

Ninth Circuit Clarifies Scope of the Federal Government's Trust Responsibilities to Indian Tribes

November 14, 2006

On November 13, the Ninth Circuit issued an important decision, *Gros Ventre Tribe v. United States*, clarifying the scope of the federal government's "trust responsibilities" to federally recognized Indian Tribes as it pertains to off-reservation, non-trust lands owned by the federal government. The lawsuit involved a challenge by the Gros Ventre Tribe and others (Tribes) to a Bureau of Land Management (BLM) approval of mining operations near the Fort Belknap Indian Reservation in Montana. In affirming a district court decision, the Ninth Circuit clarified that absent a specific duty contained in a treaty, order or statute, the general federal trust responsibility to Tribes does not impose a duty on the federal government to take action on off-reservation lands not held in trust for Indians, beyond complying with generally applicable statutes and regulations. The Court concluded that there is no common law cause of action for the breach of the federal trust responsibilities to Indian Tribes. For entities involved in federal regulatory processes that may impact tribal interests, this decision is significant because it may clarify the relationship of federal agencies trust responsibilities to those regulatory processes.

The Case

In 2000, the Tribes filed a lawsuit alleging that BLM had breached its common law trust obligations relating to the mining activities on BLM lands that had once been part of, but were no longer within, the Fort Belknap Indian Reservation in north-central Montana. In its holding, the district court granted the government's motion for summary judgment after finding that the Tribes' trust obligation claim was subject to the requirements of the Administrative Procedure Act, which the Tribes' claim did not satisfy. The Tribes appealed and the Ninth Circuit affirmed.

In affirming the district court, the Ninth Circuit concluded that there is no common law cause of action for the breach of the federal trust responsibilities to Indian tribes on off-reservation lands. (This is often called the "general trust responsibility" of the federal government to tribes, to distinguish it from the specific legal trust responsibility the federal government has over lands it holds in trust status for tribes and individual Indians.)

In explaining its decision, the Ninth Circuit recognized that the government has a trust obligation in its dealings with Indian Tribes. The Court reaffirmed prior decisions that the scope of the trust is defined by the specific duties and obligations contained in treaties, agreements, executive orders, or statutes. In the absence of a specific duty, "the government's general trust obligation is discharged by the government's compliance with general regulations and statues not specifically aimed at protecting Indian tribes." Slip Op. at 18483.

After examining the relevant treaties, the Court concluded that the treaties did not include any provision imposing a specific fiduciary obligation on the government to manage non-tribal, off reservation resources for the benefit of the Tribes. The Ninth Circuit stated:

[n]owhere do we find the government "unambiguously agreeing" to manage off-reservation resources for the benefit of the Tribes. . . . [T]he Tribes here seek to impose a duty on the government to manage resources that exist off of

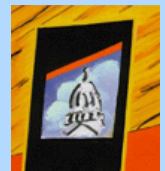
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the Reservation. Essentially, this amounts to a duty to regulate third-party use of non-Indian resources for the benefit of the Tribes. We are not aware of any circuit or Supreme Court authority that extends [such] duty to non-tribal resources. Slip at 18487.

It should be noted that, in an important footnote, the Ninth Circuit leaves open the significant question of whether, as part of its general trust responsibilities, the United States is required to take special consideration of tribal interests when complying with applicable states and regulations and when such an obligation may or may not arise.

Implications

Understanding the complexity of the federal government's trust responsibilities to tribes can be a key to success in navigating complex regulatory processes, such as federal regulation of land and water, Endangered Species Act and Clean Water Act compliance, pipeline right of way grants, and Federal Energy Regulatory Commission hydropower relicensing. The decision in *Gros Ventre Tribe Decision* has significance because it helps to clarify the relationship of the federal government trust responsibilities to these regulatory processes.

For Additional Information

For additional information on this case, or to gain a better understanding of how federal regulations impact companies who may work on tribal lands or have activities that impact tribal interests, please contact Dan Press in our Washington, DC office at (202) 298-1800, or Matthew Love in our Seattle, WA office at (206) 623-9372, or any other member of the firm's Native American practice.

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