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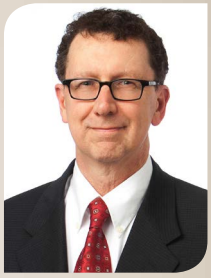

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Court Decisions

In *Protect Our Communities Foundation v. LaCounte*, 2019 WL 4582841 (9th Cir. 2019), the Tule River Tribe sought to build eighty-five wind turbines about sixty miles east of San Diego, California. During the planning and approval process, the project was split into two phases. Phase I concerned sixty-five turbines constructed on federal land in a valley and required approval from the Bureau of Land Management (BLM), which is responsible for granting rights-of-way for use of federal lands. Phase II, relating to twenty turbines on the Tribe's reservation, required approval from BIA. Both phases were approved. Plaintiffs sued, challenging the approvals under the **National Environmental Policy Act (NEPA)** and Administrative Procedure Act. The district court affirmed the approvals and the Ninth Circuit affirmed, holding that the agencies had complied with the requirements of the NEPA: "What is troubling about this case is that it appears that, if and when the project proceeds, some eagles may die or have their nests impaired diminishing reproduction. But the protections given by our environmental laws are not absolute. NEPA doesn't control any substantive result but rather requires procedural protections to ensure that a 'hard look' was given to reasonable alternatives. The Endangered Species Act doesn't absolutely prohibit all deaths of endangered species caused by development but rather prohibits the incidental taking of endangered creatures' lives if done without a permit that specifically allows the incidental take. The Bald and Golden Eagle Protection Act doesn't outlaw every killing of the eagle, just take without a permit. … While we recognize the legitimate concerns about the well-being of protected eagles raised by Plaintiffs and FWS, we are persuaded that those concerns can be addressed through the [Bald and Golden Eagle Protection Act] permitting process. At the same time, there are benefits to the Tribe and to the United States that will come from the project, and BIA has a special concern to advance the interests of the Indian nations under its jurisdiction. While that would not justify disregarding environmental laws when clearly applicable, *see, e.g., Anderson*, 371 F.3d at 494–502 (holding that Indian nation should be enjoined from hunting whales absent a permit under the MMPA), the interests of the Ewiiaapaayp Band of Kumeyaay Indians weigh in favor of the Tribe in this close case involving potentially competing values."

In *Pit River Tribe v. Bureau of Land Management*, 2019 WL 4508340 (9th Cir. 2019), the Bureau of Land Management (BLM) decided to continue twenty-six geothermal leases located in California's Medicine Lake Highlands with the Glass Mountain Unit Plan pursuant to its authority under 30 U.S.C. § 1005(a) of the Geothermal Steam Act (GSA), which provides

that geothermal leases on federal land have primary lease terms of ten years but may be continued if geothermal steam is produced in commercial quantities during the ten-year primary term. The Pit River Tribe and environmental groups sued, contending that conditions for continuation of the leases had not been met and that the extension of the leases violated the GSA, NEPA, National Historic Preservation Act (NHPA) and the federal government's fiduciary trust obligation to Indian tribes. The district court granted the plaintiffs' motion for summary judgment and remanded to the BLP. The Ninth Circuit affirmed, holding that (1) the district court's remand order was "final" and appealable where the district court had conclusively resolved a separable legal issue, the remand order required the agency to apply a potentially erroneous rule which may result in a wasted proceeding, and review would, as a practical matter, be foreclosed if an immediate appeal were unavailable; and (2) "[t]he statutory meaning of 30 U.S.C. § 1005(a) is clear and unambiguous. It only permits production-based continuations on a lease-by-lease basis, not on a unit-wide basis."

