

# FEDERAL INDIAN LAW



Newsletter of the Federal Bar Association  
Indian Law Section

Summer 2009 Issue



## A WORD FROM THE CHAIR

By Elizabeth Ann Kronk

Greetings! As you may know, I have been serving as the acting chair of our section for the past few months, as our section chair, Allie Greenleaf Maldonado, recently gave birth to a beautiful baby girl. Although we miss Allie's leadership, we are all incredibly happy for Allie and wish her and her family all the best.

### D.C. Midyear Conference

It has been a truly humbling experience to serve as your acting chair even these past months as there is so much going on within our section. Our section Midyear Conference co-chairs, Heather Dawn Thompson and Katie Morgan, have put together what promises to be a stellar conference in Washington, D.C. We will return to the National Museum of the American Indian for the Midyear Conference, as it was an excellent venue last year. Our Midyear Conference is scheduled for Friday, Nov. 13, 2009. Our conference co-chairs have put together a wonderful day of panels, including: Ethics: Inter-Tribal Investment and Ownership; Tribal Bankruptcy: Options During Difficult Economic Times; Beyond Land-Into-Trust: Creative Land Ownership Options for Tribes; Civil & Regulatory Jurisdiction Fix; and a short panel on a federal court update. I am confident that this year's Midyear Conference will be an excellent educational opportunity for all, as well as the fun experience that we have all come to expect from FBA Indian Law Section events. I look forward to seeing you in D.C. on November 13!

### 2010 Annual Conference

Our Annual Conference chair, Professor Kristen Carpenter, is also already hard at work planning our Annual Conference, which will once again take place at the Hilton Buffalo Thunder Resort on the Pueblo of Pojoaque (just north of Santa Fe, N.M.) on April 9-10, 2010. Professor Carpenter is working with three co-chairs—Professor Angela Riley, Paul Spruhan, and Tracy Toulou—to plan this year's Annual Conference. Our conference chair and co-chairs bring a wealth of knowledge and experience to our Annual Conference, and I am confident that the Annual Conference will only continue to exceed expectations. This year's conference also promises to be our best one yet because it is our 35th Annual Conference. In recognition of this auspicious event, we have formed an Advisory Committee of some of the foremost experts in Indian law to work closely with our wonderful Annual Conference Co-chairs in planning the upcoming Annual Conference. The 35th Anniversary Advisory Committee, chaired by Lawrence Baca, is composed of: Bob Clinton, Sam Deloria, John Echohawk, Walter Echo-Hawk, Doug Endreson, Paul Frye, Carole Goldberg, Heather Kendall-Miller, Arlinda Locklear, Wilson Pipestem, Judith Royster, Gloria Valencia-Weber, and Sue Williams. The Annual Conference co-chairs and 35th Anniversary Advisory

Committee have been discussing potential panel topics and speakers for the 2010 Annual Conference. If you have any ideas to share, please send your feedback to the Annual Conference chair, Prof. Kristin Carpenter, at [kristin.carpenter@colorado.edu](mailto:kristin.carpenter@colorado.edu).



### Congratulations To The Newsletter Committee!

On Sept. 12, 2009, *Federal Indian Law* received the Outstanding Newsletter Award at the national FBA

FBA PRESIDENT LAWRENCE BACA AND ELIZABETH KRONK AT THE FBA ANNUAL MEETING AND CONVENTION IN OKLAHOMA CITY

Annual Meeting and Convention in Oklahoma City. This is a great honor, as the section has never previously received this award and our section newsletter "beat out" many other excellent newsletters for the award. We all owe our Newsletter Committee a tremendous amount of gratitude for the time and effort they give to creating this now award-winning newsletter that is of great benefit to us all. Please join me in congratulating the members of our Newsletter Committee: Trent Crable, Neal DuBois, Tim Evans, Kate Fort, Cameron Fraser, Vanessa Ray-Hodge, Casey Ross-Petherick, and Ann Tweedy. KUDOS! If you are interested in contributing to our award-winning newsletter, please contact the editor in chief, Bill Wood, at [william.wood@hkllaw.com](mailto:william.wood@hkllaw.com).

### Section/Division Leadership Training Program Update

In August, I had the opportunity to attend the annual section and division leadership training program at the FBA Headquarters. As always, I was truly impressed with the dedication

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## INDIAN LAW CASES, NEWS, AND NOTES

### Supreme Court Update

The big news from the Supreme Court was the confirmation of Justice Sonia Sotomayor on Aug. 6, 2009. In addition, three petitions for certiorari of particular interest to Indian Country have been filed so far in the 2009-2010 term: *Harjo v. Pro-Football Inc.*; *Elliott v. White Mountain Apache Tribal Court*; and *Barrett v. United States*.

On Sept. 14, 2009, petition for certiorari was filed in *Harjo v. Pro-Football Inc.* from the Court of Appeals for the District of Columbia Circuit. In the late 1990s, a group of Native Americans petitioned to cancel the Washington Redskins football team's trademark registrations on the grounds that the registrations disparaged Native peoples. In 1998, the Trademark Trial and Appeal Board cancelled the registrations, and the team sought judicial review. The district court granted summary judgment in favor of the team and Pro-Football Inc., thereby reversing the Trademark Trial and Appeal Board's order scheduling cancellation of the disputed marks. The district court found that the doctrine of laches precluded consideration of the cancellation petition. After appeal and remand, the district court again granted summary judgment for the team. The appeals court then affirmed the district court's decision, and the Native plaintiffs filed a writ of certiorari with the Supreme Court.

Harjo and the other petitioners ask the Supreme Court to address "whether the doctrine of laches is applicable to a cancellation petition filed pursuant to Section 1064(3) of the Lanham Act despite the plain meaning of the statutory language stating that such a petition may be filed 'at any time.'"

On Aug. 11, 2009, petition for certiorari was filed in *Elliott v. White Mountain Apache Tribal Court* from the Ninth Circuit. In 2002, Valinda Jo Elliott, a non-Indian, and her employer were driving within the White Mountain Apache Reservation when they ran out of gas and got lost. After being separated from her employer and wandering for three days, Elliott spotted a news helicopter reporting on the Rodeo for-

est fire. In an attempt to attract the attention of the helicopter, she set a signal fire which grew into the Chediski forest fire that later combined with the Rodeo fire. The combined Rodeo-Chediski fire caused millions of dollars in damage and burned more than 400,000 acres. The White Mountain Apache Tribe brought eight claims against Elliott in tribal court, including alleged violations of tribal executive orders, the tribal game and fish code, the tribal natural resources code, and common law negligence and trespass. Elliott brought a motion to dismiss for lack of jurisdiction, which the tribal court denied; she then sought interlocutory review with the tribal appellate court, which denied her request on the ground that the tribe's code did not grant the court with jurisdiction to hear interlocutory appeals.

