

RIVERSIDE LAWYER

October 2012 • Volume 62 Number 9

MAGAZINE

In This Issue:

Jurisdiction in Riverside County's Indian Country

Life After *Patchak*: What Does It Mean for Tribal Gaming in California?

Tribal Benefits and Child Support

Indian Water Rights: The *Waters* Doctrine and Emerging Issues

Finding Native American Law

The Willie Boy Manhunt

CEQA: A Vehicle for Consideration and Protection of Native American Traditional Cultural Properties and Cultural Landscapes

Employment Law and Tribal Sovereignty: State and Federal Employment Laws Applied to Tribal Employment

California Indian Legal Services

Native American Tribe Members and Bankruptcy: Who Gets the Tribal Distributions?



The official publication of the Riverside County Bar Association

Publications Committee

Yoginee Braslaw
 Christopher Buechler
 Sophia Choi
 Melissa Cushman
 Abram Feuerstein
 Stefanie Field
 Joseph Fitzgerald
 Alexandra Fong
 Amy Guldner

Robyn Lewis
 Charlene Nelson
 Jean-Simon Serrano
 Donna Thierbach
 Bruce Todd
 Jamie Wrage
 Lisa Yang
 Connie Younger

Editor Jacqueline Carey-Wilson
 Design and Production PIP Printing Riverside
 Cover Design PIP Printing Riverside

Officers of the Bar Association

President

Christopher B. Harmon
 (951) 787-6800
 chrisbharmon@me.com

President-Elect

Jacqueline Carey-Wilson
 (909) 387-4334
 jcareywilson@cc.sbcounty.gov

Vice President

Chad W. Firetag
 (951) 682-9311
 firetag@yahoo.com

Chief Financial Officer

Kira L. Klatchko
 (760) 568-2611
 kira.klatchko@bbklaw.com

Secretary

Jean-Simon Serrano
 (951) 682-6400
 jserrano@heitingandirwin.com

Past President

Robyn A. Lewis
 (951) 682-0488
 rlewislaw@yahoo.com

Directors-at-Large

Jack B. Clarke, Jr.
 (951) 686-1450
 jack.clarke@bbklaw.com

Diana Renteria
 (951) 367-7100
 diana@drloffice.com

L. Alexandra Fong
 (951) 955-6300
 LaFong@co.riverside.ca.us

Richard D. Roth
 (951) 682-6500
 rroth@rothcarney.com

Executive Director

Charlene Nelson
 (951) 682-1015
 charlene@riversidecountybar.com

Officers of the Barristers Association

President

Amanda E. Schneider
 (909) 890-4499
 amanda.schneider@greshamsavage.com

Treasurer

Arlene M. Cordoba

Vice President

Luis Arellano

Members-at-Large

Reina Canale
 Sara Morgan

Secretary

Kelly Moran

Past President

Scott H. Talkov

Riverside County Bar Association
 4129 Main Street, Suite 100
 Riverside, California 92501

Telephone
 951-682-1015

Facsimile
 951-682-0106

Internet
 www.riversidecountybar.com

E-mail
 rcba@riversidecountybar.com

RIVERSIDE LAWYER

MAGAZINE

C O N T E N T S

Columns:

- 3 **President's Message** *by Christopher B. Harmon*
 4 **Barristers President's Message** *by Amanda E. Schneider*

COVER STORIES:

- 6 **Jurisdiction in Riverside County's Indian Country**
by Lyndon Ray Wood
- 8 **Life After Patchak: What Does It Mean for Tribal Gaming in California?**
by Heidi McNeil Staudenmaier
- 11 **Tribal Benefits and Child Support**
by Christopher J. Buechler
- 12 **Indian Water Rights: The Waters Doctrine and Emerging Issues**
by Roderick E. Walston
- 14 **Finding Native American Law**
by Ann Taylor Schwing
- 16 **The Willie Boy Manhunt**
by Bruce E. Todd
- 18 **CEQA: A Vehicle for Consideration and Protection of Native American Traditional Cultural Properties and Cultural Landscapes**
by Sarah E. Owsowitz and Alison P. Gomer
- 20 **Employment Law and Tribal Sovereignty: State and Federal Employment Laws Applied to Tribal Employment**
by Joseph Ortiz
- 22 **California Indian Legal Services**
by Devon Lee Lomayesa
- 24 **Native American Tribe Members and Bankruptcy: Who Gets the Tribal Distributions?**
by Michael J. Bujold

Features:

- 23 **22nd Annual Red Mass**
- 26 **Judicial Profile: Judge Raquel Marquez**
by Stefanie G. Field
- 27 **Opposing Counsel: Stefanie G. Field**
by Sophia Choi

Departments:

- Calendar 2 Membership 28
 Classified Ads 28

MISSION STATEMENT

Established in 1894

The Riverside County Bar Association, established in 1894 to foster social interaction between the bench and bar, is a professional organization that provides continuing education and offers an arena to resolve various problems that face the justice system and attorneys practicing in Riverside County.

RCBA Mission Statement

The mission of the Riverside County Bar Association is:
To serve our members, our communities, and our legal system.

Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Public Service Law Corporation (PSLC), Tel-Law, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Inland Empire Chapter of the Federal Bar Association, Mock Trial, State Bar Conference of Delegates, and Bridging the Gap.

Membership meetings monthly (except July and August) with keynote speakers, and participation in the many committees and sections.

Eleven issues of Riverside Lawyer published each year to update you on State Bar matters, ABA issues, local court rules, open forum for communication and timely business matters.

Social gatherings throughout the year: Installation of RCBA and Barristers Officers dinner, Annual Joint Barristers and Riverside Legal Secretaries dinner, Law Day activities, Good Citizenship Award ceremony for Riverside County high schools, and other special activities.

Continuing Legal Education brown bag lunches and section workshops. RCBA is a certified provider for MCLE programs.

MBNA Platinum Plus MasterCard, and optional insurance programs.

Discounted personal disability income and business overhead protection for the attorney and long-term care coverage for the attorney and his or her family.

Riverside Lawyer is published 11 times per year by the Riverside County Bar Association (RCBA) and is distributed to RCBA members, Riverside County judges and administrative officers of the court, community leaders and others interested in the advancement of law and justice. Advertising and announcements are due by the 6th day of the month preceding publications (e.g., October 6 for the November issue). Articles are due no later than 45 days preceding publication. All articles are subject to editing. RCBA members receive a subscription automatically. Annual subscriptions are \$25.00 and single copies are \$3.50.

Submission of articles and photographs to Riverside Lawyer will be deemed to be authorization and license by the author to publish the material in Riverside Lawyer.

The material printed in Riverside Lawyer does not necessarily reflect the opinions of the RCBA, the editorial staff, the Publication Committee, or other columnists. Legal issues are not discussed for the purpose of answering specific questions. Independent research of all issues is strongly encouraged.

CALENDAR

OCTOBER

- 8 Columbus Day Holiday**
Courts and RCBA Offices Closed
- 9 PSLC Board Meeting**
RCBA Boardroom - Noon
- Landlord/Tenant Law Section**
6:00 p.m.
For info, contact Barry O'Connor at (951) 689-9644
- 10 Mock Trial Steering Committee**
RCBA Boardroom - Noon
- 16 Family Law Section**
Family Law Court – Dept. F501 - Noon
Speaker: Justice Carol Codrington
“The Appellate Court: Family Law”
MCLE
- Red Mass**
Saint Francis de Sales Catholic Church
4268 Lime Street, Riverside
6:00 p.m.
- 17 Estate Planning, Probate & Elder Law Section**
RCBA 3rd Floor – Noon
Speaker: Sandra Diaz, Esq.
California Elder Law Center
Topic: “VA Benefits: Aid and Attendance”
MCLE
- 19 General Membership Meeting**
Noon
Speaker: Stephen Larson
“There and Back Again”
MCLE
- 22 CLE Event**
RCBA John Gabbert Gallery - Noon
Speaker: Dr. Thomas J. Campbell, Dean
Chapman University School of Law
“Election 2012: Why the Political Process is Broken and What We Can Do To Fix It”
MCLE
- 25 Solo/Small Firm Section**
RCBA 3rd Floor – Noon
2012-2013 Planning Meeting





President's Message

by Christopher B. Harmon

"We find ourselves as lawyers in troubled times. There are more of us than ever. Business has never been worse. Our own clients are far too unhappy with us. We have never been meaner and nastier to each other. More and more of us are unhappy with the career we have chosen for ourselves."

I recently came across these not so uplifting words expressed by a colleague. While it's not all doom and gloom, it is true these past few years have been hard on all of us, no matter our area of practice and no matter our firm size. This economy has been hard on lawyers, from solos to large firms. Even public sector practitioners and bench officers have not been immune, as we have seen government budgets shrinking and have even heard that some counties plans to lay off commissioners. Thanks to the heroic and brilliant planning of our court and our court's executive officer, Sherri Carter, our court here in Riverside has limited the impact these cuts have had on our practices and our clients. But that does not mean we have not felt the economic pain personally. I would venture to say that most of you reading this message have had to do some belt-tightening over these past few years. You may have had to cancel a family vacation, delay a trip to see loved ones, or lay off long-time employees; perhaps you even fell behind in your personal bills.

In these difficult times, it is more important than ever that we come together through events like those offered by the RCBA. We

can draw strength from each other, and the RCBA can and should be one of the ways we do that. The RCBA can offer its members low-cost MCLE, training programs on areas of law that you may be looking to expand into, and, of course, networking opportunities. But maybe more important is the camaraderie gained by socializing with colleagues fighting the same battles and wrestling with the same struggles and by sharing some of the joys of our professional as well as our personal lives with each other. It may sound somewhat trivial, but these things can ease some of our pain, even if only a little bit.

We too often forget just how blessed we are to be doing what we do as lawyers and legal professionals. The law is a wonderful thing. It offers us repeated mental challenges, it gives us great stories to tell at parties, and it brings us the incomparable satisfaction of helping people with our special knowledge and unique talents. And after all, isn't that why we pursued this profession to begin with? Think back to the first thought you had of becoming a lawyer; I will bet you it was not about money, it was about an exciting and rewarding career devoted to helping others.

By the way, let's not forget that these bad times, like all bad times, will pass. If there is one thing we do know about the economy, it is never a flat line. Much like the ocean, it always has ups and downs, ebbs and flows.

We are in a down period now, but we know it will not last. It will end. In fact, one of the reasons I know this is because that quotation I began this article with was written by the RCBA president in 1995, bemoaning an economic downturn much like ours today. Those bad times eventually ended and were followed by a pretty good economic run, and that RCBA president who wrote those words in 1995, fortunately for me, had enough business to share and allowed me to join him in his practice just a few years later.

Chris Harmon is a partner in the Riverside firm of Harmon & Harmon, where he practices exclusively in the area of criminal trial defense, representing both private and indigent clients.



BARRISTERS PRESIDENT'S MESSAGE

by Amanda E. Schneider



The Barristers Association has always served as a great way for new and young attorneys to network with their peers in the legal profession. With new attorneys beginning practices throughout the Inland Empire, the Barristers provided a forum to not only network with other Barristers, but also with seasoned attorneys and judges in the area at our September meeting.

