

2020 NNBA ANNUAL CONFERENCE

FEDERAL LITIGATION UPDATE

PAUL SPRUHAN

NAVAJO NATION DEPARTMENT OF JUSTICE

FEDERAL CASES

FEDERAL APPELLATE CASES

***Brackeen v. Bernhardt* (5th Cir.)**

(Challenge by non-Indian foster/adoptive parents and states of Texas, Indiana, and Louisiana to Indian Child Welfare Act and regulations as race-based statute in violation of equal protection, Tenth Amendment, Non-Delegation, and Administrative Procedures Act)

(Northern District of Texas struck down ICWA and its regulations on those grounds; Fifth Circuit panel reversed with dissent on Tenth Amendment; *en banc* panel held oral argument on 1/23/2020; decision pending)

***Confederated Tribes of the Chehalis Reservation v. Mnuchin* (D.C. Cir.)**

(Challenge by Nation and other tribes to decision of Department of the Treasury to give portion of CARES Act funding for “tribal governments” to Alaska Native Corporations)

(District Court rules ANCs are eligible; tribes appealed; D.C. Circuit held oral argument on 9/11/2020; decision pending)

***Colorado v. U.S. EPA* (10th Cir.)**

(Challenge by State of Colorado to new “Waters of the United States” rule under Clean Water Act defining scope of federal authority over water permits; District Court granted preliminary injunction against US EPA; Nation filed amicus brief in support of Colorado; oral argument scheduled for 11/18/20)

***Dine Citizens Against Ruining our Environment v. Bureau of Indian Affairs* (9th Cir.)**

(challenge to issuance of permits and lease for Navajo Mine and Four Corners Power Plant alleging NPEA and ESA violations in Biological Opinion and Environmental Impact Statement)

(Dismissed by Federal District Court of Arizona due to sovereign immunity of Navajo Transitional Energy Company and required party status under Rule 19 of the Federal Rules of Civil Procedure)

(Ninth Circuit affirmed; Cert. Denied)

***Employers Mutual Casualty Co. v. Branch* (9th Cir.)**

(Suit by insurance company defendant in *Navajo Nation v. Pic-N-Run*, pending in Chinle District Court, challenging Nation's jurisdiction)

(Federal District Court of Arizona granted EMC summary judgment, ruling Nation's courts had no jurisdiction over non-Indian insurer of non-Indian entities involved in gas spill; Nation appealed)

(Ninth Circuit affirms in unpublished decision holding Treaty right to exclude did not apply to off-reservation insurer with no physical presence on Nation or second *Montana* exception)

***Navajo Nation v. Department of Interior* (9th Cir.)**

(Breach of trust suit against Department of Interior for failure to consider the Nation's claims to the Colorado River in management of river)

(Remand to District Court to consider breach of trust claims; District Court holds no trust claim because it would require decision whether Nation has water rights to Colorado River and Treaty and other federal laws do not an express fiduciary duty to Nation; Nation appealed to Ninth Circuit; pending briefing)

DISTRICT COURT CASES

Corporation of the President of the Church of Jesus Christ of Latter Day Saints v. BN, (D. Utah)

(Second jurisdictional challenge by LDS concerning tort claim filed in Window Rock District Court for sexual abuse of Navajos in Indian Student Placement Program)

(Court stays federal case pending exhaustion of Navajo court remedies)

Hopi Tribe v. Trump (Bears Ears litigation) (D. D.C.)

(Challenge by Navajo Nation and four other tribes to reduction of Bears Ears National Monument by President Trump)

(Pending decision on cross-motions for summary judgment)

National Urban League v. Ross (N.D. Cal.)

(Suit by Nation and other governments and organizations to require Census Bureau to extend collection of Census information from households and delivery of apportionment information to President)

(TRO issued to extend data collection to end of October; pending preliminary injunction hearing)

Navajo Nation v. Department of Interior (D. D.C.)

(Claim for additional 638 contract funding for Navajo courts)

(After reversal of dismissal of complaint, District Court ordered award of \$15 million for 2014 contract; cross-motions for summary judgment to be filed for later contract years)

Navajo Nation v. Perdue (N.D. Ohio)

(Suit against opioid manufacturers, distributors, and pharmacies under federal and state law for damages related to opioid misuse)

(Pending as part of multi-district litigation)

Navajo Nation v. Hobbs (D. AZ.)

(Suit against three surrounding counties and the Arizona Secretary of State for violations of voting rights of Navajos under the First Amendment,

Fourteenth Amendment, Section 1983, the Arizona Constitution and the Voting Rights of 1965)

(Nation settled with counties and Secretary of State)

***Navajo Nation v. U.S. EPA* (D.N.M.)**

(Suit for damages under CERCLA and FTCA for Gold King Mine release)

(District Court denied defendants' motion to dismiss; in discovery phase)

***Yazzie v. Hobbs* (D. AZ.)**

(suit by individual Navajos against Arizona Secretary of State to require extension of mail-in ballot collection past election day)

(pending preliminary injunction issue)

***Zurich American Ins. Co. v. McPaul* (D. AZ.)**

(Jurisdictional challenge to Nation's court jurisdiction by insurance company defendant in *Navajo Nation v. Pic-N-Run*, pending in Chinle District Court)

(District Court holds no jurisdiction as insurance policy was not in effect at time of underlying gas spill under Treaty right to exclude and second *Montana* exception)

Non-Navajo Cases of Note

***McGirt v. Oklahoma* (U.S. Supreme Court)**

(challenge to state criminal jurisdiction over area within Muscogee Creek reservation boundaries though to be disestablished)

(Court holds Muscogee Creek Reservation was never disestablished by Congress despite allotment of Reservation)