Elliott next sought injunctive and declaratory relief from the U.S. District Court for the District of Arizona. The district court dismissed the case without prejudice because Elliott had not exhausted her tribal court remedies. Elliott then appealed to the Ninth Circuit, which upheld the district court's dismissal of her federal court case for failure to exhaust tribal remedies. The Ninth Circuit noted that exhaustion of tribal remedies is a prerequisite to federal court jurisdiction under *Iowa Mutual v. LaPlante* and rejected Elliott's arguments that either of the four exceptions to the exhaustion of remedies doctrine applied: the court found that (1) the tribal court's assertion of jurisdiction was not "motivated by a desire to harass or ... conducted in bad faith"; (2) that the tribal court action was not "patently violative of express jurisdictional prohibitions"; (3) that exhaustion would not be futile for lack of an adequate opportunity to challenge the tribal court's jurisdiction; and (4) that it was not "plain" that tribal court jurisdiction was lacking (such that the exhaustion requirement "would serve no purpose other than delay"). In rejecting Elliott's argument under the fourth exception, the Ninth Circuit analyzed whether the tribal court lacked jurisdiction under

the exceptions in *Montana v. United States* and the role that tribal ownership of the land plays in establishing tribal jurisdiction. Concluding that tribal court jurisdiction was colorable under the circumstances, the court noted that the tribe made "a compelling argument that the regulations at issue are intended to secure the tribe's political and economic well-being, particularly in light of the result of the alleged violations of those regulations in this very case: the destruction of millions of dollars of the tribe's natural resources."

Elliott asks the Supreme Court to resolve the following question: "Can a tribal court assert jurisdiction over a nonconsenting non-Indian and force her to defend against civil claims in that unfamiliar forum when it is plain that the tribal court has neither regulatory nor adjudicatory jurisdiction and where the conduct at issue by the nonconsenting non-Indian on tribal land does not and cannot ever threaten or directly effect the tribal political integrity, economic security, or the health or welfare of the tribe?"

The White Mountain Apache Tribe filed a brief in opposition to Elliott's petition for certiorari on October 16.

Petition for certiorari in *Barrett v. United States*, an appeal from the Tenth Circuit, was filed on June 6, 2009. John A Barrett Jr., the chair of the Citizen Band Potawatomi Indian Tribe, argued that his salary as chair should be exempt from federal income taxes because he was paid from a trust fund established by the secretary of the Interior with money awarded to the tribe as a result of various claims brought before the Indian Claims Commission. In 1983, a plan was established for distributing the funds pro rata to tribal members and for tribal programming, and the plan provided that "[n]one of the[] funds distributed per capita or made available under this plan for programming shall be subject to Federal or State income taxes." In 1996, the trust fund was transferred from federal to tribal management, with yearly audit reports to be submitted to the secretary of the Interior. The Tribal Business Committee, with the membership's approval, began to pay Barrett's salary from the trust fund without with-

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holding federal income taxes. The IRS determined that the chair's compensation was subject to federal income taxes and issued a notice of deficiency. Barrett paid the amount due and filed a complaint in federal district court seeking review of the IRS's determination. On summary judgment, the district court agreed with the IRS and upheld the additional penalty. Barrett then appealed to the Tenth Circuit, which affirmed the lower court. The Tenth Circuit reasoned that any exception from federal income taxes should be clearly expressed; that the exception contained in the 1983 plan did not encompass the compensation paid to Barrett as chair; and that, even if it did, the tax exemption in the plan was not sufficiently specific to exempt his salary.

Barrett appealed to the Supreme Court and the presented the following questions: (1) "Whether an Indian tribe can use Indians Claims Commission Act funds, appropriated by Congress and distributed to the tribe with a specific exemption from federal income tax, to pay federal income tax exempted salaries to elected officials the tribe is required to have under its tribal constitution;" and (2) "Whether the imposition of a penalty by the Internal Revenue Service against the tribal chair for sovereign legislative actions of the tribe improperly infringes on the tribe's sovereign powers." The Court, however, denied his petition on October 13.

### Inside the Beltway Update

Both the executive and legislative branches of the federal government have been active in Indian affairs this summer and fall.

On November 5, President Obama hosted the Tribal Nations Conference at the U.S. Department of the Interior auditorium, the first of the annual meetings he pledged to hold with tribal leaders during his campaign. In conjunction with the historic conference, the National Congress of American Indians held a Tribal Leaders Pre-Meeting and Reception on November 4. Also, a ceremony for the opening of the Embassy of Tribal Nations, which will house the

NCAI, was held on November 3. Also on November 3, Health and Human Services Secretary Kathleen Sebelius hosted tribal leaders in Washington, D.C.

On October 30, in another historic move, President Obama issued a proclamation declaring November as Native American Heritage Month. The proclamation recognized the prominent role that American Indians and Alaska Natives have played in the history of America as "inventors, entrepreneurs, spiritual leaders, and scholars."

On June 24, the newly sworn-in assistant secretary for Indian affairs at the Bureau of Indian Affairs, Larry EchoHawk, issued an opinion on a land into trust application by the United Keetoowah Band of Cherokee Indians. The opinion reversed the regional director's past decisions that the Cherokee Nation of Oklahoma has exclusive jurisdiction within the historical boundaries of what the opinion the called "the historical Cherokee Nation," to which the opinion found both the United Keetowah Band and the Cherokee Nation of Oklahoma to be modern successors. The United Keetoowah Band organized in 1950 under the Oklahoma Indian Welfare Act, a federal law similar in purpose to the Indian Reorganization Act. And, according to the opinion, the Cherokee Nation of Oklahoma formed in 1975. The opinion signals a possible change in policy that could affect land rights and other rights of tribes that have reorganized their governments under provisions of these two laws, particularly where more than one tribe claims origins in a single historical tribal government.

On August 10, EchoHawk issued a proclamation setting aside a reservation for the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan, also known as the Gun Lake Tribe. The tribe broke ground in September on its new casino project.

### NEWS FROM WITHIN THE BIA

EchoHawk approved a reorganization of the bureau's central office organizational and reporting structure. The deputy assistant secretary for policy and

economic development (DAS-PED) has become the principal deputy assistant secretary (PDAS). The PDAS is responsible for the Office of Indian Gaming; the Office of Self Governance; the Office of Federal Acknowledgment; and the Office of Regulatory affairs and Collaborative Action, an office that was added to oversee new and revised federal regulations. A new position of deputy assistant secretary for programs (DAS-PRO) has been added to oversee the Office of Indian Energy and Economic Development (formerly under the DAS-PED); the Office of Facilities, Environmental and Cultural Resources (formerly under the deputy assistant secretary for management); and the Office of Trust Policy and Rights Protection, a new office created to oversee trust resource programs and help tribes manage their trust lands and assets. A new chief of staff will oversee the assistant secretary's immediate staff, the Office of Counsel, the Office of Public Affairs, and the Office of Congressional and Legislative Affairs. (The latter two offices were previously combined in the Office of External affairs under the PDAS.) The deputy assistant secretary for management continues to be responsible for the Office of the Chief Financial Officer, the Office of Human Capital Management, and the Office of Chief Information Officer. Also, the director of the Bureau of Indian Affairs and the director of the Bureau of Indian Education will now report directly to the assistant secretary.

