TRIBAL SUPREME COURT PROJECT
MEMORANDUM

FEBRUARY 23, 2018
UPDATE OF RECENT CASES

The Tribal Supreme Court Project is part of the Tribal Sovereignty Protection Initiative and is staffed by the National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF). The Project was formed in 2001 in response to a series of U.S. Supreme Court cases that negatively affected tribal sovereignty. The purpose of the Project is to promote greater coordination and to improve strategy on litigation that may affect the rights of all Indian tribes. We encourage Indian tribes and their attorneys to contact the Project in our effort to coordinate resources, develop strategy and prepare briefs, especially at the time of the petition for a writ of certiorari, prior to the Supreme Court accepting a case for review. You can find copies of briefs and opinions on the major cases we track on the NARF website (http://sct.narf.org).

Since the last update, the Supreme Court added one additional Indian law case to its merits docket: *Washington v. U.S.* (17-269) (the "Culverts Case"). As set forth in more detail below, this is the latest iteration of a long-running case involving the fishing rights of Washington Tribes under the "Stevens Treaties." It has been nearly 20 years since the Supreme Court has heard a treaty fishing rights case, the most recent being *Mille Lacs v. Minnesota* in 1999. Moreover, only four of the current Justices were sitting on the Court when it decided *Mille Lacs*. The Tribal Supreme Court Project has formed the Culverts Amicus Workgroup to coordinate and implement amicus brief strategy in support of the Tribes in this case.

The Supreme Court also denied review in three Indian law cases: *Lewis Tein, P.L., et al. v. Miccosukee Tribe of Indians of Florida* (17-702) (tribal sovereign immunity), *Norton, et al. v. Ute Indian Tribe of the Uintah and Ouray Reservation, et al*. (17-855) (tribal court exhaustion); and *Renteria, et al. v. Superior Court of California, Tulare County, et al.* (17-789) (ICWA).

We are still awaiting a decision in *Patchak v. Zinke* (16-498), which was argued on November 7, 2017. The next Indian law case that will be argued at the Supreme Court is *Upper Skagit v. Lundgren* (17-387) (tribal sovereign immunity), which will be argued on March 21, 2018.

All of these cases are summarized in more detail below.

PETITIONS FOR A WRIT OF CERTIORARI GRANTED

The Court has granted review in three Indian law cases:

WASHINGTON V. U.S. (17-269) – On January 12, 2018, the Supreme Court granted a petition for review filed by the State of Washington that challenged the Ninth Circuit's holding that the treaty right of taking fish secured to the western Washington tribes imposes on the State a duty to make feasible repairs to its road culverts to allow for the safe passage of salmon back to their spawning grounds. Respondents are the United States and 21 Washington Tribes who exercise treaty fishing rights in the western Washington

case area. This case is the latest chapter in litigation over treaty fishing rights in Washington dating back more than a century, and which has occasioned seven prior Supreme Court decisions.

The grant of certiorari encompasses three issues:

1. Whether the lower courts properly held that the State's construction and maintenance of fish-destroying culverts violates the treaty Tribes "right of taking fish," where it is technologically feasible to retrofit those culverts to simulate normal stream conditions;

2. Whether the lower courts properly rejected the State's argument that, pursuant to the Court's decision in *City of Sherrill v. Oneida Indian Nation,* the federal government waived its claim to enforce the Tribes' treaty rights by purportedly approving the design and installation of the State's barrier culverts; and

3. Whether the district court's injunction, requiring the State to fix a substantial portion of its high priority culverts within 17 years, while allowing correction of the rest at the end of their useful life, violates principles of federalism, comity, and equity.

Although a briefing and argument schedule has not been finalized, the State of Washington's brief is due before February 26, 2018, and it is anticipated that the case will be argued during the week of April 16, 2018.

