# Utes Back Gov't Against Unrecognized Tribe's License Sales

Share us on: By **Derek Major**

Law360, New York (October 27, 2017, 4:22 PM EDT) -- The Ute Indian Tribe on Thursday threw its support behind the federal government's suit alleging a group of mixed European and Native American ancestry not recognized by the government is illegally selling hunting and fishing licenses on the Ute Indian Tribe's Uintah and Ouray Reservation.

The Ute Tribal Business Committee, which represents a tribal membership of 2,970 people and oversees more than 1 million acres of land, issued a statement supporting the U.S. attorney's efforts to have the Uintah Valley Shoshone Tribe of Affiliated Ute Citizens, or UVST, permanently banned from selling or issuing hunting and fishing licenses, to nullify any they've already sold and award any relief the court deems appropriate.

"We encourage the U.S. attorney to continue to pursue all civil and criminal actions necessary to prevent this group of mixed-bloods from continuing to disrupt the governmental activities of the Ute Indian Tribe and prevent their ongoing trespass on the Uintah and Ouray Reservation lands," the committee said in a statement.

The tribe could be handed a federal court injunction "to stop its continued disruptive activities on the U&O Reservation," said the U.S. attorney's office, which also has the support of the Ute Tribal Business Committee.

According to the complaint, in 2016 Ute Fish and Wildlife Department officers and Utah Division of Wildlife Resources officers learned the UVST had been selling licenses to be used on the Ute Tribe's reservation in Northeastern Utah as well as approximately 68 licenses to kill deer and elk on Ute Tribal Trust lands.

Dora Van, chairwoman of the UVST, and Ramona Harris, director of the UVST, who have also been named in the suit, have been telling people who've been purchasing UVST hunting and fishing licenses that Ute Tribal Trust Lands actually belong to the UVST, and therefore no entity can prevent licensees from hunting or fishing on those lands, the complaint states.

Members of the group voted to terminate their relationship with the federal government and gave up their membership in the Ute Indian Tribe in exchange for a payout of their share of money and assets of the Ute Indian Tribe in 1954, according to a statement.

Representatives for UVST could not be reached for comment.

Counsel for the government did not respond to comment.

The federal government is represented by Jared C. Bennett and John W. Huber of the U.S. Department of Justice.

Counsel information for the Uinta Valley Shoshone Tribe was not immediately available.

The case is the United States of America v. Uinta Valley Shoshone Tribe, et al., case number 2:17-cv-01140, in the U.S. District Court for the District Of Utah.

--Editing by Richard McVay and Vincent Sherry.

# Seminoles Ask 11th Circ. For Sanctions In Subpoena Appeal

Share us on: By **Andrew Westney**

Law360, New York (October 27, 2017, 9:47 PM EDT) -- The Seminole Tribe of Florida Inc. asked the Eleventh Circuit on Thursday not to revive a suit by a group associated with a Florida energy company who are seeking to escape tribal court subpoenas, saying they should be sanctioned for trying to run up the tribe's costs with "needless, vexatious litigation."

A Florida district judge in May tossed a suit by a group led by Asker B. Asker challenging the Seminole Tribe of Florida Trial Court's right to compel American Express to turn over their individual credit card and private financial records in a tribal court dispute, saying the group had failed to challenge the tribal court's authority in that venue before bringing suit in federal court.

In its July opening brief appealing that ruling to the Eleventh Circuit, the Asker group contended that its appeal only involved the procedural claim that the judge improperly tossed the case without giving the group enough notice, rather than the group's arguments regarding the tribal court's reach.

The tribe responded Thursday that the district judge didn't have to give the Asker group notice because the case was dismissed on jurisdictional grounds, as the group was "trying to usurp the well-established authority of the tribal court to rule on its jurisdiction before a federal court action."

And the group had plenty of notice anyway, the tribe said, as the judge only tossed the suit after two motions to dismiss were filed that the group didn't answer, the tribe said.

The Asker group **filed a complaint in March**, claiming the Seminole tribal court had overstepped its jurisdiction by ordering American Express, which it said does not reside or do business in Seminole tribal lands, to turn over the credit card and private financial records of non-Native citizens who live outside the tribe's boundaries.