Last month, the Barristers hosted a “speed networking” event and presentation at Mazz Bar and Grill in Riverside. Laurie Rowen and Erin Giglia, founders of Montage Legal Group, provided excellent tips for Barristers to improve their skills networking in-person and maintaining contacts throughout their practice. Barristers then had the opportunity to meet in small groups with a number of experienced attorneys for a short period of time, a la speed dating – hence, speed net-

working. Thank you to everyone who participated in this fun, informative event!

The Barristers will meet October 17th to discuss the most recent developments in immigration law. Our meeting will focus on the Deferred Action for Childhood Arrivals program, featuring Carlos Castellanos. The Deferred Action for Childhood Arrivals initiative became effective as of August 15, 2012, defers removal actions for individuals under age 31 as of June 15, 2012 who came to the United States before reaching their 16th birthday, for a two year period subject to renewal. The initiative also enables qualifying individuals to receive employment authorization. Over 80,000 requests were accepted within the first month of the program. All are welcome to this event to learn more about the program. Further information, including the time and location, can be found at the Barristers webpage: riversidebarristers.org, or via Facebook.

As always, the Barristers would love to welcome new members. Please encourage your young associates, or law students to join. Feel free to contact me with any questions regarding the Barristers or our meetings at amanda.schneider@greshamsavage.com.

Amanda Schneider is the 2012-13 President of Barristers, as well as an associate attorney at Gresham Savage Nolan & Tilden, where she practices in the areas of land use and mining and natural resources.



JURISDICTION IN RIVERSIDE COUNTY'S INDIAN COUNTRY

by Lyndon Ray Wood

In the early 1950s, the United States found itself in a post-World War II and post-Korean War economy, and it was facing a financial crisis. As a result, it took steps to reduce the level of responsibility it had for Indian nations and reservations. Some measures included the "termination" of many Indian tribes, which meant the United States no longer recognized those tribes and refused to provide services to them. The lands of the terminated tribes were seized and sold off by the United States, and the people of those tribes were forced to assimilate into mainstream society.

Jurisdiction on Indian reservations still remaining in the United States continued to rest with the United States government and with the Indian nations having possession of those reservations. There was no state jurisdiction on Indian reservations in the United States, including those within Riverside County and throughout California.

Despite reservation lands being held in trust for the Indians by the United States and the responsibility for the welfare of the Indian nations falling on the United States, the level of services provided by the United States to the Indian people was virtually nonexistent.

Indian tribes are inherently sovereign and have always had the right to govern themselves and to build their own justice systems. Unfortunately, tribal economic development was unheard of in the 1950s; living conditions on Indian reservations were those of extreme poverty and continued the Indian dependence on the United States. As a result of the limited services provided to Indian nations by the United States and the poor conditions on the reservations, crime rates began to soar. There was a rise in violent crime, as well as crime in general, against Indian people. The demand for services from the federal government on Indian reservations was growing at a pace United States government agencies could not match. By 1952, the living conditions and crime rates on most Indian reservations were so bad that the United States government was forced to take action.

To resolve the service and crime issues on Indian reservations, the United States Congress enacted Public Law 83-280 (PL- 280) in 1953. PL- 280, an unfunded federal mandate, forced six states to assume jurisdiction on the Indian reservations located in those states (Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin). However, in an effort to maintain tribal sovereignty, Congress created only state criminal jurisdiction with

PL- 280. State regulatory jurisdiction was not created and does not exist.

Locally, in accordance with PL- 280, California state criminal jurisdiction was created on the 12 Indian reservations in Riverside County, thus causing jurisdictional issues. PL- 280 created concurrent criminal jurisdiction among the United States government, California law enforcement (Riverside County), and the tribes themselves on each reservation. PL- 280 also limited state law enforcement by the type of state laws that could be enforced, i.e., criminal not regulatory.

Since the passage of PL- 280 in 1953, the Riverside County Sheriff's Department has had primary criminal jurisdiction on the Indian reservations situated within the county (regardless of the ethnicity of the victim or offender, Indian or non-Indian). The Sheriff's Department continues to have primary responsibility for the investigation of criminal matters on Indian reservations; the results are later forwarded to the Riverside County District Attorney's office for prosecution in California state courts.

Although PL- 280 created state criminal jurisdiction, the United States and each tribal government continues to maintain jurisdiction over Indian people on the individual reservations. Over time, with the increase of tribal economic development and diversity, we have seen many tribal governments develop their criminal justice systems and form tribal law enforcement agencies or tribal departments of public safety to enforce the laws of each tribe on its reservation and to further improve the quality of life for its people. These tribal law enforcement entities do not relieve the Sheriff's Department of its PL- 280 responsibilities; the two agencies (state and tribal) work alongside each other, with concurrent jurisdiction.

Because of the PL- 280 mandate for the provision of law enforcement services by the Sheriff's Department, the Sheriff's Department has been working hard to improve relationships with the tribal communities and to build partnerships with the tribes that far exceed the requirements of PL- 280 jurisdiction.

One example is the agreement for law enforcement services between the Morongo Band of Mission Indians and the County of Riverside. In this 2007 agreement, the Morongo Band desired that the Riverside County Sheriff provide additional law enforcement services on the reservation, above those services mandated by PL- 280, and was prepared to reimburse the County of Riverside for the cost of providing such services. The County of Riverside and the Morongo Band agreed that Sheriff's personnel would

be assigned to the reservation pursuant to the terms of the agreement.

The county agreed, through the Sheriff's Department, to provide law enforcement services within the Morongo Reservation to the extent and in the manner set forth in the agreement and that the Sheriff had authority to enforce only those state laws applicable under PL- 280 on the Morongo Reservation in the same manner and to the same extent as the Sheriff has such jurisdiction elsewhere in the county and on other Indian reservations.

Essentially, the agreement did not cause any change in the laws the Sheriff's Department could enforce on the reservation; it simply increased the presence of Sheriff's personnel assigned to the Morongo Reservation and increased the quality of life and the public safety of the Morongo Indian Reservation.

In 2008, the Riverside County Sheriff's Department went beyond the mandates of PL- 280 and created the Tribal Liaison Unit. The unit has since become a permanent fixture within the department. It is tasked with continuing to build and improve the relationships between the Sheriff's Department and each of the 12 Indian tribes it serves. The Tribal Liaison Unit is also tasked with maintaining training programs for department members and tribal members. The training for department members is designed to ensure department personnel stay current with the legal, cultural, and historical aspects of providing

service in Indian Country. The training for tribal community members is designed to ensure tribal members, leaders, and staff have knowledge of the operations of the Sheriff's Department and have a better understanding of what the Sheriff's Department does and why it does it. The desired result of both training programs is to provide better understanding and to obtain a higher level of service by Sheriff's Department personnel in Indian Country.

Today, strong relationships exist between the Riverside County Sheriff's Department and each of the Indian nations of Riverside County. The department has formed partnerships with the tribal governments and has become a part of each of the tribal communities it serves. The Sheriff's Department continues to work closely with the tribal law enforcement and public safety departments within the county to further improve the quality of life and reduce crime on tribal lands. These partnerships and close working relationships have helped to overcome the jurisdictional issues created by PL- 280 in Riverside County's Indian Country.

Lyndon Ray Wood is a Captain with the Riverside County Sheriff's Department. He has been the commander of the Sheriff's Department Tribal Liaison Unit for the past four years. He works directly with the 12 sovereign Indian nations situated within Riverside County.



LIFE AFTER *PATCHAK*: WHAT DOES IT MEAN FOR TRIBAL GAMING IN CALIFORNIA?

by Heidi McNeil Staudenmaier

The tribal gaming industry received a blow from the United States Supreme Court right before the high court ended its session for the summer. Whether the blow is a knock-out punch that will thwart plans for new tribal casinos in California and elsewhere, or simply a wake-up call resulting in a longer and more challenging process for tribal land acquisitions, remains to be seen.

The referenced court ruling was issued on June 18, 2012 – *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. ____ (2012). In that case, the court decisively held (8-1) that an individual owner (David Patchak) of property near the tribe’s Gun Lake Casino in Michigan had standing to challenge the Secretary of the Interior’s acquisition of land into trust for the tribe. The court determined that the U.S. government had waived its sovereign immunity and that Patchak had prudential standing to challenge the secretary’s acquisition of the land. The court reasoned that Patchak was not claiming any competing interest in the Gun Lake land, so the claim was not barred by the Quiet Title Act (QTA), and that he had asserted an interest “arguably within the zone of interests” protected or regulated under the Administrative Procedure Act (APA). As a result, the case has been sent back to the Michigan trial court for litigation on the merits.

Pertinent case background: The Secretary of the Interior took the subject land into trust for the tribe in 2009. Patchak challenged the land acquisition by contending that the tribe was not a federally recognized tribe as of 1934 (when the Indian Reorganization Act was enacted). The suit was filed prior to the United States Supreme Court’s ruling in *Carcieri v. Salazar*, ___ U.S. ___ [129 S.Ct. 1058] (2009), in which the court held that the secretary had no authority to take land into trust for any tribe not “under Federal jurisdiction” as of 1934. Patchak supported his standing claim by asserting that the Gun Lake Casino would increase traffic and crime and irreversibly change the area’s rural quality. The Michigan trial court refused to divest the government of title to the land and permitted the tribe to develop its casino, which has been successfully operating since 2011.

The Supreme Court, however, concluded that the QTA did not apply and therefore did not void the sovereign immunity waiver provided by the APA. The court determined that Patchak was not claiming a right, title or interest in the land, but instead he was seeking a declaration that the government was not entitled to any such right, title or interest in that land. With the QTA argument deemed inapplicable, the court then only needed to consider whether the government was subject to a lawsuit under the APA. The court found that Patchak did have sufficient “prudential standing” to pursue his claim based on its view that the differences between “land acquisition” and “land use” were immaterial.

Dissenting Justice Sonia Sotomayor believed the ruling ironically would permit persons with tenuous connections to Indian lands to challenge the government’s acquisition of those lands, whereas persons who may actually have “right, title or interest” in those Indian lands are barred from bringing such claims. Further, the government’s land-into-trust decisions may now be subjected to the APA’s six-year statute of limitations, which could have a chilling effect on tribal development. The majority acknowledged that Justice Sotomayor’s argument was “not without force,” but expressly left the matter to be worked out by Congress.

The court’s decision has been viewed as a “game changer” by many tribal gaming observers. Prior to September 2011, the Department of the Interior had approved only five “off reservation” land acquisitions for gaming purposes. Since that time, the department has issued four favorable determinations, three of which are in California: (1) Enterprise Rancheria (CA); (2) North Fork Rancheria (CA); (3) Keweenaw Bay Indian Community (MI); and (4) Ione Band (CA) (the latter was determined under the restored tribe exception). The Enterprise and North Fork situations required specific approval by the Governor of California, who did, in fact, concur in both decisions on August 31, 2012. Rather than going through the Department of Interior process, the Graton Rancheria (CA) is moving forward with casino plans based on Congressional legislation placing the land into trust for

the tribe. Keweenaw Bay also requires the concurrence of the Michigan governor.