In *Flandreau Santee Sioux Tribe v. Noem*, 2019 WL 4229068 (8th Cir. 2019), the Flandreau Santee Sioux Tribe (Tribe) had refused to collect and forward a South Dakota use tax on goods and services purchased by non members at Royal River Casino & Hotel (Casino) and the First American Mart (Store) on the Tribe's Reservation. The State Department of Revenue denied the Tribe renewals of alcoholic beverage licenses issued to the Casino and the Store. The Tribe sued to enjoin the use tax. The district court held that the Indian Gaming Regulatory Act (IGRA) preempted the use tax on nonmember purchases throughout the Casino but not on nonmember purchases of goods and services at the Store and that the State may not condition renewal of alcohol beverage licenses on the Tribe's remittance of use taxes imposed on nonmember purchases at the Store. On appeal, the State argued that it should be permitted to tax casino "amenities" not directly related to gaming activities, sales of alcohol, food, rooms, and other merchandise sold at the Casino. Applying the analytic framework of ***White Mountain Apache Tribe v. Bracker*** and citing federal policies underlying the IGRA, the Eighth Circuit affirmed in part and reversed in part, holding that the State could not tax Casino amenities but could condition the alcohol license on payment of taxes due: "Even if the amenities at issue are not 'directly related to the operation of gaming activities' within the meaning of [the IGRA], the summary judgment record established that the amenities contribute significantly to the economic success of the Tribe's Class III gaming at the Casino. The Tribe submitted evidence that over 90% of its sales tax revenues are generated by the 6% sales tax on transactions at the Casino and the Store. Casino departments offering the amenities operate at a loss, suggesting that goods and services are sold below cost to attract patrons and encourage gaming. The Tribe provided evidence that increases in patronage at one amenity is directly tied to increases in gaming activity itself. The Tribe also submitted evidence of the Casino's significance in promoting tribal economic development and self-sufficiency. … We conclude the Tribe's on-reservation Class III gaming activity is analogous to the nonmember logging activity on tribal land at issue in *Bracker*, and to the nonmember activity in building a reservation school at issue in *Ramah*. In both cases, the Court held that state taxes whose economic burden fell on the tribes were preempted by federal statutes and programs comprehensively encouraging and regulating the nonmember activities, where the States did not have a 'specific, legitimate regulatory interest' in the activity taxed, … only a 'generalized interest in raising revenue' that is insufficient to permit 'intrusion into the federal regulatory scheme,' … The State's interest in raising revenues to provide government services throughout South Dakota does not outweigh the federal and tribal interests in Class III gaming reflected in IGRA and the history of tribal independence in gaming recognized in *Cabazon*." In upholding the State's right to deny an alcohol license if valid taxes were not paid, the Court commented: "On its face, the State's remedy seems no more burdensome than some alternatives suggested in [*Okla. Tax Comm'n v. Potawatomi Indian Tribe*, 498 U.S. 505 (1991)] -- imposing liability on tribal agents who fail to collect the taxes and seizing untaxed goods in shipment to the reservation. In either case, the tribal retailer is unable to continue its reservation business until it complies with the valid obligation to collect and remit State tax on nonmember purchases."

In *Flandreau Santee Sioux Tribe v. Haeder*, 2019 WL 4231360 (8th Cir. 2019), South Dakota imposed a 2% excise tax on the gross receipts of a contractor if its services "entail the construction, building, installation, or repair of a fixture of realty" within the State. The Flandreau Santee Sioux Tribe (Tribe) hired a nonmember construction company, Henry Carlson Company (Carlson), to carry out the planned renovation of its casino on the Tribe's reservation. The Tribe challenged the applicability of the tax to Carlson. The district court ruled for the Tribe, holding that the tax was preempted by the Indian Gaming Regulatory Act (IGRA). The Eighth Circuit, applying the analytical framework prescribed by ***White Mountain Apache v. Bracker***, reversed: "Other than requiring NIGC approval of a tribal ordinance stating that Casino construction will adequately protect the

environment and public health and safety, the Commission does not actively regulate construction activity or prescribe what adequate protection of public health and safety requires. … Thus, … the issue in this case turns upon whether imposition of the excise tax on nonmember contractors for construction services performed on the Reservation is preempted under the *Bracker* balancing test. In conducting this analysis, we focus on 'the extent of federal regulation and control, the regulatory and revenue-raising interests of states and tribes, and the provision of state or tribal services.' … Unlike the ongoing use tax on Casino amenities at issue in *Noem*, the generally applicable excise tax is a one-time tax on nonmember contractor construction services in expanding and renovating the Casino's realty, some of which are performed off the reservation. This tax hardly implicates the relevant federal and tribal interests. … Because the Tribe has failed to show that the tax has more than a *de minimis* financial impact on federal and tribal interests, … the State's legitimate interests in raising revenues for essential government programs that benefit the nonmember contractor-taxpayer in this case, as well as its interest in being able to apply its generally applicable contractor excise tax throughout the State, are sufficient to justify imposing the excise tax on Henry Carlson Company's construction services performed on the Casino's realty."