UPPER SKAGIT INDIAN TRIBE V. LUNDGREN (17-387) – On December 8, 2017, the Court granted review of a petition filed by the Upper Skagit Indian Tribe seeking review of a Washington Supreme Court decision, which held that an tribal sovereign immunity did not bar an in rem action against real property of the Upper Skagit Indian Tribe. In 2013, the Tribe bought property in Skagit County, Washington, and received a statutory warranty deed. Subsequently, the adjacent property owners filed a quiet title action in state court, alleging they had acquired title to a strip of land along the common boundary through adverse possession before the Tribe purchased the land. The tribe raised sovereign immunity before the state trial court, which subsequently issued summary judgement in favor of the plaintiffs.

The question presented is: Does a court's exercise of in rem jurisdiction overcome the jurisdictional bar of tribal sovereign immunity when the tribe has not waived immunity and Congress has not unequivocally abrogated it?

The case will be argued on March 21, 2018.

PATCHAK V. ZINKE (NO. 16-498) – On May 1, 2017, the Court granted review of a petition filed by David Patchak, a non-Indian landowner seeking review of a decision by the U.S. Court of Appeals for the D.C. Circuit which upheld the Gun Lake Trust Land Reaffirmation Act of 2014. That statute reaffirmed the Department of the Interior's decision to take the land in question into trust for the Gun Lake Tribe, and removed jurisdiction from the federal courts over any actions relating to that property. Mr. Patchak, who previously had successfully argued before the Supreme Court in 2012 that he had prudential standing to bring an APA action and a *Carcieri* challenge to the acquisition of trust land for the benefit of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians/Gun Lake Tribe, argues that the statute is unconstitutional. The Court has granted review of Question Presented 1:

Petitioner filed a lawsuit challenging the Department of Interior's authority to take into trust a tract of land ("the Bradley Property") near Petitioner's home. In 2009, the District Court dismissed his lawsuit on the ground that Petitioner lacked prudential standing. After the Court of Appeals reversed the District Court, this Court granted review and held that Petitioner has standing, sovereign immunity was waived, and his "suit may proceed." *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S.Ct. at 2199, 2203 (2012) ("*Patchak I*"). While summary judgment briefing was underway in the District Court following remand from this Court, Congress enacted the Gun Lake Act—a standalone statute which directed that any pending (or future) case "relating to" the Bradley Property "shall be promptly dismissed," but did not amend any underlying substantive or procedural laws. Following the statute's directive, the District Court entered summary judgment for Defendant, and the Court of Appeals affirmed.

1. Does a statute directing the federal courts to "promptly dismiss" a pending lawsuit following substantive determinations by the courts (including this Court's determination that the "suit may proceed")—without amending underlying substantive or procedural laws—violate the Constitution's separation of powers principles?

The Court heard oral argument in this case on November 7, 2017, and the transcript is available at: https://sct.narf.org/documents/patchak_v_jewell/oral_argument_transcript.pdf

PETITIONS FOR A WRIT OF CERTIORARI PENDING

The following petitions for a writ of certiorari have been filed in Indian law and Indian law-related cases and are pending before the Court:

EASTERN SHOSHONE TRIBE V. WYOMING, ET AL. (17-1164); NORTHERN ARAPAHO TRIBE V. WYOMING, ET AL. (17-1159) – On February 21 and 22, 2018, a pair of petitions were filed seeking review of a Tenth Circuit Court of Appeals decision, which held that the that the Wind River Reservation boundaries were diminished by Congress in 1905. In 2008, the Eastern Shoshone and Northern Arapaho Tribes applied to the Environmental Protection Agency (EPA) for joint authority to administer certain non-regulatory programs under the Clean Air Act on the Reservation (which is occupied by both Tribes). The State of Wyoming and others submitted comments to EPA claiming that some of the land included in the application was no longer within the reservation because Congress diminished the reservation in 1905. EPA determined that the reservation was not diminished by the 1905 Act and granted the application. The State of Wyoming and the Farm Bureau appealed directly to the Tenth Circuit and the Tribes intervened as respondents. The Tenth Circuit majority concluded that the language used in the 1905 Act is the same type of language where the Supreme Court has found reservation diminishment in past cases. The brief in opposition to the Eastern Shoshone Tribe's petition is due March 23, 2018, and the brief in opposition to the Northern Arapaho Tribe's petition is due March 26, 2018.