The Supreme Court in *Patchak* did not rule on the *Carcieri* implications, leaving that open for further debate. The tribal casinos proposed in California by the Enterprise Rancheria, North Fork Rancheria, Ione Band and Graton Rancheria could all be impacted by the *Patchak* ruling. The ruling also could have negative implications for the Cowlitz Tribe in Washington (currently in litigation over *Carcieri*, even though the department has already rendered a positive determination that the tribe meets the “under federal jurisdiction” test), Mashpee Wampanoag Tribe in Massachusetts, and Shinnecock Tribe in New York.

Realistically, however, litigation on the merits of the *Patchak* case could take years, making it less likely that the Gun Lake Casino will ultimately be shut down. However, there certainly are concerns that the decision will inhibit would-be investors, who might otherwise lend to tribes or invest in gaming projects, and increase the likelihood that anti-gaming groups will oppose land into trust acquisitions – particularly since the new six-year window will give such interests more time to raise necessary support and capital – all of which could impact proposed casino development or other economic devel-

opment on tribal lands. In short, the *Patchak* decision means that the time for getting a casino up and running will be greatly increased and the costs will be considerably higher. As a result, the return on investment in future tribal projects will likely be reduced for both the tribe and its developers and financiers.

In addition to the *Patchak* decision setting up what could be a difficult roadblock for further expansion of tribal gaming, both California Senator Dianne Feinstein and Arizona Senator John McCain are pushing bills to stop off-reservation casinos. At the same time, however, there have been continuing efforts in Congress to enact a “*Carcieri* fix”.

How the *Patchak* proceedings will be ultimately resolved as the merits unfold cannot be known. Indeed, many observers believe there is little or no merit to *Patchak*’s claims. Nevertheless, in the interim, the expansion of tribal gaming will certainly be impeded or at least slowed in light of the new tools provided to casino opponents by this Supreme Court ruling.

Heidi McNeil Staudenmaier is a senior partner in the law firm of Snell & Wilmer LLP, based in the Phoenix, Arizona office, where her practice emphasizes gaming, federal Indian law, and business litigation.



TRIBAL BENEFITS AND CHILD SUPPORT

by Christopher J. Buechler

Native American tribes have benefited greatly from revenues brought in by gaming on reservation land, strategic investment, and even litigation judgments. Some of these tribes have elected to directly benefit their individual members from this fiscal growth in the form of per capita payments. As of December 2001, only about one-third of the gaming tribes had approved a revenue allocation plan to distribute these per capita benefits to eligible members, according to the National Indian Gaming Commission. Some of these benefit recipients have child support judgments issued by California courts.

From a family law attorney's perspective, any time a child support obligor has a regular source of income from some third party, it is easier for the support recipient to get payments directly from the third-party source (i.e., through wage garnishment or a Qualified Domestic Relations Order) than to wait for the (often resistant) obligor to make payments. When it comes to per capita tribal benefits, however, getting a tribe to comply with an order for garnishment of child support from a member's benefits can be hit or miss. As of last year, only about 20 of 103 federally recognized California tribes had official child support enforcement systems in place.¹

I have observed this dilemma at first hand in my experience working in the Riverside County Department of Child Support Services (DCSS). From an enforcement practitioner's perspective, dealing with tribe member per capita payments, and sometimes even the tribe members themselves, can become more of an exercise in the practice of international and federal law than family law. There are a couple of issues that come to mind when establishing and enforcing child support orders against tribe members.

Order Establishment Issues

The main problem with establishing child support orders against tribe members is obtaining personal jurisdiction over the member. In order to obtain jurisdiction over any child support obligor, a summons and petition must almost always be personally served on the respondent. The main difficulty for DCSS, then, arises when the respondent lives on tribal land. Serving a tribe member personally at his or her residence essentially means crossing an international border, and that is something that process servers will not – and usually cannot – do.

There are a few ways to resolve this dilemma. Preferably, DCSS can work with the tribe to get its cooperation in ensuring that a member meets his or her child support obligation to a California resident. Otherwise, personal service can be effected when the tribe member leaves tribal land, which can be a

challenge, especially if the tribe member is expecting service of process. There is also a third unique case, where DCSS can establish child support without worrying about personal service. When a support recipient has previously filed for divorce or paternity against an obligor and the same children are listed on the petition, Judicial Counsel dissolution and paternity forms now automatically put child support at issue (they used to have a checkbox that, if unchecked, would require separate notice). In this specific subset of cases, DCSS can file a notice of appearance and use the court's previously acquired personal jurisdiction to effect service on the obligor by mail.

Of course, all of this presumes that all the other requirements for personal jurisdiction over a nonresident have been met. In my time at DCSS, this has never been an issue, because the child was usually either conceived in California (Fam. Code, §§ 4905, subd. (6), 7620, subd. (a)) or lived in California as a result of the acts or directives of the tribe member (Fam. Code, § 4905, subd. (5)).

Order Enforcement Issues

Once a child support order has been established against a tribe member, DCSS has to pursue the obligor's income and assets in order to pay the supported party. Again, the preferred method is to work with the tribe to ensure the tribe member meets his or her obligation, especially if DCSS can divert a member's per capita payments to fulfill or partially fulfill a child support order. Failing that (and it has happened with a few tribes in the Riverside area), DCSS can resort to its traditional enforcement actions: charging interest on arrears, suspending California driver's licenses, garnishing income from California employers, diverting federal tax refunds, levying against bank accounts and property held on U.S. soil, and more. But most of that is contingent on the tribe member having sufficient regular contacts outside of the tribal land and within California.

The Preferred Solution

DCSS, with the leadership of Deputy Chief Child Support Attorney Ed McCue, has been working with tribes to achieve the agency's goals of ensuring adequate support for the county's children and/or recapture of public assistance dollars paid to supported parties and to increase the previously reported 20% tribal participation rate in child support enforcement. To do otherwise could strain a sometimes challenging relationship between the area's tribes and local and federal law enforcement and government agencies.

Christopher J. Buechler, a member of the Publications Committee, is a sole practitioner based in Riverside with a focus on family law.



¹ Kelley, "LAW: Some tribes shield delinquent parents from child support," *Riverside Press-Enterprise* (August 7, 2011), available at pe.com/local-news/local-news-headlines/20110808-law-some-tribes-shield-delinquent-parents-from-child-support.ece.

INDIAN WATER RIGHTS: THE *WINTERS* DOCTRINE AND EMERGING ISSUES

by Roderick E. Walston

Indian water rights derive from the so-called “*Winters* doctrine,” which dates from the Supreme Court’s decision in *Winters v. United States* (1908) 207 U.S. 564. There, the Supreme Court held that when Congress reserves lands from the public domain for an Indian reservation, Congress “impliedly” reserves sufficient water to serve the purposes of the reservation. Later, in *Arizona v. California* (1963) 373 U.S. 546, the Supreme Court held that the same principle applies when Congress reserves lands from the public domain for other federal purposes, such as for a national forest, a national park, a national wildlife refuge, or for like federal purposes; in such cases, Congress impliedly reserves sufficient water to serve the purposes of the federal reserved lands. Congress’ authority to reserve lands from the public domain for specific federal purposes – and to reserve water rights necessary to serve the purposes of such lands – is based on the Property Clause of the U.S. Constitution, which authorizes the United States to possess, regulate and control its own property. (U.S. Const., art. IV, § 3, cl. 2.)

Regardless of whether the federal reserved right is for an Indian reservation or for other federal purposes, the priority date of the reserved right is the date that the lands were reserved from the public domain. Thus, the federal reserved right is senior to all water rights granted under state law after the date of the reservation, and junior to all such rights granted before that date. As a practical matter, most federal reserved water rights were created long before most state-granted water rights were acquired – often in the 19th or early 20th century – and thus federal reserved rights generally have priority over most state-granted rights. And, since many if not most federal reserved rights claims have not been adjudicated or quantified in court actions, settlement decrees, or otherwise, the mere existence of the claims creates substantial confusion and uncertainty regarding the efficacy of state water rights systems and rights granted under those systems, causing some commentators to suggest that a “sword of Damocles” hangs over water rights in the western states.

Because of these concerns, the U.S. Supreme Court – which had earlier greatly expanded the federal reserved rights doctrine in *Arizona v. California* – has substantially limited the doctrine in more recent cases. In *Cappaert v. United States* (1976) 426 U.S. 128, the Supreme Court –

although upholding the applicability of the reserved rights doctrine in that case – held that Congress, in reserving water rights for federal reserved lands, reserves only the amount of water “necessary to fulfill the purpose of the reservation, no more.” (*Id.* at pp. 138-139.) In *United States v. New Mexico* (1978) 438 U.S. 696, the Supreme Court held that when Congress reserves water for purposes of federal reserved lands, Congress reserves only the amount necessary to serve the “primary” purposes of the lands, not the “secondary” purposes. (*Id.* at p. 702.) The court held that the United States must acquire water for “secondary” purposes under state law, in the same manner as private appropriators. (*Ibid.*) In reaching this conclusion, it stated that that recognition of a federal reserved right would result in a “gallon-by-gallon reduction” of the amount available for state and private appropriators. (*Id.* at p. 705.)

Since the Supreme Court has scaled back the federal reserved rights doctrine in order to accommodate state water rights systems and rights granted under those systems, the question arises whether the Supreme Court will also scale back *Winters* doctrine rights – that is, Indian water rights – in an appropriate future case. In *New Mexico*, the Supreme Court held that the reserved rights doctrine applies only to “primary” purposes but not “secondary” purposes. Will the Supreme Court hold that the same limitation applies to Indian water rights under the *Winters* doctrine?

In adopting the “primary-secondary” distinction in *New Mexico*, the Supreme Court appeared to suggest, pragmatically, that federal reserved rights must be weighed and considered in relation to their impact on state-granted rights. Indeed, Justice Lewis Powell, although dissenting in *New Mexico*, stated that he agreed with the majority opinion that the reserved rights doctrine “should be applied with sensitivity to its impact upon those who have obtained water rights under state law and to Congress’ general policy of deference to state water law.” (*United States v. New Mexico, supra*, 438 U.S. at p. 718 [conc. & dis. opn. of Powell, J.]. Assuming, as the Supreme Court appeared to suggest in *New Mexico*, that the reserved rights doctrine must be applied with “sensitivity” to state-granted water rights, does the same requirement of “sensitivity” apply to Indian water rights under the *Winters* doctrine?

Another question is what standard applies in quantifying Indian water rights under the *Winters* doctrine. In *Arizona v. California*, the Supreme Court held that Indian water rights are quantified according to the amount of water necessary to satisfy the “practically irrigable acreage” (PIA) of the reservation; thus, the rights are quantified according to agricultural uses, not other uses. More recently, however, the Arizona Supreme Court held that the quantification of Indian water rights does not depend strictly on the PIA standard, but also on the amount of water necessary for the reservation to serve as a “permanent homeland” for the tribe, which may be more or less water than the PIA standard. (*In re General Adjudication of All Rights to Use Water in the Gila River System* (2001) 201 Ariz. 307, 318-320.)