In *United States v. Neff*, 2019 WL 4235218 (3d. Cir. 2019), Hallinan and Neff, non-Indians, had entered into agreements with the Guidiville Tribe to make **loans via the internet** to non-Indian borrowers residing outside of Indian country at rates of interest exceeding those allowed under state law. Associates of Neff provided funds for the loans. Neff and Hallinan had previously partnered with Ginger, a self-proclaimed Canada First Nations chief, to make loans purportedly through Ginger's company. When Neff and Hallinan became targets in a borrower class action suit they sought to have Ginger lie about the date of transfer of the lending entity to Ginger. Federal prosecutors obtained a criminal indictment and Neff and Hallinan were convicted under the Racketeering Influenced and Corrupt Organizations Act (RICO) based on their efforts to collect debts that were unlawful under state law, and given lengthy prison sentences. The Third Circuit Court of Appeals, rejecting the defendants' sovereign immunity and other arguments, affirmed: " RICO defines an unlawful debt as an unenforceable usurious one, and it looks to state or federal law to distinguish between enforceable and unenforceable interest rates. See 18 U.S.C. § 1961(6). Sovereign immunity, on the other hand, is simply a 'common-law immunity from suit traditionally enjoyed by sovereign powers.' … Tribal sovereign immunity thus limits how states can enforce their laws against tribes or arms of tribes, but, contrary to Neff's understanding, it does not transfigure debts that are otherwise unlawful under RICO into lawful ones. … A debt can be 'unlawful' for RICO purposes even if tribal sovereign immunity might stymie a state civil enforcement action or consumer suit (or even a state usury prosecution, although tribal sovereign immunity does not impede a state from 'resort[ing] to its criminal law' and 'prosecuting' offenders, *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 796 (2014))."

In *Cherokee Nation v. Bernhardt*, 2019 WL 4197483 (10th Cir. 2019), the Secretary of Interior had agreed to take **land into trust** for the United Keetoowah Band of Cherokee Indians in Oklahoma (UKB), a federally recognized Indian tribe located in eastern Oklahoma within the former reservation of the Cherokee Nation of Oklahoma (Nation). The Nation sued, contending that (1) the BIA was required to obtain the Nation's consent before taking the Subject Parcel into trust; (2) the BIA's analysis of its regulations as applied to UKB was arbitrary and capricious; and (3) the BIA failed to consider whether UKB met the Indian Reorganization Act (IRA)'s definition of "Indian" in light of the Supreme Court's decision in *Carcieri v. Salazar*. The district court agreed and enjoined the acquisition. The Tenth Circuit reversed and vacated the injunction, holding that (1) the Secretary had authority to take the Subject Parcel into trust under section 3 of the Oklahoma Indian Welfare Act of 1936 (OIWA), (2) the BIA was not required to consider whether the UKB meets the IRA's definition of "Indian," (3) the BIA was not required to obtain the Nation's consent before taking the land into trust, and (4) the BIA's application of its regulations was not arbitrary and capricious: "As the Supreme Court noted in *Carcieri*, Congress may choose 'to expand the Secretary's authority to particular Indian tribes not necessarily encompassed within the definitions of "Indian" set forth in § [5129].' … That is precisely what Congress did when it enacted OIWA. By its terms, OIWA extends to properly incorporated Oklahoma Indian groups 'the right ... to enjoy any other rights or privileges secured to an organized Indian tribe under the [IRA].' 25 U.S.C. § 5203. OIWA contemplated that 'recognized tribe[s] or band[s] of Indians residing in Oklahoma' would take advantage of the right to incorporate and therefore have access to the 'rights or privileges' provided by the IRA. *Id.* It would be strange for Congress to purport to extend the benefits of the IRA to new groups only to have that extension immediately nullified if the group does not satisfy the IRA's definition of 'Indian.' We therefore conclude that section 3 of OIWA was not meant to be

constrained by the definition of 'Indian' in the IRA." (Emendations in original.)