ROYAL, ET AL. V. MURPHY (17-1107) – On February 6, 2018, the State of Oklahoma filed a petition seeking review of a U.S. Tenth Circuit Court of Appeals decision in a habeas corpus action, which reversed the District Court and held that the State of Oklahoma was without jurisdiction to prosecute and convict a member of the Muscogee (Creek) Nation because the crime for which he was convicted occurred in Indian country, within the boundaries of the Muscogee (Creek) Reservation. After Mr. Murphy was convicted of murder in Oklahoma State court and exhausted his appeals, he filed a habeas

corpus petition in federal district court asserting that because the crime occurred within the Muscogee (Creek) Nation's reservation boundaries, and because he is Indian, the state court had no jurisdiction. The federal district court denied his petition, holding that Oklahoma possessed jurisdiction because the Muscogee (Creek) Reservation was disestablished. On appeal, the U.S. Tenth Circuit Court of Appeals utilized the three-factor *Solem* reservation disestablishment analysis and not only found that Congress did not disestablish the Muscogee (Creek) Reservation, but that statutes and allotment agreements showed that "Congress recognized the existence of the Creek Nation's borders." Likewise, the court held that the historical evidence did not indicate a Congressional intent to disestablish the Muscogee (Creek) reservation, nor a contemporaneous understanding by Congress that it disestablished the reservation. Accordingly, the court concluded that (1) Mr. Murphy's state conviction and death sentence were invalid because the crime occurred in Indian Country and the accused was Indian, (2) the Oklahoma Court of Criminal Appeals (OCCA) erred by concluding the state courts had jurisdiction, and (3) the federal district court erred by concluding the OCCA's decision was not contrary to clearly established federal law. The brief in opposition is due March 9, 2018.

TINGLE, ET AL. V. PERDUE (17-807); KEITH MANDAN V. PERDUE (17-897) – On December 1, 2017, two individual class members filed a petition seeking review a U.S. Court of Appeals for the District of Columbia decision, which upheld a district court finding that the addendum to a class action settlement agreement was "fair, reasonable, and equitable." This class action lawsuit (the Keepseagle case) was brought against the United States Department of Agriculture (USDA) by a class of Native American farmers and ranchers alleging systemic racial discrimination by the USDA, which was ultimately settled for over $680 million. At the conclusion of the claims process, $380 million remained in the settlement fund. Over the objections of the Petitioners, the District Court approved a modification of the settlement agreement negotiated by the parties that provided for supplemental distributions to class members and a modified *cy-pres* distribution. The District Court's approval was affirmed on appeal. For both petitions, the briefs in opposition of Respondents Porter Holder and Claryca Mandan were filed on January 22, 2018, and the United States' briefs in opposition were filed February 21, 2018.

R.K.B. ET AL., V. E.T. (17-942) – On December 29, 2017, a non-Indian adoptive couple filed a petition seeking review of a Utah Supreme Court decision, which reversed the trial court, and held that the Indian birth father was a "parent" under the Indian Child Welfare Act (ICWA) and had right to notice and to intervene in the adoption proceedings. The birth mother, a member of the Cheyenne River Sioux Tribe, executed a voluntary relinquishment of parental rights and consent to adoption that falsely listed her brother-in-law as the child's father; her brother-in-law also signed a sworn affidavit falsely claiming to be the child's father, relinquishing his parental rights and consenting to adoption. A Utah trial court, in reliance on these false documents that made the proceeding appear to be voluntary, entered an order terminating the parental rights of the birth parents and transferred custody of the child to an adoption agency, and authorizing the agency to place the child with the prospective adoptive parents. The birth father, also a Cheyenne River tribal member, moved to intervene after learning of the child's birth and adoptive placement. The state court first granted the birth father's motion to intervene, but on reconsideration denied both his motion to intervene and the birth mother's motion to withdraw her consent to the termination of parental rights. The birth father appealed. In reversing the trial court, the Utah Supreme Court first looked to ICWA's definition of "parent," which specifically excludes "the unwed father where paternity has not been acknowledged or established." The court noted, however, that ICWA does not define what actions the unmarried father must take to acknowledge or establish paternity, nor does it specify the timing. Due to the lack of definition in the statute, the court looked to the plain meaning of the terms "acknowledge" and "establish." In doing so, the court rejected the argument that these terms should be given meaning by reference to Utah state family law, instead concluding that