Another question is whether federal reserved rights, including Indian rights, apply only to surface waters, or extend to groundwater as well. The Supreme Court has applied the reserved rights doctrine only to surface water and has never applied it to groundwater. The Supreme Courts of Arizona and Wyoming have disagreed on whether the reserved rights doctrine applies to groundwater, with the Arizona Supreme Court holding that doctrine does apply and the Wyoming Supreme Court holding that it does not. (Compare *In re General Adjudication of All Rights to Use Water in the Gila River System* (1999) 195 Ariz. 411, 417, with *In re General Adjudication of All Rights to Use Water in the Big Horn River* (Wyo. 1988) 753 P.2d 76, 99-100.) Assuming that the reserved rights doctrine applies – or does not apply – to groundwater, will the same conclusion apply to Indian water rights under the *Winters* doctrine?

In sum, Indian water rights claims under the *Winters* doctrine may have a substantial impact on western states’ water rights systems and on rights granted under those systems. The Supreme Court has not had an opportunity to address whether the restrictions that it has imposed on federal reserved rights also apply to Indian water rights under the *Winters* doctrine. Because of the uncertainty surrounding this issue and its importance to both Indian communities and the states’ water rights systems, the Supreme Court will likely consider these and other related issues in an appropriate future case.

Roderick E. Walston is of counsel with the law firm of Best Best & Krieger LLP in Walnut Creek. He is a member of the firm’s Environmental and Natural Resources Law Section and specializes in appellate litigation.



**County
Records
Research**

FORECLOSURE PROCESSING

California Non - Judicial Foreclosure

1-800-664-2567

Representing Lenders for over 21 years

4952 Warner Ave, Ste 105

Huntington Beach, CA 92649

www.CountyRecordsResearch.com/fcproclp.asp

FINDING NATIVE AMERICAN LAW

by Ann Taylor Schwing

Some Native American legal materials are available on the major commercial legal research sites, but substantial additional materials are available on the Internet. These materials may be more up to date or may not be well updated, so look for dates of adoption and revision and for other signals that a particular site is current. Sites may be current for some tribes but not others, just as some sites will overlap coverage for some tribes and materials but not others. Some tribes do not make their legal materials widely available, so it is virtually certain that the following sites are incomplete in their coverage.

The following materials gather sites by categories. The sites themselves typically contain explanatory information and multiple links. There are many other sites, especially other sites specific to a particular tribe or a particular subject matter. The following are selected for breadth of coverage, ease of use and currency of material. Tribal websites may provide information or copies of constitutions, laws, and other legal materials. If searching for the law of a specific tribe, start with the official website, if there is one.

Links to Official Websites of Indian Tribes and Other Sites on Specific Tribes

- <http://www.judicare.org/ilo/websites.html> (links to the official websites of several hundred Indian tribes)
- <http://www.ncai.org/tribal-directory> (listing of Indian tribes searchable by name or geography, providing websites, telephone numbers and other information)
- <http://www.narf.org/nill/triballaw/directories.htm> (gateway for links to information on federally recognized, state-recognized and non-recognized tribes)
- <http://www.gpo.gov/fdsys/pkg/FR-2010-10-01/pdf/2010-24640.pdf> (list of all federally recognized tribes as of 2010)
- <http://www.ncsl.org/issues-research/tribal/list-of-federal-and-state-recognized-tribes.aspx> (list of federally recognized and state-recognized tribes as of February 2012)
- <http://www.dickshovel.com/trbindex.html> (federal and state-recognized tribes and Canadian tribes)

- <http://www.kstrom.net/isk/maps/tribesnonrec.html> (tribes not federally recognized, some with petitions pending and date of petition)

Links to Tribal Constitutions, Codes, and Laws

- <http://www.narf.org/nill/triballaw/index.htm> (extensive gateway site for Indian law research tips and helpful videos, searching tools and research guides. Materials may be accessed by tribe or by searching for subject. Updated January 2012, with specific materials updated more recently)
- <http://thorpe.ou.edu/const.html> (links to over 30 tribal constitutions listed by tribe)
- <http://thorpe.ou.edu/codes.html> (links to a number of codes and to gateway and portal sites with more)
- <http://thorpe.ou.edu/IRA.html> (links to many historical tribal constitutions listed by tribe)
- http://www.tribal-institute.org/lists/tribal_law.htm (links to other sites with tribal constitutions listed by tribe)
- <http://www.tribal-institute.org/lists/codes.htm> (links to many tribal codes and model codes)
- <http://www.law.asu.edu/library/RossBlakleyLawLibrary/ResearchNow/IndianLawPortal.aspx> (portal for research linking to sources for tribal constitutions)
- <http://www2.umt.edu/law/library/research%20tools/tribal%20law.htm> (same)
- <http://www.judicare.org/ilo/constitutions.html> (two dozen constitutions, tribal codes, and bylaws, plus model codes on specific subjects, including family law, commercial law, housing, solid waste management, and juvenile justice)

Links to Treaties

- <http://www.narf.org/nill/triballaw/treaties.htm> (research guides, online tools for locating and searching treaties)
- <http://www.judicare.org/ilo/treaties.html> (links to dozens of treaties from the 1800s)

- <http://digital.library.okstate.edu/kappler> (links to all volumes of Indian Affairs: Laws and Treaties (Charles J. Kappler, ed., Government Printing Office, 1904) and early treaties)
- <http://thorpe.ou.edu/treaties.html> (a link to Indian Affairs: Laws and Treaties, Volume I, II (Treaties), III-VII (Charles J. Kappler, ed., Government Printing Office, 1904), plus several treaties not available in Kappler)
- <http://www.washlaw.edu/doclaw/subject/nativ5m.html> (links to treaties and materials on treaties)
- http://avalon.law.yale.edu/subject_menus/ntreaty.asp (treaties organized by year)

Links to Court Decisions

- <https://lib.law.washington.edu/content/guides/TribalCt> (substantial information on locating tribal court decisions, many links)
- <http://mlc.utulsa.libguides.com/content.php?pid=171864&sid=1447024> (portal site for many decisions)
- <http://www.tribal-institute.org> (tribal court clearing-house)
- <http://www.washlaw.edu/doclaw/subject/nativ5m.html> (federal court decisions and some others)

Other Links of Possible Interest

- <http://www.judicare.org/ilo/organizations.html> (Native American organizations)
- <http://www.judicare.org/ilo/law.html> (links to many Indian law resources on the Internet)
- <http://www.lawmoose.com/internetlawlib/31.htm> (links to a number of topics)
- <http://www.whitehouse.gov/nativeamericans/resources> (links to Native American resources within U.S. federal agencies)
- <http://www.thecre.com/fedlaw/legal22x.htm> (links to federal laws affecting Native Americans)
- <http://thorpe.ou.edu/solicitor.html> (links to opinions of the Solicitor of the Department of the Interior relating to Indian affairs, also searchable by subject)
- <http://nmai.si.edu> (National Museum of the American Indian)
- <http://www.lb7.uscourts.gov/reflinks.htm#native> (Ask Bill, the Seventh Circuit's fabulous research portal)

- <http://lawprofessors.typepad.com/nativeamerican> (Native American Law Blog by university professors)
- <http://nilllibrary.blogspot.com> (a blog covering current events in federal and tribal Indian law from the public law library of the Native American Rights Fund)
- <http://www.nativelegalupdate.com> (blog with Native American legal updates)
- <http://mlc.utulsa.libguides.com/cat.php?cid=31819> (research guides for multiple subjects relating to Native Americans)
- <http://www.law.berkeley.edu/library/dynamic/guide.php?id=49> (annotated bibliography of printed and online materials)
- <https://lib.law.washington.edu/content/guides/indian> (same)

Ann Taylor Schwing is of counsel at Best Best & Krieger LLP in Sacramento. She limits her practice to research and writing. She divides her time between work for the firm, writing legal treatises, service on the executive committee of the Anthony M. Kennedy Inn of Court, and service as commissioner and secretary of the Land Trust Accreditation Commission.



VOLUNTEERS NEEDED

Experienced Family Law and Criminal Law Attorneys are needed to volunteer their services as arbitrators on the RCBA Fee Arbitration Program.

If you are a member of the RCBA and can help, or for more info, please contact Lisa at (951) 682-1015

or feearb@riversidecountybar.com.

THE WILLIE BOY MANHUNT

by Bruce E. Todd

It was a search throughout Riverside and San Bernardino Counties that fascinated much of the nation. President William Taft was making a historic visit to Riverside, and yet the manhunt even superseded in the nation's press the Republican president's campaign trip throughout the west.

The manhunt in question was for one Billy Boy, but because this was also a familiar nickname for Taft, local newspaper accounts changed his name to Willie Boy so as to not offend the president.

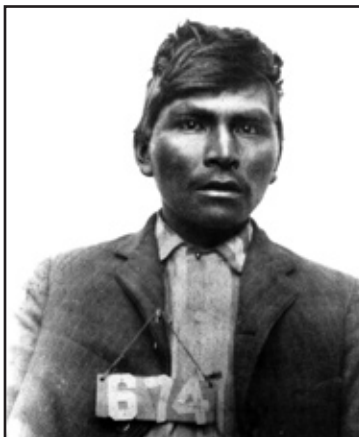
Willie Boy was a member of the Paiute tribe and was born near Pahrump, Nevada. While he was a small boy, his family moved south along the Mojave Desert to an area known as Twentynine Palms, northeast of the stagecoach town of Banning. This area was populated by a mixture of the Paiute and Chemehuevi tribes. Many of these tribe members would drift into Victorville and Banning to obtain various jobs at local ranches.

By the time he was in his late 20s, Willie Boy had acquired considerable skills as a cowhand. His services were in much demand by local ranchers at roundup time. During the remainder of the year, however, he drifted from job to job.

Willie Boy eventually married, at the urging of his family, since it was a source of dishonor for a Paiute man not to have a wife. For whatever reason, the marriage dissolved in 1909 after only several months.

He then became infatuated with a 16-year-old Chemehuevi girl known as Carlota (some have said that her name was Lolita). She was a distant relative of Willie Boy. In August of 1909, he asked Mike Boniface, Carlota's father, for her hand in marriage. Boniface had known Willie Boy for many years, and it has been reported that he was fond of him. He told Willie Boy, however, that he would not approve of the marriage because of the blood relations between his daughter and the young man. There were reports that Willie Boy occupied much of his time brooding over this rejection.

Meanwhile, a grand event was going to be occurring in nearby Riverside. President Taft was coming to town as part of his campaign tour throughout the west. Before the president's arrival, however, a shooting took place on September 26, 1909, which resulted in a manhunt



that would eventually be covered in the national news.

Willie Boy, armed with a rifle, came to Jim Gilman's ranch, where the Boniface family was staying. He apparently argued with Carlota's father, and, in the heat of the moment, he shot Mike Boniface to death. He then left with Carlota, and the hunt for Willie Boy was on.

The manhunt, during which the pursuers dogged their quarry over miles and miles of rugged desert terrain in 100+ degree heat, included some men whose

names now dot the map in Riverside and San Bernardino Counties. They included Charlie Reche (Reche Canyon), A.R. Swarthout (Swarthout Canyon), and the aforementioned Jim Gilman (Gilman Hot Springs).

