

Wash. Tribes Say Gambling Co.'s Suit Could Ruin Economies

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September 11, 2023 Monday

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Section: APPELLATE, CALIFORNIA, GOVERNMENT CONTRACTS, HOSPITALITY, NATIVE AMERICAN

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Byline: Ali Sullivan

Highlight: A coalition of 22 Native American tribes that has signed gaming compacts with Washington state implored the Ninth Circuit to dispense with an appeal from a gambling company that wants to invalidate their compacts, telling the appellate court that Maverick Gaming cannot dodge the tribes' sovereign immunity by suing state and federal officials.

Body

A coalition of 22 Native American tribes that has signed gaming compacts with Washington state implored the Ninth Circuit to dispense with an appeal from a gambling company that wants to invalidate their compacts, telling the appellate court that Maverick Gaming cannot dodge the tribes' sovereign immunity by suing state and federal officials.

The federally recognized tribes said in a Friday amicus brief that a Washington federal judge was correct to toss Maverick Gaming LLC's challenge to tribal-state gaming agreements that give Washington-based tribes exclusive rights to offer sports betting and casino-style gaming. Maverick knew what it was doing when it sued government officials over the arrangement, the tribes said, while excluding the "real parties in interest": the 29 federally-recognized tribes in Washington.

The aim of Maverick's July 2022 suit - to void the tribes' gaming compacts on grounds they constitute unconstitutional racial discrimination and violate the Indian Gaming Regulatory Act - imperils a vital means of funding tribal governments and essential community services, the amici tribes said.

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"If successful, these claims would cripple the Amici Tribes' governments and economies, decimating their budgets for education, healthcare, public safety, and other critical services upon which tribal members and neighboring non-tribal communities depend," the tribes said.

U.S. District Judge David G. Estudillo in February ruled that the Washington-based Shoalwater Bay Tribe, which intervened as a defendant in Maverick's suit, was an indispensable party to the litigation but could not be joined to it due to the tribe's sovereign immunity - factors that required the suit's dismissal under Rule 19 of the Federal Rules of Civil Procedure.

Maverick appealed the ruling to the Ninth Circuit, arguing in its July opening brief that Judge Estudillo's holding "flies in the face of a long line of cases" that have held the federal government is well-positioned to represent tribal interests as a defendant in court. The company owns cardrooms throughout Washington and wants to expand its business into casino-style gaming and sports betting, which is reserved for tribes.

In their Sept. 1 answering briefs, the Shoalwater Bay Tribe, United States and Washington state officials contended that Ninth Circuit precedent is clear: Maverick's Administrative Procedure Act challenge must be dismissed because the tribe is a required party to the litigation but cannot be joined due to its sovereign immunity.

Indeed, the amici tribes - which include the Confederated Tribes of the Colville Reservation, the Puyallup Tribe of Indians and Muckleshoot Indian Tribe - said Maverick is attempting to circumvent the Ninth Circuit's "clear and controlling Rule 19 precedent." The circuit's precedent also "makes plain" that the federal government cannot adequately represent the tribes' interests, the tribes said.

"Federal Defendants cannot represent the Tribes' interests in this case for a simple reason: Federal Defendants do not share the Tribes' interests," the amicus brief said.

Not only does the federal government lack a financial interest in the tribes' gaming operations, but there is also a serious risk that federal and tribal interests could split as the case moves forward, the tribes said. If, for example, the district court ruled on the merits in a way that upset federal officials' interpretation of the law, the tribes argued "that ruling could 'change Federal Defendants' planned actions,' including whether to continue to defend their actions on appeal." Shifts in internal policy or federal leadership could similarly change the federal defendants' approach to the litigation, the tribes said.

In addition, the second and third claims in Maverick's suit - taking issue with state officials' execution and administration of the tribal-state gaming compacts as well as the state law that exempts tribes from criminal prohibition on class III gaming - have nothing to do with the federal government, the tribes said.