The Seminole tribe does business as oil distribution company Askar Energy, which it

acquired from Evans Energy in 2013. According to the underlying complaint, filed in June 2016, part of that purchase included the signing of a loan agreement and management agreement, under which Evans was required to pay back $1.5 million the tribe loaned Evans and continue running certain portions of the company.

However, "it appears Evans had no intention of ever abiding by these agreements and instead has been self-dealing and profiteering at the expense of STOFI," the tribe said, including skipping its loan payments, racking up $2.2 million in back-taxes, and using Askar Energy company money to try to start a competing business.

American Express was subpoenaed by the Seminole court on Feb. 17 for financial documents pertaining to Asker and eight other individuals who were believed to be associated with Evans in some way, though they were not named as defendants in the underlying complaint.

The district court's clerk granted a default judgment against American Express after it didn't respond to a notice in the case, according to court records. The Asker group then voluntarily dismissed the tribe and its court as defendants a move the tribe contends would keep it from continuing to defend its interests in the suit, even though it would be impacted by any judgment against American Express.

But U.S. District Judge Beth Bloom tossed the case entirely on May 4 and refused to vacate that decision May 10, saying that the Asker group lacked standing because it failed to state a claim against American Express and "cannot simply circumvent this court's jurisdictional requirements by attempting to take advantage of the procedural posture in this case."

The Asker group said in its July 26 opening brief to the Eleventh Circuit that the judge had "dismissed the action entirely without advising appellants of any perceived deficiencies in the complaint," which prevented them seeking relief against American Express, the only defendant remaining after the Seminole defendants were dismissed.

The Seminole tribe in its answering brief Thursday called for oral arguments in the appeal, saying it would "aid the court by helping to illuminate the frivolous and vexatious nature of this appeal, justifying an award of sanctions against appellants."

In a separate brief, the Seminole trial court said that the Asker group's dismissal of the

Seminole defendants and bid for relief against American Express were “gamesmanship” that the district judge properly rejected. And the claims against American Express must be dismissed anyway because the tribal court is an indispensable party to the suit but can’t be joined due to its sovereign immunity to lawsuits, according to the court's brief.

Representatives for the parties were not immediately available for comment Friday.

Asker and the group are represented by Donald G. Peterson and Jonathan M. Weirich of Parrish White & Yarnell PA.

The Seminole Tribe of Florida is represented by Peter W. Homer and Christopher King of Homer Bonner Jacobs.

The Seminole trial court is represented by Harriet Retford, Caran Rothchild and Jennifer H. Weddle of Greenberg Traurig LLP.

The case is Asker B. Asker et al. v. Seminole Tribe of Florida Inc. et al., case number 17-12535, in the U.S. Court of Appeals for the Eleventh Circuit.

--Additional reporting by Steven Trader. Editing by Adam LoBelia.

# Texas AG Says Indian Child Welfare Act Is Unconstitutional

Share us on: By **Adam Lidgett**

Law360, Dallas (October 27, 2017, 7:24 PM EDT) -- The state of Texas and a foster family have sued the U.S. government over a federal law they say unconstitutionally dictates rules for adoption and custody cases involving Native American children.

Chad and Jennifer Brackeen and the state attorney general mounted a challenge Wednesday to the Indian Child Welfare Act, alleging it contradicts the Texas Family Code, which focuses on the best interest of the child as the deciding factor for custody and adoption cases. Texas Attorney General Ken Paxton said in a statement Thursday that the ICWA's racial requirements can jeopardize children.

"The Constitution makes clear that people are more than just their racial background," Paxton said. "But ICWA elevates a child's race over their best interest in a way that could endanger Texas children. Such an unconstitutional and dangerous law cannot stand."

Filed in Texas federal court, the lawsuit centers on an adoption dispute the Brackeens are facing. They are not Native American and had fostered a Native American boy now 2 years old since he was 10 months old, but a Texas family court refused their petition to adopt him after applying federal law, according to Wednesday's complaint.

Even though the adoption was supported by the unnamed boy's biological parents and grandparents, the Brackeens say, the family court removed the boy from their home to live with a couple he does not know, in a state he has never seen. The family court decision is now on appeal.