### FEDERAL GOVERNMENT RECOGNITION AND RESTORATION OF INDIAN TRIBES

On July 15, the House Natural Resources Committee held a hearing on federal recognition with testimony concerning the situations of the Duwamish Tribe, the Burt Lake Band of Ottawa and Chippewa, the Chinook Nation, and the Little Shell Chippewa Tribe of Montana. On July 22, Environmental Protection Agency Administrator Lisa Jackson reaffirmed the EPA's long-standing Indian Policy recognizing the right of tribes, as sovereigns, to self-determination; acknowledging the federal trust responsibility to Indian tribes; and pledging to continue the

government-to-government relationship with tribes to protect the land, air, and water in Indian Country.

Secretary of Interior Kenneth Salazar announced on August 7 a new policy to provide regular status updates to the American public on Indian trusts, which are currently estimated to include \$3.5 billion in funds and 56 million acres of land.

The Department of Interior restored the Delaware Tribe of Oklahoma by certifying the tribe's election adopting a new Constitution under the Oklahoma Indian Welfare Act, and the Delaware Tribe was included on the revised list of federally recognized Indian tribes issued on August 11. The Wilton Rancheria was also added to the list under a court-ordered settlement stipulation. (A local city and county are petitioning to reopen a lawsuit challenging the Wilton Rancheria's recognition in the U.S. District Court for the Northern District of California.) On August 17, in the first decision by the Office of Federal Acknowledgment issued under the Obama Administration, the Bureau of Indian Affairs issued a proposed finding against acknowledgment of the Brothertown Indian Nation (a 180-day comment period follows the proposed finding).

On October 1, Del. Deni Faleoavaega (D-American Samoa) introduced the Indian Tribal Federal Recognition Administrative Procedures Act, a bill whose stated purpose is to provide for an improved administrative process for federal recognition. On October 22, the Senate Committee on Indian Affairs passed S. 1178, the Indian Tribes of Virginia Federal Recognition Act of 2009 (which would recognize the Chickahominy Tribe, the Chickahominy Tribe—Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, the Monacan Nation, and the Nansemond Tribe) and S. 1735, which would extend federal recognition to the Lumbee Tribe of North Carolina. On October 27, the Department of the Interior issued a final determination not to acknowledge the Little Shell Tribe. On the same day, Sens. Max Baucus (D-Mont.) and Jon Tester (D-Mont.) introduced S. 1936, a bill to recognize the Little Shell Tribe of Montana. And on November 4, the Senate Committee

on Indian Affairs held an oversight hearing on federal recognition.

#### GAMING REGULATIONS

On August 25, the day before the regulations were scheduled to take effect, the National Indian Gaming Commission extended the effective date of its amended regulations to Dec. 31, 2009. The amended regulations clarify appellate procedures; update various cost, fee, and reporting provisions; and add gaming on ineligible lands to the class of substantial violations warranting immediate closure. On October 7, the commission announced a one-year extension, to Oct. 13, 2010, of the effective date of the final rule for Minimum Internal Control Standards (MICS) for Class II gaming. In other developments regarding the NIGC, chair Phil Hogen announced his retirement, and there are two new commission members. George Skibine, principal deputy assistant secretary for Indian affairs, will serve as chair until a permanent appointment is confirmed. Steaffani Cochran, a citizen of the Chickasaw Nation, has been appointed as an associate member of the commission.

And, on August 31, the White House Domestic Policy Council and Office of Public Engagement held two listening sessions that brought together several dozen tribal leaders and White House officials to discuss the process of tribal consultation.

#### NEWS FROM CAPITOL HILL

Sen. Al Franken (D-Minn.) joined the Senate Committee on Indian Affairs (SCIA) in early July, shortly after being sworn into office. The SCIA held several hearings and approved several pieces of legislation—one of which was an apology resolution (Senate Joint Resolution 14, titled “A joint resolution to acknowledge a long history of official depredations and ill-conceived policies by the Federal Government regarding Indian tribes and offer an apology to all Native Peoples on behalf of the United States”) that was passed by the full Senate on October 6 as part of the defense spending bill.

The SCIA approved six bills on September 10, including the Tribal Law and Order Act (S. 797) and several water rights acts.

On September 24, 2009, Sen. Byron Dorgan (D-N.D.) introduced a technical amendment to the Indian Reorganization Act (S. 1703), affirmatively clarifying the authority of the secretary of the Interior to take land into trust for all tribes, regardless of when recognized. This legislation is commonly known as the *Carcieri*-fix bill. Legislation to address the Supreme Court's decision in *Carcieri v. Salazar* was also introduced in the House in October by, respectively, Rep. Dale Kildee (D-Mich.) (H.R. 3742) and Rep. Tom Cole (R.-Okla.) (H.R. 3697). On November 3, top officials from the Obama administration announced the White House's support for a legislative fix to address *Carcieri*, and on November 4, the House Natural Resources Committee held a hearing on H.R. 3742 and H.R. 3697.

On October 15, Senator Dorgan introduced a new version of the Indian Health Care Improvement Reauthorization and Extension Act (S. 1790), which is co-sponsored by 15 other Senators. The House Committee on Energy and Commerce—Subcommittee on Health held a hearing on the Indian Health Care Improvement Act Amendments of 2009 (H.R. 2708).

#### SENATE HEARINGS

An oversight hearing to examine federal tax treatment of health care benefits provided by tribal governments was held on Sept. 18, 2009, and was followed by an amendment proposed by Sen. Kent Conrad (D-N.D.) to America's Healthy Future Act that excludes future tribal health benefits from being treated as taxable income. On September 10, the SCIA held a hearing on the Indian Youth Suicide Prevention Act (Senate Bill 1635). On August 6, the Senate Committee held a hearing the Native Hawaiian Government Reorganization Act (Senate Bill 1011), where Deputy Associate Attorney General Sam Hirsch voiced the Department of Justice's support for Native Hawaiian self-governance. The SCIA held a hearing to examine the increase of gang activity in Indian Country on July 30. And, following a July 16 hearing on no-bid federal contracting preferences for Alaska Native corporations under the

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Small Business Administration's 8(a) Business Development Program, Sen. Claire McCaskill (D-Mo.) dropped an amendment that would have instituted a cap on federal contracts for Alaska Native corporations at \$5.5 million. (Sen. McCaskill vowed to continue to work on reform.)

#### ENERGY, ENVIRONMENT, AND NATURAL RESOURCES ISSUES

The SCIA also held several roundtable meetings to discuss Indian energy: in Tulsa on September 25; Albuquerque on September 28; Washington, D.C., on September 30; Palm Springs on October 13; Portland on October 19. Also, the committee released an Indian Energy and Energy Efficiency Concept Paper on September 10 (available on the committee's Web site at [indian.senate.gov/public/](http://indian.senate.gov/public/)), and is seeking comments in person or in writing.

