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Federal Recent Developments

FEDERAL RECENT DEVELOPMENTS

ALLOTMENTS: Alaska Native Rights to Allotment

In *Akootchook v. Clark, 747 F.2d 1316 (9th Cir. 1984)*, the court of appeals affirmed the district court's grant of summary judgment against four Alaska natives seeking allotments of land within three national wildlife refuges.

Although the plaintiffs' ancestors had occupied the land in question for generations, the plaintiffs personally did not occupy the lands until after the lands had been withdrawn by a series of executive orders and consolidated into wildlife refuges under the Alaska National Interest Lands Conservation Act.[1]

The court rejected the natives' arguments that: (1) section 1 of the Alaska Native Allotment Act[2] allowed the natives to apply for allotments based on their ancestors' use and occupancy of the land prior to the creation of the refuges; (2) the right to seek allotments is inheritable; (3) the executive lacked authority to disturb their right to seek allotments by creating the refuges; (4) the land remained available for allotment despite the creation of the refuges; and (5) the withdrawals provide express exceptions for their claims.

Nevertheless, the court suggested that Congress review the fairness of the administrative action depriving the native plaintiffs of their chance to obtain title to their ancestral lands.

1. Pub. L. No. 96-487, §§ 303(2), (5), (7), 94 Stat. 2390-93 (1980).
2. 43 U.S.C. § 270-1 (1970).

FEDERAL AUTHORITY OVER INDIAN AFFAIRS

In *Moapa Band of Paiute Indians v. U.S. Dep't of the Interior, 747 F.2d 563 (9th Cir. 1984)*, the Moapa sought to overturn the Secretary of Interior's rescission of a tribal ordinance permitting houses of prostitution on the Moapa Reservation in Nevada.

The Ninth Circuit reviewed the Secretary's ruling *de novo*. It rejected the government's argument that the Secretary has unreviewable discretion under the Moapa constitution, art. V, § 4, to rescind tribal ordinances for public policy reasons. Instead, the court cited the Administrative Procedures Act[1] to justify its review and use of the "arbitrary and capricious" standard. After weighing two conflicting federal policies, one opposing prostitu-

1. 5 U.S.C. § 701(a)(2) (1976).

tion and one favoring Indian self-determination, the court held the Secretary's decision to be neither arbitrary nor capricious and affirmed the rescission of the ordinance allowing the establishment of houses of prostitution.

HUNTING, FISHING, TRAPPING, AND GATHERING RIGHTS: Subsistence Rights and Mineral Exploration

In *People of the Village of Gambell v. Clark, 746 F.2d 572 (9th Cir. 1984)*, Alaska native residents of towns on Norton Sound sought to enjoin the Secretary of the Interior from selling leases to certain oil companies for oil and gas exploration of outer continental shelf lands in the Norton Sound basin. The district court granted summary judgment to the Secretary of the Interior.

On appeal, the natives argued that oil and gas development without their consent was barred because it would harm their aboriginal right to subsistence hunting and fishing. Disagreeing, the court of appeals held that if any such right existed, it was extinguished by the Alaska Native Claims Settlement Act.[1]

Alternatively, the natives argued that the lease sales violated section 810 of the Alaska National Interest Lands Conservation Act,[2] which provides special protections for Alaska native subsistence uses. The court held that this Act applies to the outer continental shelf waters in Norton Sound and remanded the case for further factual and legal determinations.

1. 43 U.S.C. §§ 1601-28 (1982).
2. 16 U.S.C. § 3120 (1982).

MINERAL RIGHTS

In *Montana v. Clark, 749 F.2d 740 (D.C. Cir. 1984)*, the state of Montana challenged the validity of an Interior Department regulation that allowed fees collected from mines owned by or for Indians, both inside and outside the reservation, to go to the tribe rather than to the state.[1] This regulation implemented section 1232(g)(2) of the Surface Mining Control and Reclamation Act.[2] The language of the regulation tracked that of the statute, except that the former referred to "Indian lands" while the latter referred to "Indian reservations."

The Crow Tribe joined with the federal government to uphold

the regulation's validity, urging the court to defer to the Office of Surface Mining's interpretation of the statute. The court reviewed the legislative history of Congress' interchangeable use of "Indian land" and "Indian reservation" and found that the regulation was in keeping with congressional objectives. Therefore, the court affirmed the validity of the regulation as a reasonable construction of the Act.