Congress intended to codify a reasonability standard in ICWA. Applying this standard, the Utah Supreme Court concluded that the birth father satisfied the requirements for acknowledging paternity under ICWA, and was therefore a "parent" under the statute and was entitled to intervene in the adoption proceeding. The brief in opposition was filed February 16, 2018.

PUBLIC SERVICE COMPANY OF NEW MEXICO V. BARBOAN, ET AL. (17-756) – On November 22, 2017, Public Service Company of New Mexico (PNM) filed a petition seeking review of a Tenth Circuit Court of Appeals decision, which affirmed the U.S. District Court of New Mexico, and held that the public utility could not condemn a right-of-way for electric transmission lines across allotments in which the Navajo Nation possesses a fractional interest. The right-of-way was first granted by BIA in 1960 for a fifty year period. At that time, ownership in the allotments was only with individual Indians, but in 2006 and 2009, the Navajo Nation acquired ownership interests in two of the allotments through conveyances and intestate succession. Initially in 2009, PNM sought renewal of its right-of-way from BIA pursuant to 25 U.S.C. § 324. However, BIA informed PNM that it could not approve the renewal because a majority of individual Indian landowners did not consent, as required by statute. Thereafter, PNM filed suit in the Federal District Court of New Mexico seeking to condemn the right-of-way in perpetuity pursuant to 25 U.S.C. § 357 and naming all those with ownership interests, including the Navajo Nation. The Tenth Circuit affirmed the District Court ruling that "When all or part of a parcel of allotted land owned by one or more individuals is transferred to the United States in trust for a tribe, that land becomes 'tribal land' not subject to condemnation under § 357." The brief in opposition is due March 23, 2018.

HERRERA V. WYOMING (17-532) – On October 5, 2017, a member of the Crow Tribe filed a petition challenging a Wyoming state court conviction for unlawfully hunting elk in the Big Horn National Forest. The Crow Tribe's 1868 treaty with the United States reserves hunting rights in ceded lands, which include what is now the Bighorn National Forest, so long as those lands remain "unoccupied." However, the state court did not allow Petitioner to assert the Tribe's treaty hunting right as a bar to prosecution, instead holding that Wyoming's admission to the Union abrogated the Tribe's treaty hunting rights, and in the alternative that the creation of the Bighorn National Forest constituted an "occupation" of those lands. A state appellate court affirmed, and the Wyoming Supreme Court denied review. On January 8, 2018, the Court called for the views of the Solicitor General.

TAVARES V. WHITEHOUSE (17-429) – On September 21, 2017, a member of the United Auburn Indian Community filed a petition challenging a Ninth Circuit Court of Appeals decision, which held that federal courts lack subject matter jurisdiction to consider a tribal member's habeas corpus petition challenging an order banishing her from all tribal land for 10 years. Specifically, the Ninth Circuit held that a temporary exclusion from Indian tribal land is not a "detention" for purpose of the habeas corpus provision of the Indian Civil Rights Act (ICRA), and ICRA's "detention" requirement has a narrower meaning than the "custody" showing required under other federal habeas statutes. Upon the request of the Court, the brief in opposition was filed on February 16, 2018.