On September 30, the House Natural Resources Committee approved three tribal water settlements bills (H.R. 4065, H.R. 3254, H.R. 3342) for, respectively, the White Mountain Apache Tribe; Taos Pueblo; and the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque. On September 21, Rep. Bob Bennett (R-Utah) introduced legislation that would give control over the Utah Navajo Trust Fund, a currently state-managed fund managing royalties from oil and gas production, to the Utah Dineh Corporation (the fund has been the subject of long-standing litigation over alleged mismanagement by the state of Utah). The bill has been assigned to the Senate Committee on Indian affairs.

On October 7, the House Natural Resources Committee held a hearing on the Native American Graves Protection and Repatriation Act, at which witnesses discussed the inadequate funding of NAGPRA grants and the length of time and expenditure of resources required to go through the repatriation process. And on October 21, the Natural Resources Committee held a legislative hearing on H.R. 2523, the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act.

#### GOVERNMENT APPOINTMENTS

On the appointments front, Paxton Myers, a member of the Eastern Band of Cherokee Indians, replaced Kim Teehee (who now serves as the senior policy advisor for Indian affairs at the White House Domestic Policy Council) as Rep. Dale Kildee's (D-Miss.) advisor on Native American affairs, beginning Sept. 15, 2009. Other appointments and confirmations made for various individuals who will influence Indian affairs include the following:

- Sandra Henriquez was confirmed as HUD's assistant secretary for public and Indian housing on May 21, 2009.
- Clara Pratte, a member of the Navajo Nation, was appointed by the Small Business Administration to national director of the Office of Native American affairs on May 29, 2009.
- Ignacia Moreno was nominated on June 8, 2009, for assistant attorney general for environment and natural resources, but has not yet been confirmed.
- Mary Smith, a citizen of the Cherokee Nation, was nominated for assistant attorney general for the Tax Division and reported out of the Senate Judiciary Committee on June 11, but she has not yet been confirmed.
- Kim Teehee, a citizen of the Cherokee Nation, was appointed as senior policy advisor for Indian affairs at the White House Domestic Policy Council on June 15, 2009.
- Elsie Meeks, a member of the Oglala Sioux Tribe, was named state director of the USDA Rural Development in South Dakota Office on July 27, 2009.
- Tracie Stevens, a member of the Tulalip Tribes, was named senior advisor to the assistant secretary of Indian affairs at the Department of Interior on July 30, 2009.
- Paul Tsosie, a member of the Navajo Nation, was named chief of staff to the assistant secretary of Indian affairs on July 30, 2009.
- Wizipan Garriott, a member of the Rosebud Sioux Tribe, was tapped for policy advisor to assistant secretary of Indian affairs on July 30, 2009.
- Donald "Del" Laverdure, a member

of the Crow Tribe, was appointed as principal deputy assistant secretary of Indian affairs on Aug. 4, 2009.

- Sonia Sotomayor was confirmed as U.S. Supreme Court Justice on Aug. 6, 2009.
- Pilar Thomas, a member of the Pasqua Yaqui Tribe, was appointed deputy solicitor for Indian affairs at the Department of Interior Office of the Solicitor on Sept. 21, 2009.
- Lilian Sparks, a Lakota woman of the Rosebud and Oglala Sioux Tribes, was nominated as the commissioner of the Administration for Native Americans at the Department of Health and Human Services on October 27.

Several key Indian affairs positions remain unfilled, including the special trustee for American Indians at the Department of the Interior and the chair of the National Indian Gaming Commission.

#### Southeast Update

The Court of Appeals for the Eleventh Circuit issued its opinion in *Friends of the Everglades v. South Florida Water Management Dist.*, 570 F.3d 1210 (11th Cir. 2009), a case involving the transfer of polluted canal water by pumps operated by the South Florida Water Management District into nearby Lake Okeechobee. The Miccosukee Tribe of Indians of Florida participated as an intervenor-plaintiff in the litigation. At issue was whether the transfer was a "discharge of a pollutant" under the federal Clean Water Act and thus whether the Water Management District would have to obtain a National Pollution Discharge Elimination System permit. That issue in turn depended on the meaning of "discharge," defined in the Clean Water Act as "any addition of any pollutant to navigable waters from any point source." Finding the definition of "discharge" in the act to be ambiguous, the court turned to EPA regulations adopted during the course of the litigation, under which the transfer of pollutants from one navigable body of water to another is not an "addition of [a] pollutant to navigable waters." The court held that the regulations were entitled to *Chevron* deference as a reasonable and therefore permissible

construction of the statutory language, in part because the EPA adopted in the regulations one of two constructions the court itself had considered. The court's holding allows the Water Management District to make the transfer without obtaining a water discharge permit under the Clean Water Act.

At the district court level, the U.S. District Court for the Western District of Louisiana issued an opinion in *Coushatta Tribe of Louisiana v. Abramoff*, No. 07-1886, 2009 WL 2406303 (W.D. La. July 31, 2009), part of the ongoing litigation regarding the Coushatta Tribe of Louisiana's claims against, *inter alia*, Jack Abramoff, Michael Scanlon, and the tribe's former law firm, Greenberg Traurig LLP, as an outgrowth of the Jack Abramoff lobbying scandal. The parties settled the underlying litigation by agreement, but there remained a dispute regarding Greenberg Traurig's and the firm's insurers' (insurer defendants) coverage and defense costs under the firm's professional liability insurance policies. The insurer defendants filed motions to stay the litigation and compel arbitration as to the coverage dispute, and these motions were granted. The tribe, Greenberg Traurig, and Scanlon sought to have the underlying litigation dismissed based on the settlement agreement, but the insurer defendants opposed dismissal until they were permitted further discovery, including deposing Scanlon. The judge allowed the deposition of Scanlon to go forward but stayed all other discovery. During his deposition, Scanlon asserted the Fifth Amendment privilege against self-incrimination and refused to answer questions pertaining to information he disclosed to Greenburg Traurig attorneys during a Jan. 23, 2004, meeting. The insurer defendants moved to compel Scanlon to answer deposition questions about the substance of the conversations at the January 2004 meeting, but the court denied the motion, sustained Scanlon's objection to questioning based on his assertion of the Fifth Amendment privilege, and released him as a witness. Notably, the court upheld Scanlon's assertion of the privilege against self-incrimination by pointing to a presumption against waiver and finding that the privilege is not waived or extinguished by entry of a guilty plea (he had pleaded

guilty in a related criminal action) but instead remains intact until sentencing (since Scanlon's eventual sentencing in the criminal case in the U.S. District Court for the District of Columbia could be adversely affected by his answering the potentially-incriminating questions in the deposition).