In *United States v. Antonio*, 2019 WL 4180406 (10th Cir. 2019), the King of Spain in 1748 had conveyed land east of the Rio Grande to the Sandia Pueblo. A portion of the land eventually passed into private ownership and was acquired by Garcia, who in 1930 conveyed a fee simple right-of-way to the Middle Rio Grande Conservancy District, leaving the remaining parcel, known as Private Claim 364, in private hands. Antonio, a member of the Laguna Pueblo, while intoxicated, drove his motor vehicle into another vehicle in an intersection located in Private Claim 364, killing the driver of the other vehicle. Federal prosecutors indicted Antonio under the Major Crimes Act and a jury convicted him of second-degree murder. Antonio challenged his conviction, arguing that Private Claim 364 was not within Indian country and that the government, therefore, lacked jurisdiction under the Major Crimes Act. The Tenth Circuit disagreed and affirmed: "In 1748, the King of Spain granted to the Pueblo of Sandia a parcel of land that described the Rio Grande as the western boundary of the grant. In 1924, Congress passed the **Pueblo Lands Act**, which quieted title to certain tracts of land within the exterior boundaries of the different Pueblos that was disputed by Pueblos and non-Indians. In 1933 and 1934, through the 1924 Pueblo Lands Act, Congress issued land patents to Garcia for Private Claim 364, which sat entirely within the boundaries of the 1748 land grant. Because the offense took place on Private Claim 364, it took place within the exterior boundaries of the original land grant by a sovereign. … Although the size of the Garcia tract of land has changed as a result of accretion, this jurisdictional grant has not changed. The Rio Grande has slowly moved west, leaving a strip of land between the east bank at the time of the 1748 grant and the Garcia tract. The district court found that because the Sandia Pueblo had fenced and posted the strip of land, the land belonged to the Sandia Pueblo. This would mean Garcia's tract was surrounded entirely by Sandia Pueblo land, making it manifestly within Indian Country. … Even if Garcia or the Middle Rio Grande Conservancy District owned the land, the parcel as a whole would still fall within the boundaries of a grant from a prior sovereign that were confirmed by Congress. In this case, both parties agree the land where the offense occurred was part of a grant from a prior sovereign. And the 1858 Act confirmed the Rio Grande as the western boundary of this land, placing the site of the offense squarely within federal jurisdiction."

In *United States v. Gallego*, 2019 WL 4572805 (D.S.D. 2019), the Oglala Sioux Tribe in 2000 leased a parcel of land on Pine Ridge Indian Reservation to Skye, who assigned the lease to Gallego. The assignment was recorded as an encumbrance by the BIA. Gallegos mortgaged the leasehold in 2007 to Wells Fargo Bank as security for a $55,736.00 promissory note made by Wells Fargo to Gallego under the provisions of **Section 184 of the Housing and Community Development Act**. Section 184 permits the U.S. Department of Housing and Urban Development (HUD) to guarantee loans made to Indians. The lease provided that, in the event of a loan default, the Tribe would have a right of first refusal to acquire the leasehold upon payment of the loan balance. Gallegos defaulted on the loan, then passed away. After Wells Fargo purportedly provided notice to the Tribe, it assigned the loan to HUD, which sued Gallegos' estate and the Tribe. The Tribe filed an answer with affirmative defenses relating to alleged defects in the notice that Wells Fargo had provided. On HUD's motion for a default judgment, the District Court (1) granted default judgment against Gallegos' estate but (2) denied the motion for foreclosure on the ground that the government had not addressed the procedural defects alleged by the Tribe.

In *Oertwich v. Traditional Village of Togiak*, 2019 WL 4345975 (D. Alaska 2019), Oertwich sued the Traditional Village of Togiak (Tribe), individuals, the State of Alaska Department of Public Safety and the City of Togiak alleging nine separate claims arising out of his banishment by the Tribe. The Court dismissed on grounds or **sovereign or official immunity**, noting that the Ninth Circuit has explicitly extended sovereign immunity to tort claims.