WASHINGTON STATE DEPARTMENT OF LICENSING V. COUGAR DEN (NO. 16-1498) – On June 14, 2017, the Washington Department of Licensing filed a petition seeking review of a decision by the Supreme Court of Washington, which held that the right to travel provision of the Yakama Nation Treaty of 1855 preempts the imposition of taxes and licensing requirements by the Department on a tribally chartered corporation that transports motor fuel across state lines for sale on the Reservation. On October 2, 2017, the Court called for the views of the Solicitor General.

PETITIONS FOR A WRIT OF CERTIORARI DENIED

NORTON, ET AL. V. UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, ET AL. (17-855) – On February 20, 2018 the Court denied a petition filed by several non-Indian local police officers and deputy sheriffs seeking review of a Tenth Circuit Court of Appeals decision, which reversed the district court and held that a Tribe's trespass claim against non-member police officers was within the jurisdiction of the tribal court. The case arose out of the death of a Ute tribal member following a police pursuit on the Uintah and Ouray Indian Reservation. The tribal member's parents, his estate, and the Ute Indian Tribe sued the officers involved in Ute Tribal Court for wrongful death, trespass, and other torts. The officers then challenged the Tribal court's jurisdiction in federal district court. The district court enjoined the Tribal court action, holding that *Nevada v. Hicks* bars tribal civil jurisdiction over the officers, making exhaustion of tribal court remedies unnecessary. In reversing, the Tenth Circuit concluded that the Tribe's trespass claim fell within jurisdiction of tribal court under *Montana v. United States* and that no state interest was implicated by nonmember police officer pursuing a tribal member on tribal land for on-reservation offense, and thus tribal jurisdiction was not barred over a trespass claim against the officers. The Tenth Circuit further held that the bad faith exception from exhaustion of tribal court remedies was not available as to a trespass claim against nonmember police officers.

RENTERIA, ET AL. V. SUPERIOR COURT OF CALIFORNIA, TULARE COUNTY, ET AL. (17-789) – On February 20, 2018 the Court denied a petition filed by California residents Efrim and Talisha Renteria seeking review of a California trial court decision, which held that a guardianship proceeding involving three children who would be subject to the Indian Child Welfare Act (ICWA) because their father was a member of the Shingle Springs Band of Miwok Indians. After their parents died in a car crash, the children initially were taken in by the Renterias, who are related to the children's mother. Subsequently, Regina Cuellar, a Shingle Springs tribal member who is related to the children's father, sought custody. In the trial court, the Renterias moved to bar application of ICWA, arguing that a guardianship proceeding was not a "child custody proceeding" as defined in ICWA. The trial court denied that motion. Although the trial court has not yet decided placement, the Renterias appealed the decision to apply ICWA. The California Court of Appeals summarily denied their appeal, and the California Supreme Court denied review, prompting the Renterias' petition for certiorari.

ALASKA V. ROSS (17-118) On January 22, 2018, the Court denied a petition filed by the State of Alaska seeking review of a Ninth Circuit Court of Appeals decision, which reversed the District Court's ruling that the National Marine Fisheries Service acted arbitrarily and capriciously when it listed a bearded seal subspecies as "threatened" due to habitat loss precipitated by climate change.

LEWIS TEIN, P.L., ET AL. V. MICCOSUKEE TRIBE OF INDIANS OF FLORIDA (17-702) – On January 16, 2018, the Court denied a petition filed by a law firm and its partners seeking review of a Florida District Court of Appeals decision, which reversed a trial court's denial of the Tribe's motion to dismiss based on tribal sovereign immunity. The law firm, which previously represented the tribe, sued seeking damages for the Tribe's alleged misconduct during the course of several lawsuits filed by the Tribe against the law firm. The Florida District Court of Appeals held that although there was a limited waiver of the tribe's sovereign immunity in a previous lawsuit involving Lewis Tein, the waiver did not extend to a new lawsuit filed against the Tribe by the firm. The court further concluded that the tribe's litigation conduct itself did not constitute "a clear, explicit, and unmistakable waiver" of the tribe's immunity in a subsequent lawsuit seeking damages based on that conduct.