President Taft arrived in Riverside on October 12, 1909. He spent the day greeting citizens, unveiling a plaque to honor Father Junipero Serra at the summit of Mount Rubidoux, talking with students at the Sherman Indian Institute, watching a parade, and attending a banquet at Frank Miller's Mission Inn. He was presented with a massive oversized chair while he was at the Mission Inn; this chair is still on display at the local hostelry.

Although the local press referred to Riverside as the "City Beautiful", E.A. Fowler, a reporter from the New York Sun who was covering the president's campaign tour, wrote a story in which he referred to Riverside as "Willie Boy country." Fowler's article apparently failed to mention that the manhunt for Willie Boy was occurring over 100 miles from Riverside, and thus, some east coasters were fearful that the president's safety might be in jeopardy from Willie Boy himself. Once Taft's visit was linked to the manhunt, the search for Willie Boy took on national stature.

The actual search for Willie Boy criss-crossed over miles of the Mojave Desert north of Twentynine Palms. Some of the pursuers even felt that he would try to double back to the Palm Springs area and hide out in an Indian reservation behind the settlement. Palm Springs at the time was described as a village consisting of cabins and tents amid smoke trees and was inhabited primarily in the winter by tuberculosis victims.

During their pursuit of Willie Boy, the posse discovered the body of Carlota. There is speculation that Willie

Boy eventually killed her because she could not keep up with his pace to avoid his pursuers. There are others who believe that she was shot at long range by one of the posse.

On October 7, the posse located Willie Boy hiding in a rocky outcropping near Ruby Mountain. A vicious gun battle ensued during which one of the pursuers (Reche) was struck by a rifle shot. The posse members eventually decided to retreat so that they could attend to him. It was assumed that Willie Boy had again escaped capture.

Various posse members returned to the site of the shootout on October 15 as part of the effort to track down Willie Boy. There they discovered his decaying body. Although there was some debate about whether Willie Boy had been killed in the earlier gunfight, it was generally presumed that he shot himself with his last remaining bullet. His bloated body was burned by the pursuers at the site.

The notoriety of the Willie Boy manhunt immediately resulted in a theatrical production about his life which debuted at the Riverside Auditorium on October 18. The play was performed to a packed house for three straight nights. Due to the manner in which some of the pursuers were portrayed, however, local law enforcement evidently

put pressure on the producers of the play, and it was terminated after three performances.

Meanwhile, Wolff and Grossman Clothiers in San Bernardino ran an advertisement in the San Bernardino Sun to announce that it had on display various relics of the manhunt that it had gathered from posse members. These included the shoes that Willie Boy wore throughout the chase and the Winchester rifle that he used on himself.

Willie Boy's skull, which had been taken by posse members following his funeral pyre, was allegedly hung on the barn at the San Gorgonio ranch of one of the posse members. It remained there for many years.

Several books have been written about the Willie Boy story. Most notable among them have been Harry W. Lawton's *Willie Boy: A Desert Manhunt* (1960) and *The Hunt for Willie Boy* (1994) by James A. Sandos and Larry R. Burgess. A movie, *Tell Them Willie Boy Is Here* (1969), starred Robert Redford and Robert Blake.

Bruce E. Todd, a member of the Bar Publications Committee, is with the firm of Osman & Associates in Redlands.



CEQA: A VEHICLE FOR CONSIDERATION AND PROTECTION OF NATIVE AMERICAN TRADITIONAL CULTURAL PROPERTIES AND CULTURAL LANDSCAPES

by Sarah E. Owsowitz and Alison P. Gomer

The California Environmental Quality Act (CEQA) is a statute that requires state and local agencies to identify the significant environmental impacts of a project and avoid or mitigate those impacts, if feasible. Most proposals for physical development are subject to CEQA, as are many other governmental decisions, such as the adoption of a general plan. CEQA is concerned with a wide variety of different types of potential environmental impacts that a given project could have, including impacts on air quality, biological resources, hazardous materials, water, public services, and traffic, among others. It requires that a project's impacts be disclosed to the public, analyzed, and, potentially, mitigated.

California enjoys a rich Native American history, and, in addition to the other types of environmental impacts it is concerned with, CEQA also seeks to protect that history. It does so through procedures for identifying, analyzing, and disclosing the potentially significant adverse impacts of a project on historical and archaeological resources. While public agencies and project sponsors often focus on the potential for proposed projects to impact archeological sites related to Native American tribes, they often overlook the potential for projects to impact Native American traditional cultural properties (TCPs) and cultural landscapes, both of which are historic resources under CEQA. Through CEQA, these resources, though not always perceived as significant by outsiders, can be given the consideration they deserve.

Historic resources under CEQA are determined, in part, by their inclusion on, or eligibility for, the National Register of Historic Places or the California Register of Historic Resources. The National Register is the nation's official list of buildings, structures, objects, sites, and districts worthy of preservation because of their significance in American history, architecture, archeology, engineering, and culture. Similarly, the California Register is the authoritative guide to the state's significant historical and archeological resources; like the National Register, the California Register includes significant architectural, historical, archeological, and cultural resources associated with events, people, and places important to California's

history. Under Public Resources Code section 21084.1, a resource is considered a historic resource subject to the protections of CEQA if it is eligible for, or listed on, the California Register. Further, all properties listed or eligible for inclusion in the National Register, such as TCPs and cultural landscapes, are, per se, listed on the California Register of Historical Resources. (Pub. Res. Code, § 5024.1 (d).) Given this, TCPs and cultural landscapes are historic resources for purposes of CEQA, and public agencies must consider the potential for a project to result in an impact on such resources.

National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties defines a TCP as "eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community." As with any resource that is evaluated for listing on the National Register, a TCP must be a tangible property, rather than simply the intangible beliefs or values that give a TCP its significance. TCPs embrace a wide range of types of properties, including locations associated with a Native American group's traditional beliefs about its origins, its cultural history, or the nature of the world or locations where Native American religious practitioners have historically gone and continue to go to perform ceremonial activities. For example, here in California, the rocks and islands of the California Coastal National Monument, which feature prominently in Pomo Native American mythology and ceremonies, have been designated as a TCP. These sites embody the beliefs, customs, and practices passed down through generations of Native Americans, and the rocks and islands continue to serve as meeting areas and places for gathering traditional resources. Closer to home, Tahquitz Canyon in Riverside County, associated with the cultural traditions of the Cahuilla Native Americans, has also been designated as a TCP.

When undertaking CEQA review of a project that may include or be located near a TCP, a lead agency may wish

to undertake an abbreviated version of the two-step National Register eligibility review process, ideally in close consultation with recognized Native American tribes located in the area of the project. First, a potential resource is evaluated for “integrity.” A TCP must have “integrity of relationship,” meaning that it is integral and necessary to a traditional cultural group’s beliefs or specific practices. A TCP must also have “integrity of condition,” meaning that it has not been altered in such a way that it can no longer serve its function for the traditional cultural group. This does not mean that a TCP must be completely intact, without any changes to the setting or features of the resource; rather, the test is whether or not the resource can still function for traditional cultural purposes despite the presence of new elements. If the TCP has integrity of relationship and condition, it is next evaluated against the four basic National Register criteria to determine if it may be eligible for listing on the National Register. Of particular relevance when evaluating potential Native American TCPs is criterion (d) – whether the resource has a history of yielding or the potential to yield information important in prehistory or history.

Another category of historical resources that must be considered are cultural landscapes. Related to TCPs, and also eligible for listing on the National Register (and therefore the California Register), cultural landscapes are geographic areas, including both cultural and natural resources and the wildlife or domestic animals who dwell there, that are associated with a historic event, activity, or person or that exhibit other cultural or aesthetic values. (*National Park Service, Preservation Brief 36: Protecting Cultural Landscapes* [1994].) Cultural landscapes include ethnographic landscapes – landscapes that contain a variety of natural and cultural resources defined as heritage resources by associated people. Here in California, the Sutter Buttes, the circular complex of eroded volcanic peaks rising above the Central Valley, are designated as cultural landscapes. The Buttes feature the Maidu

Native Americans’ “Histum Yani,” or Spirit Mountain, where the spirits of the Maidu people rest after death before journeying into the afterlife. TCPs and cultural landscapes are not mutually exclusive designations, and TCPs often include elements of, or are also designated as, cultural landscapes.

CEQA requires that lead agencies evaluate the potential for development projects to impact historic resources and work to avoid or mitigate any significant impacts. When environmental review reveals that those resources include a Native American TCP and/or a cultural landscape, it is important for lead agencies to work collaboratively with all relevant Native American tribes to find ways to sensitively address potential impacts.

Sarah E. Owsowitz is of counsel in Best Best & Krieger LLP’s Environmental Law and Natural Resources practice group. She is based in the San Francisco Bay area; her practice focuses on CEQA advice and litigation, with a particular concentration on cultural resources, urban decay, climate change, water supply, and agricultural resource issues. She can be reached at Sarah.Owsowitz@bbklaw.com.

Alison P. Gomer is an associate in Best Best & Krieger LLP’s Municipal & Redevelopment Law practice group. Based in the Inland Empire, she provides a range of services to municipal clients, with a particular concentration on transactional land use and real estate matters. She can be reached at Alison.Gomer@bbklaw.com.



EMPLOYMENT LAW AND TRIBAL SOVEREIGNTY: STATE AND FEDERAL EMPLOYMENT LAWS APPLIED TO TRIBAL EMPLOYMENT

by Joseph Ortiz

“If you don’t understand sovereignty, you don’t understand Indians.”

– John Echohawk, Director, Native American Rights Fund

In recent years, the explosive growth¹ of Native American entertainment venues and other tribal economic enterprises has generated a significant number of jobs in our region. For instance, the San Manuel Band of Serrano Mission Indians, which owns and operates San Manuel Indian Bingo & Casino nestled within the San Bernardino highlands, has over 1,800 employees in the area. Despite our proximity to Native American reservations and tribes, few attorneys consider whether tribal employees are subject to state and federal employment laws. Here is what you need to know:

Tribes are sovereign: Tribal governments pre-exist the formation of the United States, and their inherent powers of sovereignty have never been extinguished.² Generally speaking, tribes retain all “aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependant status.”³ Therefore, primary jurisdiction over claims arising from interactions with a tribe usually lies with a tribal court. Attorneys may be required to apply for admission to practice before a tribal court.