In a straightforward application of the doctrine of tribal sovereign immunity, the court in *Perry v. Seminole Tribe of Florida*, No. 8:08-CV-2455-T-17TBM, 2009 WL 2365892 (M.D. Fla. July 30, 2009) granted the tribe's motion for dismissal under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. The case stemmed from the plaintiff's arrest at the tribe's Tampa Reservation Seminole Hard Rock Casino on DUI and resisting arrest charges. The plaintiff, who had been acquitted in criminal court, then brought a civil case against the tribe. The Court summarily found that there had been no clear and express waiver of immunity by the tribe or by Congress and therefore granted the tribe's motion to dismiss. In light of its Rule 12(b)(1) dismissal for lack of subject matter jurisdiction, the court denied as moot the tribe's motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6) on the basis that 42 U.S.C. § 1983 did not apply to the tribe or its individual defendant employees.

And in a state court case involving the rights of state recognized tribes, the North Carolina Court of Appeals issued its opinion in *Meherrin Indian Tribe v. Lewis*, 677 S.E.2d 203 (N.C. Ct. App. 2009). Alleged newly-elected tribal officers brought suit against purported former tribal officers to quiet title to tribal property held by the former officers and seeking declaratory and injunctive relief. The trial court denied the defendants' pre-answer motion to dismiss for, *inter alia*, lack of personal and subject matter jurisdiction based on the assertion of sovereign immunity. The appeals court held that a motion for dismissal based on sovereign immunity must allege a lack of personal jurisdiction rather than subject matter jurisdiction, and on the merits found that the former officers of the Meherrin Tribe, which is recognized by the state of North Carolina but not by the federal government, could not assert the defense of sovereign immunity because the tribe has no reservation, is

not federally-recognized, has no functioning judiciary for resolution of intra-tribal disputes to which disputes can be referred prior to litigation, and has as its sole source of legal authority the state statute granting the tribe state recognition.

### Southwest Update

The U.S. Court of Appeals for the Ninth Circuit decided two cases involving the authority and immunity of tribal police officers, and in particular claims for rights violations under *Bivens v. Six Unknown Agents*. *Bressi v. Ford*, 575 F.3d 891 (9th Cir. 2009), arose out of a stop of a non-Indian by tribal police officers at a roadblock on a state highway crossing the Tohono O'Odham Nation Indian Reservation. When stopped at the road block, which was set up under tribal authorization, Bressi refused to present his driver's license or other identification or give his name to the officers. After he was cited by the officers for violating certain state laws, Bressi filed suit under 42 U.S.C. § 1983 and *Bivens*, seeking relief against the officers for his arrest (he also sought relief against the United States under the Federal Tort Claims Act based on a malicious prosecution claim arising out of his aborted prosecution).

The district court granted summary judgment for the officers, finding that the operation of the roadblock was "purely a tribal endeavor" and that tribal sovereign immunity therefore barred Brassi's claims against the officers. (The court also dismissed his claims against the United States because there was an independent prosecutorial decision to pursue the complaint against Bressi.) The Ninth Circuit disagreed with the district court's finding that the roadblock was a purely tribal endeavor and found that it was improper for the district court to grant summary judgment on the basis of the officers' sovereign immunity. The appeals court found that because the officers' inquiry went beyond determining whether Bressi was Indian or not—which, along with searching non-Indians for evidence of crime or detaining them for obvious violations for delivery to state officers, is all the court said tribal officers can do with respect to non-Indians based on "purely tribal authority"—and because the officers

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treated Bressi's refusal to show his driver's license as a violation of state law, the roadblock functioned "not merely as a tribal exercise, but also as an instrument for the enforcement of state law." Citing *Oliphant v. Suquamish Indian Tribe*, the court stated that "[i]n the absence of some form of state authorization ... tribal officers have no inherent power to arrest and book non-Indian violators of tribal law." According to the Ninth Circuit, "a roadblock on a public right-of-way within tribal territory, established on tribal authority, is permissible only to the extent that the suspicionless stop of non-Indians is limited to the amount of time, and the nature of inquiry, that can establish whether or not they are Indians." The court also found that since the tribal officers were enforcing state law and therefore acting under the color of state law they were required to abide by constitutional standards applicable to state officers enforcing roadblocks, stating "[i]f a tribe wishes to avoid such constitutional restraints, its officers operating roadblocks will have to confine themselves, upon stopping non-Indians to questioning to determine non-Indian status and to detention only for obvious violations of state law."

In *Murgia v. Reed*, No. 08-15618 (9th Cir. June 30, 2009), the defendants, who were tribal police officers with the Gila River Indian Community, appealed from the district court's denial of their motion to dismiss for lack of subject matter jurisdiction. (The Ninth Circuit permitted the interlocutory appeal because the motion to dismiss was based on tribal sovereign immunity.) The plaintiff filed a *Bivens* action against the officers, who moved to dismiss on the basis of their being protected by tribal sovereign immunity and being exclusively tribal actors, not federal actors as required under *Bivens*. The district court found that the officers were not entitled to sovereign immunity because the complaint named them in their individual capacities. But the appeals court reversed, citing Ninth Circuit case law holding that the fact that a tribal officer is sued in his individual capacity does not, without more, establish that he lacks the protection of sovereign immunity. The court remanded the case for a determination

of whether the officers were acting as federal agents or exclusively as tribal agents acting within the scope of their authority when they engaged in the activity that was the subject of plaintiff's *Bivens* claim.

The Ninth Circuit also decided *Elliott v. White Mountain Apache Tribal Court*, 566 F.3d 842 (2009), a case involving claims brought by the White Mountain Apache Tribe in tribal court against Valinda Jo Elliott, a non-Indian who set a signal fire which grew into a fire that caused millions of dollars in damage to and burned hundreds of thousands of acres on the tribe's reservation. The Ninth Circuit found that tribal court jurisdiction was colorable under the circumstances, and thus that the plaintiff had to exhaust her remedies in tribal court. Elliott filed a petition for certiorari with the U.S. Supreme Court, and the tribe has filed a brief in opposition. The *Elliott* case is discussed in more detail in the Supreme Court Update.

### California—Hawai'i Update

This California update focuses on the latest developments in ongoing litigation between several California tribes and the state of California regarding the number of slot machines allowed under the 1999 tribal-state gaming compact, under which most tribes in California operate. The federal district court in *Cachil Dehe Band of Wintun Indians of the Colusa Indian Community v. California*, No. 2:04 civ. 02265 (ED. Cal. Aug. 19, 2009), issued a ruling which made final the court's April 22 order directing the state to issue 10,549 additional Class III gaming licenses to eligible tribes. (The court also ruled that the California Gambling Control Commission has the authority, under the compact, to oversee the draws for slot machine licenses; that Colusa should be placed in a higher priority tier for future draws; that the fees paid by tribes to enter draws for licenses are not refundable; and that each terminal of a multi-station game should be counted as a separate gaming device for licensing purposes under the compact.) The state of California appealed the district court's ruling to the Ninth Circuit Court of Appeals on Sept. 2, 2009. The state also filed a motion to stay the dis-

trict court's order pending a decision on appeal, but the district court denied the state's motion. The state then filed a motion for an emergency stay with the Ninth Circuit, which was also denied. On October 5, the California Gambling Control Commission held a drawing at which 1,878 licenses were issued. (The licenses will be revoked if the Ninth Circuit overturns the district court's ruling.)