MASSACHUSETTS V. WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH) (17-215); TOWN OF AQUINNAH V. WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH) (17-216) – On January 8, 2018, the Court denied a pair of petitions, one filed by Massachusetts, the other by a local government and a community association, seeking review of a First Circuit Court of Appeals decision reversing the District Court's issuance of summary judgment in their favor in a dispute over the applicability of the Indian Gaming Regulatory Act (IGRA). Massachusetts brought a breach of contract action alleging that the Tribe's efforts to commence Class II gaming operations on tribal trust lands, pursuant to IGRA, without having obtained a license from the Commonwealth, violated the settlement agreement between the State and the Wampanoag Tribe of Gay Head (Aquinnah). The Tribe argued that the settlement agreement and certain provisions of the Wampanoag Tribal Council of Gay Head, Inc., Indian Claims Settlement Act of 1987 were impliedly repealed by IGRA. The First Circuit held that the Tribe exercised jurisdiction sufficient to trigger IGRA's application, and that IGRA impliedly repealed provisions of the Settlement Act that would have subjected the Tribe to state gaming regulations.

WINDOW ROCK UNIFIED SCHOOL DISTRICT V. REEVES (17-447) – On January 8, 2018, the Court denied a petition filed by an Arizona public school district seeking review of a Ninth Circuit Court of Appeals decision, which held that the school district must exhaust tribal remedies regarding an employment dispute arising on tribal land leased by the school district from the Navajo Nation. Several current and former employees of the school district filed complaints with the Navajo Nation Labor Commission (NNLC), and the school district moved to dismiss claiming that the NNLC lacked jurisdiction. However, prior to the NNLC ruling on the motion to dismiss, the school district filed for declaratory and injunctive relief in federal district court, likewise asserting that the NNLC lacked jurisdiction over the employment disputes. The federal district court granted the school district summary judgment, concluding that tribal jurisdiction was plainly lacking. The Ninth Circuit reversed, holding that tribal court jurisdiction is plausible because the claims arose from conduct on tribal land and implicate no state criminal law enforcement interests; consequently, the school district must exhaust tribal remedies.

GREAT PLAINS LENDING, LLC, ET AL., V. CONSUMER FINANCIAL PROTECTION BUREAU (17-184) – On December 11, 2018, the Court denied a petition filed by two Tribally-owned lenders seeking review of a Ninth Circuit Court of Appeals decision, which affirmed the District Court's enforcement of civil investigative demands (CIDs) issued by the Consumer Financial Protection Bureau (CFPB) against the tribally-owned lenders. The Ninth Circuit held that the Consumer Financial Protection Act (CFPA) applies to Tribes because it is a federal statute of general applicability and Congress did not expressly exclude Tribes from its application. The Ninth Circuit rejected the Tribal entities' argument that the term "person" within the statute does not include sovereigns, such as states and tribes.

STATE OF KANSAS V. NATIONAL INDIAN GAMING COMMISSION (17-463) – On December 11, 2018, the Court denied a petition filed by the State of Kansas seeking review of a Tenth Circuit Court of Appeals decision, which affirmed the district court and held that a legal opinion letter of National Indian Gaming Commission's general counsel regarding the eligibility of Indian lands for gaming is not a final agency action reviewable under the Administrative Procedures Act.

COACHELLA VALLEY WATER DISTRICT V. AGUA CALIENTE BAND OF CAHUILLA INDIANS; DESERT WATER AGENCY V. AGUA CALIENTE BAND OF CAHUILLA INDIANS (NOS. 17-40 AND 17-42) – On November 27, 2017, the Court denied two separate petitions filed by California water agencies seeking review of a decision by the Ninth Circuit Court of Appeals, which held that the *Winters* doctrine does not distinguish between surface water and groundwater. The court held that when the United States

established the reservation as a homeland for the Agua Caliente Band of Cahuilla Indians, the federal government reserved appurtenant water sources – including groundwater – for use by the Tribe.