The decision cleared the way for the Crow Tribe to administer a large sum of money recovered from strip mining in the "ceded strip," land ceded to the federal government with a reserved beneficial interest in the coal still held by the tribe.

1. 30 C.F.R. § 872.11(b)(3) (1983).
2. 30 U.S.C. §§ 1201 *et seq.* (1982).

TAXATION: Federal Income Taxation for Alaska Natives

In *Karmun v. Commissioner of Internal Revenue, 749 F.2d 567 (9th Cir. 1984)*, the court affirmed that income earned by Alaska natives from the sale of reindeer and reindeer products is subject to federal taxation because there is no express exemption of such income in the Reindeer Industry Act of 1937.[1]

The court distinguished this case from *Squire v. Capoeman*[2] because that case turned on the congressional intent in the General Allotment Act to exempt allotted lands held in trust from all taxes.[3] No such allotment interest was involved in the profits from reindeer sales.

The court noted that the Reindeer Act's purpose was to provide a continuing food service to Alaskan Eskimos through the establishment of a reindeer industry. Because the statute contained no express exemption language, and because the purpose of the Reindeer Act was not undermined by federal taxation of the profits from the industry, the court affirmed the ruling of the Tax Court.

1. 25 U.S.C. § 500 (1982).
2. 351 U.S. 1 (1956).
3. 25 U.S.C. § 348 (1982).

GIFT TAXATION ON ALLOTMENT PROCEEDS

In *Kirschling v. United States, 746 F.2d 512 (9th Cir. 1984)*, Kirschling, a "noncompetent Indian,"[1] made a gift of $750,000 to a non-Indian from proceeds of timber sales derived from her beneficial holdings on the Quinault Reservation in Washington. The Internal Revenue Service imposed a gift tax on her, which she paid. She then brought suit for a refund, claiming that her transfer of allotment proceeds was exempt from the gift tax under the General Allotment Act of 1887.[2] The district court granted summary judgment to the government.

In a case of first impression, the court of appeals reviewed *de novo* the district court's conclusions of law as to the Act's meaning. Finding that the $750,000 was directly derived from Kirschling's allotted land, the court applied the holding of *Squire v. Capoeman*,[3] that "until such time as the [fee simple] patent is issued, the allotment shall be free from all taxes,"[4] and found the transfer of funds to be exempt from federal gift taxes.

1. A "noncompetent Indian" is one who holds allotted land under a trust patent, and who must have the federal government's consent to alienate or encumber that land.
2. Ch. 119, 24 Stat. 388 (1887).
3. 351 U.S. 1 (1956).
4. *Id.* at 8.

WATER RIGHTS

In *Salt River Pima-Maricopa Indian Community v. United States, 745 F.2d 67 (9th Cir. 1984)*, the plaintiff sought both declaratory and injunctive relief against the Secretary of the Interior's administration of the Salt River water reclamation project. The community alleged the Secretary diverted water from the project to other users before meeting the needs of the community, as required by the Warren Reclamation Act.[1]

The Secretary's motion to transfer the case from Washington, D.C., to the Arizona district court was granted to allow interested Arizona parties to protect their interests at trial.

Following the transfer, the community amended its complaint, adding new defendants and seeking declaratory judgments invalidating contracts between these defendants and the United States for delivery of the project's water. The district court held that the community lacked standing to assert the claims against

the added defendants because the challenged contracts were not the cause of the injury alleged by the community.

The court of appeals found a sufficient causal link between the challenged contracts and the injury to the community. Citing *Commonwealth Trust Co. v. Smith*,[2] and rules 18(b) and 19 of the Federal Rules of Civil Procedure, the court reasoned that the causes of action should be allowed against the added defendants because the alleged illegality of the contracts could only be determined by the community's entitlement to the water under the Warren Act. The district court's ruling was reversed and remanded.

1. 43 U.S.C. §§ 523-25 (1982). The Warren Act prohibits export of reclamation project water until the water needs of all lands within the project are met first.

2. 266 U.S. 152 (1924). "If . . . the supply of water is not adequate for the reclamation acreage for which water-right contracts are outstanding, and yet is adequate for the reclamation of a smaller acreage, . . . it is evident that some contracts must be eliminated. . . . Of course, ascertainment or designation of which contracts must fall and those which are to stand cannot be had in a suit to which their holders are not parties." *Id.* at 160.