In developments regarding Hawai'i, the Native Hawaiian Government Reorganization Act of 2009 (S. 1011), also known as the Akaka Bill, was introduced by Sens. Daniel Akaka (D-Hawaii) and Daniel Inouye (D-Hawaii) in May. The Senate Committee on Indian affairs held a hearing on the bill on August 6. As promised by President Obama on the campaign trail, the administration testified in support of the bill's passage and federal recognition of Native Hawaiians. As stated in the act, its purpose is to reaffirm the United States special "political and legal" relationship with Native Hawaiians and to "provide a process for the reorganization of the single Native Hawaiian governing entity. The act would also establish a Office for Native Hawaiian Relations within the Office of the secretary of Interior and would require interagency coordination and consultation with the Native Hawaiian governing entity for purposes of providing services to Native Hawaiians. And, the act would establish a commission for purposes of developing a roll of adult Native Hawaiians that elect to participate in the reorganization of the Native Hawaiian governing entity. Significantly, the act prohibits the Native Hawaiian governing entity from gaming under the Indian Gaming Regulatory Act, prohibits the secretary of Interior from taking land into trust and expressly states the Indian Non-Intercourse Act does not apply to past, present or future lands in the State of Hawaii. Lastly, the act states that nothing in the act provides authorization for the Native Hawaiian governing entity or its members from participating in federal Indian programs for which they are not otherwise already eligible.

## Pacific Northwest Update

The Court of Appeals for the Ninth Circuit issued several decisions worthy of note. On June 11, 2009, the Ninth Circuit amended its January 20, 2009 decision in *Phillip Morris v. King Mountain Tobacco*, 569 F.3d 932 (9th Cir. 2009), a case involving Phillip Morris's federal and state law claims for trade infringement against King Mountain Tobacco, a corporation owned by Yakama Tribe members and operated on the Yakama Reservation. After Phillip Morris sued King Mountain in federal court, King Mountain filed an action for declaratory relief in Yakama tribal court, and Phillip Morris asked the federal district court to enjoin the tribal court proceedings. In its January decision (discussed in the Summer 2009 edition of *Federal Indian Law*), the Ninth Circuit held that exhaustion of tribal remedies was not required, finding that under *Montana v. United States* the Yakama Tribal Court "[did] not have colorable jurisdiction over nonmember Philip Morris's federal and state claims for trademark infringement on the Internet and beyond the reservation." Perhaps the most interesting aspect of the January decision was not the court's ultimate holding, but rather the majority's attempt—in the words of concurring Judge William Fletcher—to "undermine the longstanding presumption of *Williams v. Lee*. ..." regarding the rights of Indian tribes to make their own laws and govern their members accordingly. In his concurring opinion, Judge Fletcher criticized the majority opinion for discussing at length what it saw as the near irrelevance of which side of the litigation the nonmember was on and finding that the *Montana* test applied in the same way regardless of whether the nonmember was the plaintiff suing a tribal member or a tribal member suing a nonmember. Judge Fletcher viewed this as unnecessary dicta that was not only a jab at *Williams v. Lee* but also in clear conflict with the Ninth Circuit's recent en banc decision in *Smith v. Salish Kootenai College*. The amended June 11 decision addresses, at least to some extent, the issues raised by Judge Fletcher: it notes that the case deals with only off-reservation activity, and the language that Judge Fletcher viewed as an attack on *Williams* and in conflict with the en banc decision in *Smith* was removed. Thus although the ultimate

holding did not change, much of the more controversial dicta was removed from the court's opinion.

In *North Country Community Alliance v. Salazar*, 573 F.3d 738 (9th Cir. 2009), the court rejected a claim that the National Indian Gaming Commission and the Department of the Interior violated the Indian Gaming Regulatory Act by not making an "Indian lands determination" before approving the Nooksack Tribe's gaming ordinance or licensing the tribe's casino. The group of individuals that brought the suit also argued that the approvals violated the National Environmental Policy Act (NEPA). The Ninth Circuit held that the federal agency defendants did not need to make an Indian lands determination before approving the tribe's gaming ordinance and license, and that NEPA did not apply. The court distinguished *Citizens Against Casino Gambling in Erie County v. Kempthorne*, a 2007 case from the United States District Court for the Western District of New York which held that the NIGC chair had a duty to determine whether a tribe's proposed gaming would occur on Indian lands before affirmatively approving an ordinance for that gaming, by noting that the ordinance there named specific locations where the facilities could be built) whereas the Nooksack Tribe's ordinance was silent as to location.

And in *United States v. Washington*, 573 F.3d 701 (9th Cir. 2009), the Ninth Circuit affirmed the dismissal of the Skokomish Tribe's request for a determination seeking an equitable apportionment of the Hood Canal Fishery. The decision is notable if for no reason other than its dicta. The appellate panel concluded its decision by expressing surprise that the district court's continuing jurisdiction still exists, and essentially suggested that it should not. The court noted that the U.S. District Court for the Western District of Washington has been acting as a fisheries regulating agency for more than 35 years, a job it is not suited for nor supposed to perform. In the words of the Ninth Circuit: "It is hard to see what we achieve in our continuing adjudications. We pretend to be able to read the mind of the long deceased district judge who initially issued the decree on matters of which

he did not speak. And we pretend to determine what the Indian tribes did 150 years ago at a time for which there is no evidence of especially high reliability and little evidence of any kind. This exercise is not law, and is not a reliable way to find facts, so it is hard to see why courts are doing it and how it could be preferable to the Indian tribes working some dispute resolution system out for themselves."

At the federal district court level, the U.S. District Court for the Eastern District of Washington in *Pakootas v. Teck Cominco Metals Ltd.*, 632 F. Supp. 2d 1029 (E.D. Wash. 2009), dismissed Teck Cominco's counter-claims against the Confederated Tribes of the Colville Reservation, finding that tribes are not "persons" subject to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The tribes and some of their members sued Teck Cominco, a metal smelter operating in Canada, for contaminating the Columbia River, which serves as the eastern and southern border of the tribes' reservation. Teck Cominco asserted two CERCLA counter-claims, arguing that the tribes caused and contributed to the contamination. The court held that the definition of "persons" liable under CERCLA does not include Indian tribes, rejecting Teck Cominco's argument that the term "municipalities" in CERCLA should include tribes because tribes are included in the definition of "municipalities" in other environmental laws.