The Application of State Laws: Tribal sovereignty also means that state employment laws, includ-

ing the California Labor Code and Industrial Welfare Commission Wage Orders, generally do not apply. State and local agencies have no inherent authority to regulate tribal conduct unless specifically authorized by Congress. The United States Supreme Court affirmed this concept in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). In that case, two Riverside County-based tribes operated federally approved bingo games that were not run entirely in accordance with state and local laws. The tribes sued to prohibit local agency interference on jurisdictional grounds. The District Court granted summary judgment in favor of the tribes and the Ninth Circuit and, later, the Supreme Court affirmed, holding that there was no Congressional grant of jurisdiction.⁴

Tribes have generally agreed, however, to a limited waiver of their sovereign immunity pursuant to gaming compacts with California.⁵ Generally, the participating tribes either submit to state workers’ compensation or provide insurance with procedures and benefits “comparable to those mandated for comparable employees under state law.”⁶ Likewise, these tribes participate in California’s program for unemployment compensation benefits and disability benefits, including compliance with the California Unemployment Insurance Code.⁷

The Application of Federal Laws: The application of federal laws is governed either expressly by the language of the law or by analysis of whether Congress has impliedly waived sovereign immunity. Congress expressly included tribal employment in the 1983 amendments to the Social Security Act, subjecting tribes to Social

1 Despite localized growth, much of the Native American community remains impoverished. Cornell & Jorgenson, *The Nature & Components of Economic Development in Indian Country* 7 (2007) (overall trend toward tribal economic development but noting, as a whole, the community remains impoverished).

2 See *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008) (discussing governmental powers of tribes, which include powers over their land and tribal members as well as certain non-members); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55-56 (1978) (describing tribes as “separate sovereigns pre-existing the Constitution” and “retaining their original natural rights in matters of local self-government”) (internal quotes omitted).

3 *United States v. Wheeler*, 435 U.S. 313, 323 (1978).

4 Relevant to the case was whether Public Law 280 (28 U.S.C. § 1162 & 28 U.S.C. § 1360), which grants broad state jurisdiction over criminal offenses committed by or against Native Americans on reservations, granted jurisdiction to the local agencies to regulate gaming.

5 Many such compacts maintain identical or similar formats. See generally Gaming Compacts at Section 10.3 re participation in statutory programs related to employment. Ratified Tribal-State Gaming Compacts, available at cgcc.ca.gov/?pageID=compacts.

6 *Id.*

7 *Id.* at § 10.3(b).

Security and federal unemployment taxes. Congress expressly *excluded* tribes from: (1) Title VII of the Civil Rights Act of 1962 (42 U.S.C. § 2000e-2000e-17);⁸ (2) Title I of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. § 12111(b)); and (3) the Worker Adjustment and Retraining Notification Act (WARN) (20 C.F.R. § 639.3(a)(1)).

There are, however, many federal laws that do not expressly address applicability to tribal employment. These remaining laws must be analyzed on a case-by-case, fact-specific basis to determine whether Congress impliedly waived sovereign immunity. In general terms, courts look to whether: (1) the law touches exclusive rights of self-government in purely intramural matters; (2) the application of the law would abrogate treaty rights; or (3) there is proof in the statutory language or legislative history that Congress did not intend the law to apply to tribes.⁹ Relevant to California, the Ninth Circuit has held that the Fair Labor Standards Act (FLSA),¹⁰ the Occupational Safety and Health Act (OSHA),¹¹ and the Employee Retirement Income Security Act (ERISA)¹² apply to tribal employment.

In 2007, the National Labor Relations Board (NLRB) held for the first time that the National Labor Relations Act (NLRA) applied to a casino operated by a California tribe.¹³ In that 2007 case, the NLRB considered whether the NLRA applied to a casino wholly owned and operated by the San Manuel Band of Serrano Mission Indians on the tribe's land. The tribe sought dismissal for lack of jurisdiction, but the NLRB expressly overruled its own prior analysis and contravened prior federal court decisions to find that the NLRA applied.¹⁴ The tribe's peti-

tion for review of the NLRB's ruling was denied.¹⁵ Thus, as matters now stand, labor organizations representing tribal employees may seek NLRB protection.

The final take-away is that issues involving tribal employment cannot be treated as "business as usual." Attorneys who foresee addressing issues involving tribal employment should familiarize themselves with the relevant tribal laws. When possible, jurisdiction and remedies should be explicitly addressed by contract with the tribe prior to commencing employment. When this is not possible, attorneys should carefully determine which state or federal employment laws apply and must not overlook any available internal tribal remedies. Ideally, this brief summary will serve as a good launching point for practicing employment attorneys analyzing and addressing the unique jurisdictional issues created by tribal sovereignty.

Joseph Ortiz is of counsel with the law firm of Best Best & Krieger LLP in Riverside, Calif. He is a member of the firm's Labor and Employment practice group, teaches employment law through the University of California, Riverside's extension, is active in local human resources professional groups, and regularly lectures on employment law issues.



8 It is also worth noting that Title VII and Executive Order 11246 also exclude private employers operating "on or near" reservations from charges of discrimination if those employers extend publicly announced employment preferences for Native Americans. See also *Dawavendewa v. Salt River Project Ag. Improvement & Power Dist.*, 154 F.3d 1117 (9th Cir. 1998).

9 *Federal Power Commission v. Tuscarora Indian Nation*, 362 U.S. 99, 120 (1960).

10 *Solis v. Matheson*, 563 F.3d 425 (9th Cir. 2009) (applying FLSA to tribes).

11 *Donovan v. Coeur d'Alene Tribal Farm*, 751 F.2d 1113 (9th Cir. 1985) (applying OSHA to tribes); see also Gaming Compacts at Section 10.3(f) (participating tribes voluntarily agree to comply with federal law regarding public health and safety).

12 *Labor Industry Pension Fund v. Warm Springs Forest Products Industries*, 939 F.2d 683 (9th Cir. 1991) (applying ERISA to tribes).

13 *San Manuel Indian Bingo & Casino*, 341 NLRB No. 138, 2004 NLRB LEXIS 286 (May 28, 2004) (Case Nos. 31-CA-23673 & 31-CA-23803),

14 See, e.g., *NLRB v. Pueblo of San Juan*, 276 F.3d 1186, 1192 (10th Cir. 2002).

15 *San Manuel Indian Bingo & Casino v. NLRB*, 475 F.3d 1306 (D.C. Cir. 2007) (denying tribe's petition for review).

CALIFORNIA INDIAN LEGAL SERVICES

by Devon Lee Lomayeva

“What is Indian Legal Services?” This is the question I am most often asked after I tell people I work at California Indian Legal Services (CILS). It is difficult to respond briefly, as there is much history behind the creation of Indian legal services, not to mention the 45 years of history behind CILS. Indian legal services programs have been funded for over five decades by the Legal Services Corporation, based on recognition of the need to fund specialized legal services for Native Americans. This need is further advanced by the federal government’s recognition of a special obligation to tribal governments and peoples to ensure they have access to attorneys that are trained to address their unique legal needs within Indian country and beyond. These unique legal needs are born out of the status of tribes as governments with inherent powers to make decisions about their own affairs. A mix of tribal, federal, and, in many cases, state law makes for lengthy representation, often in remote areas of the country where poverty and inadequate social services continue to exist.¹

Founded in 1967 by California Indian leaders and public interest attorneys, CILS is the first not-for-profit law firm devoted exclusively to the cause of Indian rights in California. Governed by a 13-member Board of Trustees and supported by California tribes and Indian organizations, CILS has provided free and low-cost legal services to California tribes and Indian individuals throughout the state for 45 years. CILS operates four offices throughout California, providing services over the entire state. Escondido currently houses both the principal administration of CILS as well as a field office, and additional field offices are located in Bishop, Eureka and Sacramento. Our mission is to protect and advance Indian rights, foster Indian self-determination, and facilitate tribal nation-building.

CILS is a well-established and respected Indian rights organization that has achieved major successes for California Indians, such as restoring federal recognition for dozens of tribes, building the capacity of tribal governments to develop and sustain effective tribal justice systems, and providing essential assistance to low-income Indians. CILS has worked with virtually every

tribe in California and thousands of individuals and is nationally known as a leader in Indian legal services.

The last ten years have been especially productive for CILS. It has implemented various project groups that address issues specific to Indians, including the Indian Child Welfare Act (ICWA), tribal governance, trust land issues, such as the American Indian Probate Reform Act, fiscal and taxation issues, and Indian education issues.

Specifically, the ICWA Project completed and published the June 2012 edition of our *California Judges’ Benchguide on the Indian Child Welfare Act*, incorporating information about a new law regarding tribal customary adoptions that took effect on July 1, 2010. As this new law makes its way through the courts, it will bring new questions into the mix of juvenile proceedings involving ICWA. Another recent addition to the guide was the inclusion of information about SB 678, recent legislation aimed at improving ICWA compliance in California. CILS’ attention will now return to the completion of an ICWA worker handbook, a guide for tribal ICWA workers in state court dependency/delinquency proceedings, with expected publication in early 2013. Additionally, ongoing needs and demands include training and other efforts throughout the state to increase knowledge of and compliance with ICWA, a statewide effort CILS is committed to via our participation in state and county roundtables, conferences, and community-based presentations.

Our Tribal Governance Project provides services for tribal courts and overall tribal justice development and implementation efforts across the state, with a focus on statewide tribal communication and interaction, via education and training and assistance with the ongoing development and facilitation of regional consortia surrounding tribal justice issues. By providing direct assistance on tribal governance infrastructure to tribes and tribal consortia, such as tribal code and policy and procedure drafting, tribes are better positioned to move forward with developing and expanding their tribal courts, tribal law enforcement, and related departments. Tribal justice development continues to be a significant need in the California Indian community to ensure safety and access to justice for tribal members.

¹ National Association of Indian Legal Services, *Legal Needs and Services in Indian Country* (2008) 1.

Our Trust Assets and Probate Project concentrates on the delivery of community education on the law and regulations governing Indian probate and the inheritance of trust assets, most notably under the American Indian Probate Reform Act, as well as providing will-drafting services to California Indians and Indian people with California trust land, in order to protect California Indian trust lands and other trust assets. CILS has provided numerous training sessions throughout the state and drafted dozens of wills.

Our Fiscal and Taxation Project routinely develops and updates community education resources regarding Indian taxation issues pertaining to tribes, tribal businesses and Indian individuals. We also offer annually our highly successful ICAN component, which provides tax services to indigent Indian individuals. Recent changes in state regulations and practices have created a need for new development and revision of CILS' key education materials that have a significant impact on individual tribal members and tribal businesses.

The Indian Education Project develops community education resources regarding Indian education issues as well as provides education and assistance to tribes, individual Indians and community and parent groups regarding state and federal law and policy in the area of education law, including special education issues, tribal funding issues, and overall tribal rights.

CILS is committed to continuing our goal of ensuring that the rights of California tribes and individual Indians are protected. As we celebrate our 45th anniversary this year, we reflect on our impact on the community and those who have made it possible for us to continue the delivery of vital legal services to the California Indian community. We invite you to learn more about CILS by visiting our website at calindian.org.

Attorney Devon Lee Lomayesva is the Executive Director of California Indian Legal Services.



22nd ANNUAL RED MASS

Tuesday, October 16, 2012, at 6:00 p.m.

**SAINT FRANCIS DE SALES CATHOLIC CHURCH
4268 Lime Street, Riverside**

The entire legal community and persons of all faiths are invited to attend the 22nd annual Red Mass on Tuesday, October 16, 2012, at 6:00 p.m. The mass will be held at Saint Francis de Sales Catholic Church, which is located at 4268 Lime Street, Riverside, 92501, across the street from the California Court of Appeal, Fourth District, Division Two. The chief celebrant will be the Most Reverend Rutilio del Riego, the Auxiliary Bishop of the Diocese of San Bernardino. The homilist will be the Very Rev. David Anel, Judicial Vicar. Immediately following the mass, there will be a complimentary dinner reception in the parish hall hosted by the Red Mass Steering Committee.

