187, and State of California et al. v. U.S. Bureau of Land Management et al., case number 3:17-cv-07186, both of which are in the U.S. District Court for the Northern District of California.

--Additional reporting by Adam Lidgett. Editing by Jack Karp.