In *Lil' Brown Smoke Shack v. Wasden*, No. CV 09-044, 2009 WL 2044409 (D. Idaho July 7, 2009), a tribally-owned smoke shop brought suit seeking a declaratory judgment that Idaho's Minors' Access Act (I.C. §39-5701 *et seq.*), which places certain registration and reporting requirements on businesses that sell tobacco products to Idaho consumers, could not be enforced against the smoke shop because it is tribally owned and licensed and is located on tribal land outside of the state. The defendants—the Office of the Idaho Attorney General, the Idaho attorney general as an individual, the Idaho Department of Health and Welfare, and the director of the Idaho Department of Health and Welfare

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# Tribal Leaders Weigh In on Climate Change Legislation

By Kirsten Matoy Carlson, Indian Law Resource Center

**A**s debate over the American Clean Energy and Security Act of 2009 (ACESA) intensifies, Indian and Alaska Native leaders are pushing members of Congress and President Obama to ensure that tribes are treated as full sovereign partners in the national effort to curb climate change.

Climate change disproportionately affects Indian tribes and Alaska Native villages throughout the United States. Flooding and erosion caused by climate change threatens 86 percent of all Alaska Native villages. Of the 184 Alaska Native villages imperiled by rising sea levels, 12 have already asked to be permanently relocated. Throughout the hemisphere, climate change has caused major shifts in wildlife migration patterns and growing seasons, critically impacting the diet, cultural traditions, and livelihoods of Indian tribes and Alaska Native villages.

This summer, the House of Representatives narrowly passed the ACESA, the first comprehensive piece of legislation aimed at addressing climate change and restricting uncontrolled greenhouse gas emissions. The National Congress of American Indians (NCAI) is collaborating with the National Tribal Environmental Council, Native American Rights Fund (NARF), and the National Wildlife Federation to provide leadership and influence the direction of many provisions in the bill.

Tribes have been included in many sections of the 1,400-page bill, which provides tribes with access to many of the same resources for addressing climate change as state and local governments. Tribes share in allowances made available for energy efficiency and renewable energy projects, domestic adaptation to climate change, natural resources adaptation activities, woodstove replacement programs, and residential energy efficiency programs. The bill also recognizes the

importance of tribal participation in assessing and addressing climate change by including them as participants in planning and programs related to carbon capture and sequestration, housing energy efficiency, loans for renewable energy activities, natural resources, smart grid development, smart way transportation, transmission siting, and water efficiency.



The provisions of the ACESA bill dealing with international carbon offsets and deforestation activities also implicate the rights of indigenous peoples outside the United States. In anticipation of and in conjunction with the Senate's debate and discussion on the bill, NCAI, NARF, and the Indian Law Resource Center, among others, have been reviewing the bill's language to ensure that indigenous rights are respected and protected as a condition of all projects qualifying for international carbon offsets and activities aimed at reducing deforestation and encouraging forest preservation. Deforestation activities, which account for nearly 20 percent of all carbon emissions, undermine the ability of indigenous peoples to preserve and protect their territories, natural resources, and culture. Strong language is needed in the ACESA to protect indigenous rights throughout the Americas, prevent further deforestation, and foster the forest stewardship and preservation activities that many indigenous peoples are already managing.

The bill was introduced in the Senate on September 30, and passed out of the Senate Environment and Public Works Committee on November 5, ahead of next month's United Nations Summit on Climate Change in Copenhagen, Denmark, in December. ♦

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as an individual—moved to dismiss the case, arguing that the suit was barred by the Eleventh Amendment and that the court should abstain under the abstention doctrine in *Younger v. Harris*. The court held that the Eleventh Amendment required the dismissal of the Office of the Attorney General and the Department of Health and Welfare, but not the individual defendants, and that abstention under *Younger* was not appropriate “in light of the predominant federal question regarding the State of Idaho’s jurisdiction to enforce the [Minors’ Access] Act.”

In state court, the Supreme Court of Oregon in *State ex rel Dewberry v. Kulongoski*, 210 P.3d 884 (Or. 2009), affirmed the decision of the court of

appeals, which held that the trial court erred when it dismissed a writ of mandamus which sought to bar state officials from carrying out a gaming compact with the Confederated Tribes of Coos, Lower Umpqua, and Suislaw Indians. Oregon’s procedural rules permit writs of mandamus only when there is no “plain, speedy and adequate remedy in the ordinary course of the law[.]” and the trial court had dismissed the action after finding that the realtors (the persons seeking the writ) had a plain, speedy, and adequate remedy in the form of a declaratory judgment action. The Supreme Court of Oregon held that the standard joinder rules do not apply in mandamus proceedings since the only necessary parties

are the “realtor” and the “defendant.” The court, noting that the tribe would clearly be a necessary party to a declaratory judgment action seeking to invalidate the compact, further held that a declaratory judgment action was not an adequate alternative in the case because the tribe could prevent the action from going forward by asserting its immunity from suit and, according to the court, therefore had complete control over whether a declaratory judgment action could go forward. The court’s ruling is significant because it allows persons to bring writ of mandamus actions against Oregon state officials without joining Indian tribes, thus preventing dismissals for failure to join a necessary party. ♦

# Negotiations to Resume on Draft of the American Declaration on the Rights of Indigenous Peoples

By Kirsten Matoy Carlson, *Indian Law Resource Center*

In June, the General Assembly of the Organization of American States (OAS) reaffirmed its commitment to negotiate and adopt an American Declaration on the Rights of Indigenous Peoples (the American Declaration). The American Declaration is a regional human rights document establishing the human rights of Indian tribes, Alaska Natives, and other indigenous peoples throughout the Americas. Once adopted, it will complement and strengthen the United Nations Declaration on the Rights of Indigenous Peoples that was adopted in 2007. The current draft of the American Declaration affirms the right of self-determination, treaty rights, rights to lands, territories, and natural resources, cultural rights, and much more. A copy of the most recent draft of the American Declaration on the Rights of Indigenous Peoples can be found on the OAS Web site at [scm.oas.org/doc\\_public/ENGLISH/HIST\\_08/CP20518E07.DOC](http://scm.oas.org/doc_public/ENGLISH/HIST_08/CP20518E07.DOC).

Once adopted, the American Declaration may have the greatest practical and long-term impact of all the international mechanisms available to Indian tribes and nations in North America—for several reasons. First, a strong American Declaration will address particular regional issues in the Americas that are not dealt with in the UN Declaration. The draft of the American Declaration already includes strong provisions on gender equality and violence against Native women that were not included in the UN Declaration and are particularly important to Indian tribes and Alaska Natives in the United States. Second, the OAS already has a good monitoring and complaint mechanism in the Inter-American Commission on Human Rights, and the American Declaration would provide it clear rules to apply. Finally, because the draft of the American Declaration is still under negotiation, it presents an important opportunity to get the support of the United States and Canada, both of which voted against the UN Declaration and feel they are not bound to honor it. An American Declaration passed with their support would hasten the establishment of binding, customary international law. Adoption of an American Declaration in the OAS with the support of the United States and Canada could become the legal and moral foundation for changing racist federal laws that undermine the sustainability and threaten the existence of Indian nations and tribes in the Americas.