In *Bell v. City of Lacey*, 2019 WL 4318615 (W.D. Wash. 2019), Bell, a non-Indian, had been arrested by City of Lacey police and incarcerated at a Nisqually Tribe detention facility pursuant to a Jail Services Agreement between the Tribe and the City. While there, Bell suffered a stroke and required medical care. He sued both tribal and City officials alleging denial of due process, false imprisonment, deliberate indifference to medical needs, conspiracy, Equal Protection violation, and denial of access under *Christopher v. Harbury*, based on his detention at the Tribe's facility. After the Court dismissed tribal officials on sovereign immunity grounds, City officials moved to dismiss for failure to join the Tribe, which they argue was indispensable under the standards of Fed. R. Civ. P. 19. The Court denied the motion: "The City Defendants correctly point out that Bell couches nearly all his claims in terms of the Agreement's illegality. … However, the Tribe is a necessary party with respect to Bell's claim for injunctive and declaratory relief, which does seek to invalidate the Agreement. … the Court is unable to accord complete relief for this claim as long as the Tribe is unbound by any

judgment. … A judgment that only bound the City could also put the City 'between the proverbial rock and a hard place' of choosing between the Court's opinion and its Agreement with the Tribe, which would still be enforceable on one end. *Id*. It is also undeniable that the Tribe has a substantial interest in the survival of its Agreement with the City. … Despite obvious parallels with similar Ninth Circuit cases that ended in dismissal, the Court cannot help but observe the troubling implications of dismissing a serious constitutional claim like this via the sovereign immunity/ Rule 19 one-two punch. … In addition to shutting out plaintiffs, this application of Rule 19 creates perverse incentives for governmental and private entities to export their dirty work to reservations, where it can be protected by contracts that are legally unassailable. This concern is especially acute here, where the relevant contract implicates the basic rights and liberties of third parties. With this in mind, the Court cannot in good conscience dismiss Bell's claim for declaratory and injunctive relief. … [T]he lack of an alternative forum for this type of claim outweighs the Tribe's interest in simultaneously maintaining sovereign immunity and avoiding any threat to its contract. … If Bell or others like him are in imminent danger of being unconstitutionally detained by a government entity, they must be able to stop that entity from continuing its illegal practices. While it may not be possible to bind the Tribe to a judgment, the Court can still shape an adequate remedy in the form of enjoining the City from sending detainees to the Tribe's facility. Fed. R. Civ. P. 19(b)(3). This outcome does risk prejudicing the Tribe, but the Tribe has the option of intervening in the case if it wishes to defend its interests. Unlike situations where joining a party would necessarily destroy subject matter jurisdiction, nothing prevents the Tribe from waiving its sovereign immunity and re-entering the case."

In *Swinomish Indian Tribal Community v. Azar*, 2019 WL 4261368 (D.D.C. 2019), the plaintiff Swinomish Indian Tribal Community (Tribe) sued under the Contract Disputes Act (CDA) and Declaratory Judgment Act, 28 U.S.C. § 2201, alleging breach of contract and statutory violation by the Indian Health Service (IHS) in connection with the Tribe's contract with IHS under the Indian Self Determination and Education Assistance Act (ISDEAA). Specifically, the Tribe contended that it was entitled to **contract support cost** (CSC) funding to support the Tribe's expenditures of program income. The Court answered the question in the negative and granted the government's motion for summary judgment: "[T]he statute makes clear that CSC is negotiated and calculated within the funding agreement. Subsection (c) defines the '[a]mount of funding' provided under a funding agreement, and it explicitly includes 'amounts for contract support costs specified under section 5325(a)(2), (3), (5), and (6) of this title.' 25 U.S.C. § 5388(c). The parties' own Funding Agreement accordingly included negotiated calculations for CSC. *See* Funding Agreement § 6. ('The parties agree that under this [Funding Agreement] the Swinomish Indian Tribal Community will receive direct CSC in the amount of $141,514 ..., and indirect CSC in the amount of $645,489.'). Because third-party revenue is supplemental to the amount negotiated in the funding agreement, 25 U.S.C. § 5388(j), and CSC is negotiated within the funding agreement, *id*. § 5388(c), expenditures of such third-party revenue are not amounts eligible to be included in the amount from which CSC is calculated."