UPSTATE CITIZENS FOR EQUALITY V. U.S. (NO. 16-1320); TOWN OF VERNON V. U.S. (17-8) – On November 27, 2017, the Court denied review of a decision by the Second Circuit Court of Appeals, which affirmed the district court's dismissal of challenges by a civic organization and local residents to the Secretary's authority to accept into trust approximately 13,000 acres of land in New York State for the benefit of the Oneida Nation of New York. On June 23, 2017, the Town of Vernon filed a separate petition pursuant to an extension granted by the Court. Justice Thomas filed a dissenting opinion from the denial of certiorari, in which he restated his view that "the Indian Commerce Clause does not appear to give Congress the power to authorize the taking of land into trust under the IRA." No other justices joined Justice Thomas' dissent.

S.S. V. COLORADO RIVER INDIAN TRIBES (17-95) – On October 30, 2017, the Court a petition filed on behalf of two Indian children seeking review of an Arizona Court of Appeals decision, which upheld dismissal of an Indian father's action to terminate his ex-wife's parental rights. The Arizona court held (1) that private proceedings to terminate parental rights are subject to ICWA Sections 1912(d) (the active-efforts provision) and 1912(f) (the termination-burden provision), (2) that evidence indicated active efforts were successful, and (3) that ICWA does not violate the children's Constitutional rights to Equal Protection.

FRENCH V. STARR (17-197) – On October 10, 2017, the Court denied a petition seeking review of a Ninth Circuit Court of Appeals decision, which affirmed the District Court's grant of summary judgment in favor of members of the Colorado River Indian Tribes' (CRIT) Tribal Court and Tribal Council. Petitioner argued that CRIT lacked jurisdiction to adjudicate eviction proceedings relating to his leasehold on the California side of the Colorado River because his lot is not part of the Colorado River Indian Reservation. The Ninth Circuit held Petitioner is estopped from contesting CRIT's title because he paid rent under the leasehold to the Bureau of Indian Affairs for the benefit of CRIT, and then directly to CRIT, from 1983 through 1993. Having resolved the question of title, the Court went on to hold that the matter is squarely controlled by *Water Wheel Camp Recreational Area, Inc. v. La Rance*, 642 F.3d 802 (9th Cir. 2011), which upheld CRIT's jurisdiction over a non-Indian in an unlawful detainer action stemming from a leasehold on tribal land.

HACKFORD V. UTAH (17-44) – On October 2, 2017, the Court denied a petition filed by an individual seeking to enjoin the prosecution of traffic citations against him by the State of Utah. The petition sought review of a Tenth Circuit Court of Appeals decision, which held that the State of Utah had jurisdiction because the location of the alleged offenses was no longer part of the Uintah and Ouray Indian Reservation, and, therefore, not Indian Country.

WILLIAMS V. POARCH BAND OF CREEK INDIANS (NO. 16-1324) – On October 2, 2017, the Court denied a petition filed by a former tribal employee seeking review of a decision by the Eleventh Circuit Court of Appeals, which affirmed the district court's dismissal of her claims brought under the Age Discrimination in Employment Act (ADEA). The Eleventh Circuit held that the Tribe had not waived its sovereign immunity and Congress did not clearly abrogate tribal sovereign immunity from private suit under the ADEA.

CONTRIBUTIONS TO THE TRIBAL SUPREME COURT PROJECT

As always, NCAI and NARF welcome general contributions to the Tribal Supreme Court Project. Please send any general contributions to NCAI, attn: Sanat Pattanaik, 1516 P Street, NW, Washington, DC 20005. **Please contact us if you have any questions or if we can be of assistance: John Dossett, NCAI General Counsel, 202-255-7042 (jdossett@ncai.org), or Joel West Williams, NARF Senior Staff Attorney, 202-785-4166 (williams@narf.org).**