As the American Declaration has yet to be adopted by the OAS, Indian tribes, and Alaska Native villages can influence the draft text to ensure that it adequately protects their rights. Such international advocacy by Indian tribes and Alaska Native villages can be an important part of a multi-faceted, long-term strategy for protecting tribal governments, lands, and resources. International legal standards, such as those in the draft American Declaration, can provide new legal and political arguments for the protection of tribal rights to self-determination, land, resources, and more. While tribes cannot usually expect courts in the United States to enforce or rely solely on international law in their decisions, it can strengthen and complement domestic legal strategies. International advocacy can also educate elected government officials about the international obligations that the

United States has and influence them to adopt laws and policies more favorable to Indian tribes and Alaska Native villages.

The on-going negotiation of the draft of the American Declaration provides Indian tribes and Alaska Native villages with an opportunity to craft the emerging international jurisprudence of indigenous peoples' rights. In 1999, the OAS established a working group to review and make changes to the declaration. From the very beginning, indigenous representatives insisted that these working group meetings be open to them. Currently, indigenous representatives, including the governments of the Navajo Nation and the Six Nations Confederacy, attend the negotiation sessions of the working group to debate the articles and ensure that the declaration accurately reflects their interests.

Tribal governments are welcome to participate in all working group meetings on the draft of the American Declaration and do not have to register with the OAS to attend these meetings. The working group negotiation sessions are usually convened at OAS headquarters in Washington, D.C., but are sometimes hosted by other OAS countries. Each negotiation session consists of a week of discussions regarding the form and content of the articles of the declaration, with the objective of reaching consensus between country delegations and indigenous representatives. These sessions are important not only for resolving differences regarding the text of the declaration, but also for advancing international thought and collaboration surrounding these fundamental rights. The OAS General Assembly has scheduled the first working group meeting on the draft of the American Declaration for Nov. 30–Dec. 2, 2009, in Washington, D.C. Another working group meeting will be held before March 2010. More information regarding upcoming sessions can be found on the OAS Web site at [www.oas.org/consejo/cajp/working%20groups.asp#indigenous](http://www.oas.org/consejo/cajp/working%20groups.asp#indigenous).

Tribal governments can also participate in the meetings convened by the Indigenous Caucus, an ad-hoc gathering of indigenous participants that usually convenes two or three days prior to the official working group meetings in order to consult with each other and, where possible, develop common strategies and proposals for the negotiation sessions. These meetings are loosely organized and completely open to tribal governments and other indigenous representatives.

A special fund administered by the OAS is available to facilitate indigenous participation in the working group. Tribal governments may seek economic support from this specific fund for travel and per diem expenses related to their participation in the meetings. The criteria for receiving this support are available at [www.oas.org/consejo/resolutions/res873.asp](http://www.oas.org/consejo/resolutions/res873.asp). Tribal government representatives who wish to apply should contact Luis Toro or Johanna Salah at the OAS Office of International Law: via phone at (202) 458-6377, by fax at (202) 458-3292, or by e-mail at [ltoro@oas.org](mailto:ltoro@oas.org) and [jsalah@oas.org](mailto:jsalah@oas.org).

For more information on the American Declaration on the Rights of Indigenous Peoples and the Organization of American States, contact the Indian Law Resource Center at [mt@indian-law.org](mailto:mt@indian-law.org). ♦

displayed by the FBA executive director, Jack Lockridge, and staff members Stacy King and Adrienne Woolley. I enjoyed meeting the other section and division chairs and discussing possible partnership opportunities for our section. I was also excited to learn about many new possibilities for the Indian Law Section. In particular, we are interested in mobilizing to our section committees and possibly developing webinars on topics of interest to our membership. If you are interested in increasing your participation in the FBA Indian Law Section, please contact me at [elizabeth.kronk@umontana.edu](mailto:elizabeth.kronk@umontana.edu).

### Update From FBA Annual Meeting and Convention

Along with the section secretary-elect, Prof. Matthew Fletcher, immediate past section chair, Mike McBride, and current section secretary/deputy chair elect, Jennifer Weddle, I attended the FBA Annual Meeting and Convention held Sept. 9-13 in Oklahoma City. The FBA installed Lawrence Baca, the founder of our section, as its first American Indian president on September 12. For

those of us in the audience, Lawrence's installation as president was truly a touching and memorable moment. In celebration of his installation, the Indian Law Section played a large role in the convention and hosted six panels, including: Criminal Jurisdiction in Indian Country; The Cherokee Freedmen; Issues and Ethics for Lawyers Working with Corporate and Tribal General Counsel Parts I and II; Delivery of Veterans Services in Indian Country; and The Roberts Court on Indian Law. A big thank you goes to Jennifer Weddle, who served as the liaison between the section and annual convention planners. It was truly a spectacular convention—in large part because of the tremendous role our section and all of Indian Country played in making it a reality!

It is an exciting time for the FBA Indian Law Section, and I have greatly enjoyed serving as your acting chair for the past few months. I sincerely look forward to the possibility of serving you more in the future. Please feel free to contact me at any time with questions or concerns at [elizabeth.kronk@umontana.edu](mailto:elizabeth.kronk@umontana.edu).

Chi Miigwetch! ♦



(LEFT) PING AND MIKE McBRIDE, WALTER ECHO-HAWK, CONVENTION CHAIR WILL HOCH, AND PAULINE ECHO-HAWK; (RIGHT) SIX JUDGES INDUCTED LAWRENCE BACA AS FBA PRESIDENT: (L TO R) JUSTICE WALTER ECHO-HAWK, PAWNEE SUPREME COURT; CHIEF JUDGE VICKI MILES-LAGRANCE, WESTERN DISTRICT OF OKLAHOMA; JUDGE BOB BACHARACH, WESTERN DISTRICT OF OKLAHOMA; JUDGE MICHELLE BURNS, DISTRICT OF ARIZONA; MAGISTRATE JUDGE GUSTAVO GELPI, DISTRICT OF PUERTO RICO; AND JUSTICE D. MICHAEL McBRIDE, PAWNEE SUPREME COURT.



# FEDERAL INDIAN LAW

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## JOIN THE INDIAN LAW SECTION NEWSLETTER COMMITTEE!

Become a FBA Indian Law Section newsletter editor—stay current on the most recent legal developments in Indian country, support the section, and receive nationwide recognition for your contributions! Currently, there are several vacancies on the FBA Indian Law Section newsletter committee. We are looking for motivated individuals interested in serving as a regional editor for the Midwest and Plains regions. If you might be interested in serving as a regional editor, please contact Bill Wood, Indian Law Section newsletter editor at [william.wood@hklaw.com](mailto:william.wood@hklaw.com). Additionally, we are always interested in receiving new submissions/articles for the section newsletter. If you have a piece you would like to share with the section membership, please feel free to forward it to Bill Wood.