In *U.S. ex rel. Dahlstrom v. Sauk-Suiattle Indian Tribe of Wash.*, 2019 WL 4082944 (W.D. Wash. 2019), the Sauk-Suiattle Indian Tribe (Tribe) had terminated Dahlstrom's employment as Health and Social Services Director for the Tribe. Dahlstrom sued the federal government under the Federal Tort Claims Act (FTCA) and the Tribe and individual tribal officials under the Washington and federal False Claims Acts (FCA), contending that he was fired in retaliation for raising concerns about the safety of the vaccines the Tribe's medical team distributed. The Court had previously dismissed Dahlstrom's claims against the United States and the Tribe. In the instant decision, the Court dismissed his claims against tribal officials: "Individual Defendants contend that because they are not employers, they may not be held liable for retaliation under either the FCA or the Washington Medicaid Fraud FCA. … '[T]he overwhelming majority of courts...have held that the current version of [31 U.S.C.] § 3730 (h) does not create a cause of action against supervisors sued in their individual capacities.' … This court agrees with the Fifth Circuit's analysis and, because the court looks to federal precedent to aid its interpretation of the Washington statute, grants Individual Defendants' summary judgment motion on both Mr. Dahlstrom's FCA retaliation claim and his Washington Medicaid Fraud FCA retaliation claim." (Citations and emendations omitted.) Citing Dahlstrom's claims based on "rumor and supposition," the Court awarded the defendants their attorney fees.

In *State v. Stanton*, 2019 WL 4382988 (Iowa 2019), the Meskwaki Nation (Nation) resided on lands that had been held in trust by the State of Iowa and transferred to the United States, in trust for the Tribe, in 1896 (Settlement). In 1948, Congress had explicitly expanded **state criminal jurisdiction** over the Settlement to offenses "committed by or against Indians" but repealed the 1948 act in 2018.

Nation police filed complaints against Stanton, alleging trespass on the Settlement in violation of Iowa Code section 716.8(1) (2018), possession of drug paraphernalia in violation of Iowa Code section 124.414(2), and violation of a no-contact order in violation of Iowa Code section 664A.7. A state court magistrate dismissed and assessed costs against the Nation, holding that the state lacked jurisdiction. The Iowa Supreme Court reversed: "The impact of the 2018 Act is clear. It simply repealed the 1948 expansion of state court jurisdiction. The 2018 legislation left undisturbed state court criminal jurisdiction involving criminal acts involving non-Indians existing prior to the passage of the 1948 Act. And the law prior to the enactment of the 1948 Act provided state court jurisdiction over crimes committed in 'Indian country' involving non-Indians. *See, e.g., McBratney*, 104 U.S. at 623–24. … The magistrate, however, did not find it necessary to inquire further into the facts but simply dismissed the charges with the sweeping assertion that Iowa courts have no jurisdiction over any criminal activity on the Meskwaki Settlement. This proposition is clearly incorrect. The courts of Iowa continue to have jurisdiction over criminal matters arising on the Meskwaki Settlement when the defendant is non-Indian and when the victim or victims are also non-Indians (or when the crimes are victimless.)."

In the case of *In re CSRBA Case No. 49576 Subcase No. 91-7755*, 2019 WL 4197624--- P.3d ---- (Idaho 2019), the United States Department of the Interior (United States), as trustee for the Coeur d'Alene Tribe (Tribe), filed 353 claims in Idaho state court as a subcase under the broader Coeur d'Alene-Spokane River Basin Adjudication (CSRBA) seeking judicial recognition of federal reserved water rights to fulfill the purposes of the Coeur d'Alene Tribe's Reservation (the Reservation) under the doctrine of ***Winters v. United States***. The Tribe intervened. The district court allowed reserved water rights for agriculture, fishing and hunting, and domestic purposes and reserved water rights for instream flows within the Reservation. The trial court disallowed reserved rights for instream flows outside the Reservation, the Tribe's claim to the right to maintain the level of Lake Coeur d'Alene and homeland purposes (e.g., industrial, commercial, aesthetics, recreation, and others). The court held that the Tribe was entitled to a date-of-reservation priority date for the claims for consumptive uses, and a time immemorial priority date for nonconsumptive uses. In regard to lands homesteaded on the Reservation by non-Indians and later reacquired by the Tribe, the court ruled the Tribe was entitled to a priority date of a perfected state water right or, if none had been perfected or it had been lost due to nonuse, the date-of-reacquisition. On appeal, the Idaho Supreme Court held that (1) the distinction found in federal reserved water rights jurisprudence between primary and secondary water uses, applied by the trial court, does not apply to Indian reservations, and the Tribe was entitled to water for homeland purposes to the extent "contemplated at the time surrounding the Reservation's creation and which are supported by the formative documents," (2) the Tribe had reserved rights for homeland purposes including "domestic, agriculture, hunting and fishing, plant gathering, and cultural" purposes, (3) the trial court correctly rejected the Tribe's claim to control the water level of Lake Coeur d'Alene because it had conveyed the mouth of the lake in 1871 for water power purposes, (4) the Tribe had reserved ground water rights for domestic purposes, (5) the record did not support reserved water rights for industrial purposes, (6) the Tribe had reserved in-stream rights for purposes of maintaining a fishery on both tribal and non-tribal lands within the Reservation but not outside the Reservation because *Winters* rights apply only to waters "appurtenant" to reservation lands, and (7) the priority date for the Tribe's non-consumptive water rights is time immemorial, notwithstanding alienation and reacquisition of land.