The Red Mass is a religious celebration in which members of the legal community of all faiths invoke God's blessing and guidance in the administration of justice. All who are involved in the judicial system, including lawyers, judges, legal assistants, court personnel, court reporters, court security officers, and peace officers, are encouraged to attend the Red Mass.

Michael A. Scaffiddi Will Be Honored with the Saint Thomas More Award

Michael A. Scaffiddi will be honored with the Saint Thomas More Award for his extraordinary service and devotion to church, community, and justice. The Saint Thomas More Award is given to attorneys and judges in the community whose professional life is a reflection of their faith, who give hope to those in need, who are kind and generous in spirit, and who are exemplary human beings overall. The Honorable John M. Pacheco will present the award.

The Tradition of the Red Mass

The Red Mass is celebrated each year in Washington, D.C., where Supreme Court justices, members of Congress, and the President attend at the National Shrine of the Immaculate Conception. Since 1991, the Red Mass has been offered in the Diocese of San Bernardino, which covers both Riverside and San Bernardino Counties. For further information about this event, please contact Jacqueline Carey-Wilson at (909) 387-4334 or Mitchell Norton at (909) 387-5444.

NATIVE AMERICAN TRIBE MEMBERS AND BANKRUPTCY: WHO GETS THE TRIBAL DISTRIBUTIONS?

by Michael J. Bujold

Like all other population groups, large numbers of Native Americans have sought bankruptcy relief in order to solve their financial problems. According to data released by the U.S. Courts and by the Institute of Financial Literacy, an estimated 10,000 Native Americans filed for bankruptcy protection in 2011.¹ Recent census information suggests that Native Americans file bankruptcy at slightly lower rates than the general population.² From a bankruptcy standpoint, a Native American debtor's right to receive tribal distributions may be a valuable asset and subject to litigation. This article focuses on the approaches bankruptcy courts have used in determining who holds these rights.

Bankruptcy Overview

Most individuals who file bankruptcy seek relief under Chapter 7 of the Bankruptcy Code. This is a liquidation chapter, and the filing of a case creates a liquidation framework. The Code provides that a Chapter 7 bankruptcy "estate" is created upon case commencement and a bankruptcy trustee is appointed to act on behalf of the estate. Generally, the bankruptcy trustee is responsible for collecting and liquidating all "property of the estate" in order to pay creditors.³

The Bankruptcy Code defines property of the estate broadly. Section 541(a)(1) provides that estate property

1 A recent survey conducted by the Institute of Financial Literacy showed that 0.75% of bankruptcy filers self-identified as Native Americans. See Leslie E. Linfield, *2010 Annual Consumer Bankruptcy Demographics Report: A Five Year Perspective of the American Debtor*, Institute for Financial Literacy, September 2011, available at ssrn.com/abstract=1925006. Meanwhile, for the calendar year 2011, the U.S. Courts database calculated nationwide non-business bankruptcy filings at 1,362,847. *Bankruptcy Filings Slide in Calendar Year 2011*, February 7, 2012, available at uscourts.gov/News/NewsView/12-02-07/Bankruptcy_Filings_Slide_in_Calendar_Year_2011.aspx.

2 The 2010 U.S. Census determined that Native Americans comprise 0.9% of the total population. See Karen R. Humes, Nicholas A. Jones, and Roberto R. Ramirez *Overview of Race and Hispanic Origin: 2010*, United States Census Bureau, March 2011. The conclusion that Native Americans may file fewer bankruptcy cases than the population at large is based on the 0.9% census figure and the 0.75% bankruptcy filings figure from Ms. Linfield's report.

3 For a full description of the statutory responsibilities of a Chapter 7 bankruptcy trustee, see 11 U.S.C. § 704.

consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." In turn, Section 542 requires parties holding estate property to turn the property over to the trustee "and account for[] such property or the value of such property." What does this mean for Native American debtors who receive tribal distributions?

Rights to Payments Already Made

After the filing of a Chapter 7 petition, courts universally agree that all tribal distributions actually received by a debtor constitute property of the bankruptcy estate. See *In re Brown*, 2006 WL 6810938 at *6 (B.A.P. 9th Cir. 2006).⁴ In reaching this conclusion, the Bankruptcy Appellate Panel for the Ninth Circuit reasoned that "[t]he actual money received [after the petition was filed] became [the debtor's] personal property and it lost its identity as tribal funds." *Id.*

Debtors who received tribal distribution funds after filing their case have some options, however. In California, debtors generally are entitled to keep a certain amount of money and/or property by electing "exemptions" as provided by Sections 703 and 704 of the California Code of Civil Procedure. As the U.S. Supreme Court observed, such exemptions allow debtors to emerge from bankruptcy with sufficient property to achieve a financial "fresh start." *Stellwagen v. Clum*, 245 U.S. 605, 617 (1918). California recognizes a "wildcard" exemption that allows a debtor to retain various property interests up to a value of \$23,500. By utilizing the wildcard exemption, a debtor may be able to retain up to \$23,500 in tribal payments received after filing bankruptcy.

Rights to Future Payments

Bankruptcy trustees are likely to encounter resistance from Native American tribes when they attempt to liquidate the debtor's right to receive *future* distributions. To decide the issue, courts engage in a two-

4 See also *In re McDonald*, 353 B.R. 287, 295 (Bankr. D. Kan. 2006) (holding that tribal per capita distributions received after the conversion of a case from Chapter 13 to Chapter 7 are property of the estate); *In re Kedrowski*, 284 B.R. 439, 449 (Bankr. W.D. Wis. 2002).

step analysis. Generally, the trustee must show (1) that the right to receive future distributions constitutes “property of the estate,” and (2) that this property is capable of being transferred. The resolution of this issue is not easy, and courts must consider “an uneasy mixture of federal, state, and tribal rights and responsibilities.” *Kedrowski*, 284 B.R. at 441. In their attempts to reconcile these considerations, courts have reached opposite conclusions.

In *Brown*, the Ninth Circuit Bankruptcy Appellate Panel ruled that the debtor’s entitlement to future payments was a “contingent, intangible property interest to which Trustee succeeded,” but it cast doubt on whether the trustee could transfer this interest to third parties. 2006 WL 6810938 at *9. In ruling that the interest was “property of the estate,” the court analogized the tribal member’s right to payments to a corporate stock dividend. It reasoned that, so long as the debtor was alive and the same tribal ordinance remained in effect, the trustee could utilize the debtor’s share to pay creditors. The court noted that the entitlement to future payments was contingent because in *Brown*, the controlling tribal ordinance provided that (1) the tribe could amend or repeal the ordinance at any time, (2) the debtor needed to be alive to receive the payments, and (3) there had to be funds available for distribution. Although the future payment rights were clearly transferable under California law, the court held that the doctrine of tribal sovereign immunity required an analysis as to whether the tribal ordinance permitted the transfers. As a result, the case was remanded to the bankruptcy court to take evidence and make findings as to whether the tribal ordinance allowed the bankruptcy trustee to transfer the debtor’s interest.

Trustees and debtors alike should consider the actual terms of tribal law and any related tribal ordinance to determine whether a payment interest constitutes estate property and whether the trustee is free to transfer the interest to third par-


ties. Absent these transfer rights, the trustee cannot sell the interest to pay creditors. In *In re Fess*, a Wisconsin court held that tribal law must be considered when determining whether the debtor holds any payment rights that belong to the bankruptcy estate. 408 B.R. 793 (Bankr. W.D. Wis. 2009). In turn, the court found that the debtor did not hold any property interest under tribal law because the tribal code specified that the payments were property of the tribe until actually disbursed. As a result, the payment rights were not property of the bankruptcy estate.

By contrast, a Kansas court ruled that the payment rights were estate property and transferable because the tribal ordinance did not contain the same restrictive provisions found in *Fess* and because the ordinance did not contain limitations on the right to compel payments. *In re Howley*, 446 B.R. 506, 513 (Bankr. D. Kan. 2011).

Conclusion

This sampling of cases shows that, while courts agree that tribal distributions actually received by a debtor after filing bankruptcy belong to the trustee, there is greater uncertainty regarding the rights to future payments. In order to protect their clients, attorneys should carefully review the particular laws and ordinances of the debtor’s tribe and the relevant cases on this subject.

Michael J. Bujold currently serves as a Trial Attorney for Peter C. Anderson, the United States Trustee for the Central District of California, Region 16. The United States Trustee Program is a component of the Department of Justice that protects the integrity of the bankruptcy system by overseeing the administration of bankruptcy cases.



**FINAL DRAWING
of the
Riverside
Historic
Courthouse
by Judy Field**

**\$100 each
(unframed)**

Signed and numbered limited edition prints.
Great as a gift or for your office.
Contact RCBA office, (951) 682-1015
or rcba@riversidecountybar.com

The advertisement features a detailed black and white illustration of the Riverside Historic Courthouse, a grand neoclassical building with multiple columns and a prominent central pediment. The drawing is framed by a thick black border. To the right of the illustration, the text is arranged in a clear, bold hierarchy, starting with the title of the artwork, followed by the price per piece, and ending with contact information for the Riverside County Bar Association (RCBA).

JUDICIAL PROFILE: JUDGE RAQUEL MARQUEZ

by Stefanie G. Field

Riverside County has its first Latina judge – Judge Raquel Marquez. In fact, she is the only Latina judge in the Inland Empire. Her family epitomizes the American dream. Her father came here as a bracero – a migrant Mexican farm worker who was brought into the United States, in his case, to harvest cotton. After receiving his green card, he returned to Mexico for his sweetheart. They made a life in the United States, working a variety of jobs until they saved enough money to open their own restaurant. Life was not always easy, but they taught Judge Marquez to make the best of a situation and find solutions to enable goals to be accomplished, regardless of the obstacles that must be overcome.



photo courtesy of Michael J. Elderman

Judge Raquel Marquez

The lessons learned through her parents' work ethic and drive to succeed are an inherent part of Judge Marquez. She never said, "I quit" or "I cannot make a better life for myself." Rather, she took advantage of the available resources, such as the public library and school field trips, to open her mind to the possibilities and the world. In fact, her interest in the law was piqued through her participation in Mock Trial. In her words, "Mock Trial exposed me to the opportunities that a higher education can provide and allowed me to meet mentors who would change the course of my life." Her team was coached by two prosecutors and won the county competition. After competing in the state competition, she was awarded Best Defense Attorney of the Year, cementing her interest in the law.

She graduated from Santa Clara University and went on to receive her law degree from UCLA. From there, she went to work for the Riverside County District Attorney's office, where she ultimately attained the status of Senior Deputy District Attorney. Although she started in misdemeanors, through her perseverance and skill, she was repeatedly promoted and even spent many years in the Writs and Appeals Unit, a unit sometimes known at the "attorneys for the attorneys," where some of the most complex work was handled.