The Brackeens say that the ICWA and the enabling regulations that the Bureau of Indian Affairs has put out are racially discriminatory. The ICWA puts children at risk, requiring that preference be given, absent good cause, to a member of the child's extended family, other members of their tribe or other Native American families in state-law-governed adoption placements of Native American children, according to Wednesday's suit.

"The Indian Child Welfare Act is unconstitutional, discriminatory and invades every aspect

of Texas family law as applied to Native American children," Paxton additionally said. "It coerces state agencies and courts to carry out unconstitutional and illegal federal policy, and make child custody decisions based on racial preferences."

Counsel for the Brackeens declined to comment beyond the complaint.

The federal government did not immediately respond to requests for comment Friday.

Texas is represented by Ken Paxton, Jeffrey C. Mateer, Brantley D. Starr, James E. Davis and David J. Hacker of its attorney general's office. The Brackeens are represented by Rebekah Perry Ricketts, Matthew D. McGill and Lochlan F. Shelfer of Gibson, Dunn & Crutcher LLP.

Counsel information for the federal government was not immediately available.

The case is Brackeen et al. v. Zinke et al., case number 4:17-cv-00868, in the U.S. District Court for the Northern District of Texas.

--Editing by Edrienne Su.

# Enviros Slam Trump's Promise To Hatch To Shrink Bears Ears

Share us on: By **Michael Phillis**

Law360, New York (October 27, 2017, 9:44 PM EDT) -- In the wake of reports that President Donald Trump promised Republican Sen. Orrin Hatch, R-Utah, that he would shrink Bears Ears National Monument, environmental groups criticized the move and said they would sue if the president took action.

The National Resources Defense Council weighed in with a tweet when the news broke, saying, “Executive action to change the boundaries of a monument is illegal. If Trump acts on this, we’ll defend our national monuments in court.”

Ashley Soltysiak, the director for the Utah chapter of the Sierra Club, criticized any move to reduce the size of the 1.35 million-acre monument located in southeastern Utah and reiterated the importance of protecting the land.

“The history, culture and landscape of Bears Ears National Monument remains as important today as when it was recognized as a national monument,” she said in a statement. “To eliminate or reduce protections in any way is an affront to the tribal nations who called for its creation and to everyone who loves and depends on our public lands."

There is debate over whether a president has the authority to rescind monument protections. In May, 86 Democratic U.S. representatives **told** Interior Secretary Ryan Zinke that Congress, not the president, has the authority to revoke or shrink national monuments. The letter said Congress has “not delegated the authority to significantly diminish or abolish an existing national monument.”

Trump’s promise to shrink the monument was first reported in the Salt Lake Tribune.

Hatch is an advocate for rescinding Bears Ears, which was designated by former President Barack Obama in December 2016. He was part of a delegation of elected officials that wrote a letter to Zinke in May, pushing for action.

“We stand unified in our recommendation for a full rescission of Utah’s most excessive

monuments," the letter said.

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 Zinke to review monuments designated by presidents going back to 1996, which included Bears Ears.

In June, Zinke said that Bears Ears should be **reduced and "right sized"** in an interim report to the White House.

"There is no doubt that it is drop-dead gorgeous country and that it merits some degree of protection, but designating a monument that including state land encompasses almost 1.5 million-acres where multiple-use management is hindered or prohibited is not the best use of the land and is not in accordance with the intention of the Antiquities Act," Zinke said in a statement at the time.

Zinke announced in August that he had sent Trump a draft report concerning a review of monuments, although he did not say exactly what his recommendations were. Some were leaked, however, including a reported recommendation to shrink Bears Ears.
In **response** to the leaked recommendations, the Bears Ears Inter-Tribal Coalition expressed "outrage."

"Secretary Zinke's recommendation is an insult to tribes," Carleton Bowekaty, a Zuni councilman and Bears Ears Inter-Tribal Coalition co-chair, said in an August statement. "He has shown complete disregard for sovereign tribes with ancestral connections to the region, as well as to the hundreds of thousands of people who have expressed support for Bears Ears National Monument."

Hatch's office and the White House did not respond to requests for comment.

--Additional reporting by Christine Powell, Adam Rhodes and Michael Macagnone. Editing by Adam LoBelia.