In *Minnesota v. Ziegler,* 2019 WL 4164893 (not reported in N.W. Rptr) (Minn. App. 2019), Red Lake Chippewa Tribal Police officer Smith found Ziegler, a non-Indian, in a ditch by the side of a road running through the Red Lake Chippewa Reservation. Smith, determining from his observations that Ziegler was impaired and a threat to public safety, placed him in a vehicle and delivered him to the Reservation border, where he was taken into custody by Beltrami County deputies who conducted an investigation and charged him with third-degree driving while impaired and driving after revocation. Ziegler moved to suppress evidence on the ground that Smith had no authority to arrest him. The trial court disagreed and denied the motion and the appellate court affirmed: "Generally, tribal governments 'lack **criminal jurisdiction over non-Indians** who commit crimes in Indian country.' … 'Thus, Indian tribes may not prosecute a non-Indian for a violation of the tribe's criminal code that is committed on the tribe's reservation if the victim of the crime is a non-Indian or if the crime is a victimless crime.' … The district court did not err by finding that the tribal officers' interaction with appellant did not amount to an arrest. The evidence establishes that the Red Lake officers never placed appellant into handcuffs, they never administered field sobriety tests or preliminary breath tests (PBTs), appellant was placed in the back of Officer Wicker's squad car for the sole purpose of transporting him to the reservation border

(after his own vehicle ran out of gas while he was riding in it), appellant was briefly detained in Officer Wicker's squad car to ensure his safety and the safety of the tribal community until Deputy Nohre arrived, and during this brief detention, there is no evidence that the officers interrogated, or even questioned, appellant. ... The conduct of Officers Smith and Wicker amounted to nothing more than a brief, temporary detention of appellant. The detainment was based on Officer Smith's observation that appellant was disturbing public order on the reservation and his reasonable belief that appellant 'was a direct threat to the safety of other people due to his impairment.' Pursuant to *Duro* and *Thompson*, the officers were permitted to temporarily detain appellant and deliver him to the proper agency with jurisdiction over his actions." (Citations and quotations omitted.)

In the case of *In Re Navajo Nation, Relator*, 2019 WL 4282909 (Tx. App. 2019), a Texas trial court held a final custody placement hearing involving three Navajo children. The Navajo Nation advised the Texas Department of Family and Protective Services (Department) that no Navajo families were available to take the children and did not object to the hearing in Texas, where the mother and children resided. During the hearing, however, the Nation requested that the case be transferred to the Navajo court. Finding that the good-cause standard prescribed by the **Indian Child Welfare Act** had been met, the court denied the motion. The Nation sought a writ of mandamus from the Texas Court of Appeals ordering the transfer to the Navajo court. The Court of Appeals denied the petition: "Here, the Department's evidence at the *de novo* hearing established that the mother and children have, at a minimum, lived in Lubbock throughout the proceedings which had lasted in excess of nineteen months. The removal proceedings occurred in Lubbock. All service providers for the mother and/or the three children were also in Lubbock, and all the Department's caseworkers were in Lubbock and/or the surrounding area. In addition, if the proceeding were transferred to Arizona, there is no mechanism for the Department to bear the expense of having service providers attend and any reimbursement for Department employees would be limited. Thus, as in *Mejia*, all material witnesses and evidence necessary for the custody proceedings to go forward are in Texas. … We interpret the trial court's order to be a finding that under the circumstances of this case, it was 'best positioned' to adjudicate the pending termination proceeding under the ICWA. On this record, we cannot say that the trial court's determination was arbitrary and unreasonable, or made without regard for guiding legal principles or supporting evidence."

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