Despite the rigor of her work at the District Attorney's office, she never forgot the importance of the community or the benefit she received from participating in Mock Trial. Through the years, she has coached approximately 18 high school mock trial teams, and she has no plans to stop. She has also taught Parent Project courses and participated in a variety of community programs, including the Gang and Violence Prevention Coalition. And she continues to volunteer with the Youth Court, a program with which she has been involved since 2004. In fact, she is being recognized by the YWCA for her significant achievements and commitment to the community with a Women of Achievement Award.

When she decided to pursue being an attorney, it was not with the thought of eventually becoming a judge. That change in direction was a direct result of watching Justice Sotomayor's confirmation hearings in 2009. That was the first time she had seen a Latina judge; she found that realization disconcerting, and ultimately sad. She realized that she needed to do her part to help foster diversity by becoming a judge and thereby letting other Latinas know that they, too, could have such success. Judge Marquez wasted no time in striving for her goal. She ran to fill a judicial vacancy in the 2010 elections; although she was defeated, she was then appointed by Governor Brown in 2011.

Judge Marquez knew that by becoming a judge, she would be acting as a role model for other Latinas, but little did she realize the impact it would have on others. She is often asked to speak at events and has been touched and moved by her reception. Little girls come up to her to let her know that when they grow up, they want to be a judge, like her, and they want to have their picture taken with her. Women let her know how proud they are of her success. In short, she has opened their eyes to the possibilities.

Although she spent her career as a prosecutor, her experiences growing up in a rougher neighborhood, her clerkship with the Legal Aid Society, and her community involvement have helped to ensure her ability to remain neutral. She enjoys acting as a neutral to help impart justice and firmly believes in following the law. That dedication to applying the law can be a useful tool for practitioners appearing in her court – come prepared to provide her with the legal authority to do whatever it is you're requesting, or do a good job of briefing the issue. She endeavors to ensure that her rulings are grounded in the law. She also remains mindful that, for many litigants, this will be their first experience in court, and what they see will leave a lasting impression on them regarding our judicial system. To leave them with a positive impression, Judge Marquez maintains a professional and courteous demeanor, and she expects the same of those appearing in her courtroom.

Judge Marquez's humility and graciousness were charming. Her commitment to community, which has enriched the lives of many, was both impressive and inspiring. Her success, despite such humble beginnings, is a shining example of the fruits of dedication, perseverance and hard work. In sum, Judge Marquez stands as a role model for us all.

Stefanie G. Field, a member of the Bar Publications Committee, is a Senior Counsel with the law firm of Gresham Savage Nolan & Tilden. Please see her profile on page 27.



OPPOSING COUNSEL: STEFANIE G. FIELD

by *Sophia Choi*

A Talented and Optimistic Attorney

Stefanie Field is a Senior Counsel at the prestigious firm of Gresham, Savage, Nolan & Tilden. Specializing in litigation, she has represented a variety of clients, including public entities, corporations, educational institutions and private individuals. Throughout the interview, it was clear that Stefanie Field is an extremely talented and optimistic attorney who is devoted to Riverside County.

Ms. Field did not always live in Riverside. She was born in Queens, a borough of New York City. Her family moved to New Jersey, where Stefanie was raised. Her determination and goal-oriented approach is exemplified in her commitment to the legal profession. In seventh or eighth grade, Stefanie took a course called the United States Supreme Court, which involved learning about the functions of the U.S. Supreme Court and being given the opportunity to debate the merits of the parties' positions in landmark cases. It was at this time that Stefanie realized that this was what she wanted to do. She became intrigued by the analysis and advancement of a cause, and determined that her future would involve a career in the law. Thereafter, she focused her education and career path towards becoming an attorney.

Stefanie received her Bachelor of Arts degree, cum laude, from the University of California, San Diego, in 1992. She then received her Juris Doctorate Degree from Georgetown University Law Center in 1995. She was fortunate enough to obtain valuable experience in practicing the law through clerkships with the San Francisco County and Santa Clara County District Attorney's Offices. Stefanie started her first job as an attorney at a firm in San Francisco, practicing insurance defense and insurance coverage. It was while working in Northern California that she met her future husband, a Riverside native.

In 1997, she and her boyfriend at the time (now her husband) decided to return to his hometown of Riverside. Ms. Field began working for an insurance defense firm in Orange County, but wanted a better opportunity to improve her skills and expand her practice. She succeeded in that quest when she began working in the Riverside office of Burke, Williams & Sorensen, LLP, at which she eventually became a partner. Being a dedicated and hard-working attorney, her practice primarily focused on complex litigation, with a combination of products liability and toxic tort, environmental cases, business litigation, and insurance bad faith defense.



Stefanie G. Field

Impressed with the quality of work and reputation of Gresham, Savage, Nolan & Tilden, she jumped at the opportunity to join the firm about three and a half years ago. Here, she is a Senior Counsel specializing in litigation, but with a budding appellate practice. Ms. Field has continued to represent clients in business and environmental matters, but has expanded her repertoire to include real property issues, billboard law, and even some probate. She is well-respected for the quality of her writing, her analytical abilities and being devoted to her work.

Stefanie's off-time tends to center around her family and her community involvement.

Sports (baseball and soccer), water activities (boogie boarding and boating), and the occasional off-road races tend to fill her weekends, although it is not uncommon to see her volunteering at FitRiverside or attending other functions for non-profits. She is a member of Rotary Club of Corona, Finance Director of Junior League of Riverside, and sits on the American Cancer Society Leadership Council.

Stefanie truly loves the legal profession and strongly believes that the rule of law and lawyers a necessary part of society. She believes that what we do truly matters, regardless of who we represent. And, in so practicing, Stefanie strives to do so professionally, courteously and ethically, while zealously advocating for her client. That shared attitude, which she believes can be seen in many Inland Empire attorneys, has helped to make the Inland Empire her preferred venue. No longer a Jersey girl, Stefanie considers the Inland Empire her home and its legal community her legal community.

Speaking with Ms. Field, I did not realize how fast the time was passing. Her conversation was both engaging and sincere. She shared with me some of the heartache she has endured, and yet she remained focused on the positives of such experiences, pointing out that that strength is built, lessons learned and growth fostered by surviving such experiences. Laughing, Stefanie mentioned that people in New Jersey tend to be more blunt and she therefore had to modify her way of speaking when she came to California. However, it was her optimistic yet frank way of speaking that drew me to Ms. Field as it reflected her honest and authentic nature. Stefanie Field, a talented and optimistic attorney, is truly an asset to the Inland Empire legal community.

Sophia Choi, a member of the Bar Publications Committee, is a deputy county counsel for the County of Riverside.



MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective October 30, 2012.

Laurel Buchanan (S) – Law Offices of Kathleen G. Alvarado, Riverside

Bernice Espinoza – Office of the Public Defender, Riverside

Raul B. Garcia – Gresham Savage Nolan & Tilden, Riverside

Derek Hoffman (S) – Gresham Savage Nolan & Tilden, Riverside

Kyle K. Lauby – Fernandez & Lauby LLP, Riverside

Dorothy McLaughlin – U.S. District Court Central District, Riverside

Linda L. Mitchell (A) – Forensic QDE Lab LLC, Riverside

Michael Quesnel – Office of the District Attorney, Riverside

Ashley M. Rader – Riverside Superior Court, Riverside

Mark W. Regus, III – Thompson & Colegate LLP, Riverside

Manfred Schroer – Sole Practitioner, Grand Terrace

Allison F. Tilton – Reid & Hellyer APC, Temecula

Renewals:

Christopher A. Shumate – Albrektsen Law Firm, Redlands

Wilson W. Wong – Wilson Wong Law LLP, Riverside

Gordon Woo – Retired, Redlands

(S) – Designates Law Student



CLASSIFIED ADS

Office in Rancho Mirage

Nice, large, window office w/ optional secretarial space. Partial law library, conference room, lounge, phone system, built-in cabinets, copier/fax privileges, part-time reception, other amenities. Near Palm Springs & Indio Courts. Thomas A. Grossman, PLC (Desert ADR), (760) 324-3800.

Office Space – Downtown Riverside

1 Block from the Court Complex. Full service office space available. Inns of Court Law Building. Contact Vincent P. Nolan (951) 788-1747, Frank Peasley (951) 369-0818 or Maggie Wilkerson (951) 206-0292.

Office Space – Grand Terrace

Halfway between SB Central & Downtown Riverside. 565 to 1130 sq ft., \$1.10/sq ft. No cams, ready to move in. Ask for Barry, 951-689-9644

Office Space – Downtown Riverside

Prime downtown Riverside office space for lease. Quaint historic house renovated into offices. Ideal for a CPA, Insurance or Legal Office. Approximately 1430 sq ft. Price per sf is negotiable from \$1.70, net lease. Free parking. Walking distance to all courts. Great freeway access. Please email: lmclure@tclaw.net and reference House Lease.

Office Space – Downtown Riverside

Riverside Legal & Professional Center. Downtown Riverside walking distance to Courthouse. Private Executive Suite offices, virtual offices and conference rooms rental available. We offer a state of the art phone system, professional receptionist and free parking for tenants and clients. Accessible from the 91, 60 and 215 freeways. (951) 782-8089.

Office Space – RCBA Building

4129 Main Street, downtown Riverside. Next to Family Law Court, across the street from Hall of Justice and Historic Courthouse. Contact Sue Burns at (951) 682-1015.

Conference Rooms Available

Conference rooms, small offices and the third floor meeting room at the RCBA building are available for rent on a half-day or full-day basis. Please call for pricing information, and reserve rooms in advance, by contacting Charlene or Lisa at the RCBA office, (951) 682-1015 or rcba@riversidecountybar.com.



Riverside
County

LAWYER

Riverside County Bar Association

4129 Main St., Ste. 100, Riverside, CA 92501

RCBA 951-682-1015

LRS 951-682-7520

www.riversidecountybar.com

rcba@riversidecountybar.com

PRSR STD
US POSTAGE
PAID
PERMIT #1054
RIVERSIDE, CA

Why DRS?



Riverside County Bar Association
Dispute Resolution Service, Inc.
(A Nonprofit Corporation)

DRS benefits clients:

- Reasonable fee of \$300/hour; no set-up fee or hidden costs
- Minimal waiting time facilitates quicker resolution of issues
- Neutral perspective by an attorney with at least 10 years' experience

DRS benefits attorneys:

- Saving clients' money creates satisfied clients
- Solving problems quickly enhances your reputation
- Innovative solutions can restore faith in lawyers

DRS benefits the courts:

- Prevents nuisance cases from getting to court
- Enables case settlements before going to trial
- Helps alleviate congested court calendars

4129 Main Street, Suite 100
Riverside, CA 92501-3629
(951) 682-2132
FAX (951) 682-0106
www.rcbadrs.org

BOARD OF DIRECTORS:

Christopher G. Jensen, President
Michelle Ouellette, Vice President
David G. Moore, Chief Financial Officer
Judith A. Runyon, Secretary
James O. Heiting, Director-at-Large
Harry H. Histen, Director-at-Large
Michael G. Kerba, Director-at-Large
Elliott S. Luchs, Director-at-Large
Chris Harmon, RCBA President

Call 951-682-2132