"If the district court dismissed Maverick's single claim against Federal Defendants, for example, they would be unable to defend against the second and third claims because they would no longer even be parties to the case," the tribes said.

And if the lower court ruled in favor of Maverick on the latter claims, the federal government may not have standing to appeal the ruling, the tribes argued.

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Scott D. Crowell of Crowell Law Office Tribal Advocacy Group and Lael Echo-Hawk of MThirtySix PLLC, who are representing the Shoalwater Bay Tribe, said in a Monday statement that they appreciate the amici tribes' support.

"Maverick Gaming's lawsuit seeks to eviscerate not only Shoalwater Bay's gaming facility, but those gaming facilities of all Washington Tribes, which would deprive the Tribes of their most critical revenue source for funding essential governmental services and would put tens of thousands of employees out of work," the statement said.

Counsel for the Suquamish Tribe, an amicus, declined to comment further on Monday. Counsel for Maverick and representatives for the state and federal defendants did not return requests for comment on Monday.

The Suquamish Tribe is represented by Keith M. Harper, Leonard R. Powell and Allison M. Tjemsland of Jenner & Block LLP.

The Confederated Tribes of the Chehalis Reservation, Muckleshoot Indian Tribe, Swinomish Indian Tribal Community and the Tulalip Tribes are represented by Cory J. Albright and Reed C. Bienvenu of Kanji & Katzen PLLC.

The Tulalip Tribes are also represented by Lisa Koop Gunn of the Office of the Reservation Attorney for the Tulalip Tribes.

The Confederated Tribes of the Colville Reservation are represented in-house by Shannon C. Thomas.

The Cowlitz Indian Tribe is represented by Edward Fleisher of Fleisher Law Firm PC.

The Hoh Indian Tribe and Samish Indian Nation are represented by Corin La Pointe-Aitchison of Dorsay and Easton LLP.

The Jamestown S'Klallam Tribe is represented by Christine M. Masse of Miller Nash LLP.

The Kalispel Tribe of Indians is represented by Lorraine A. Parlange and Aubrey A. Seffernick of the Kalispel Tribe of Indians Legal Office.

The Makah Tribe is represented by Beth Baldwin of Ziontz Chestnut.

The Nisqually Indian Tribe is represented by Nate J. Cushman of the Office of the Tribal Attorney for the Nisqually Indian Tribe.

The Nooksack Indian Tribe is represented in-house by Charles N. Hurt Jr.

The Port Gamble S'Klallam Tribe is represented by Steven D. Moe of the Legal Department for the Port Gamble S'Klallam Tribe.

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The Puyallup Tribe of Indians is represented in-house by Robert L. Hunter Jr.

The Quinault Indian Nation is represented by Lori Bruner of the Quinault Indian Nation Office of the Attorney General.

The Skokomish Indian Tribe is represented by Earle David Lees III of the Skokomish Legal Department for the Skokomish Indian Tribe.

The Spokane Tribe is represented by Scott Wheat of Wheat Law Offices.

The Squaxin Island Tribe is represented by Nathan Schreiner of the Squaxin Island Legal Department.

The Stillaguamish Tribe of Indians is represented in-house by Edward J. Wurtz.

The Confederated Tribes and Bands of the Yakama Nation are represented by Marcus Shirzad of the Yakama Nation Office of Legal Counsel.

Maverick is represented by Theodore B. Olson, Matthew D. McGill and Lochlan F. Shelfer of Gibson Dunn & Crutcher LLP.

The federal government is represented by Todd Kim, Rebecca M. Ross and Hillary K. Hoffman of the U.S. Department of Justice's Environment and Natural Resources Division and by Jody H. Schwarz of the Interior Department.

The Washington state officials are represented by Robert W. Ferguson, Kristin Beneski, Brian H. Rowe, William McGinty and Tera Heintz of the state attorney general's office.

The Shoalwater Bay Tribe is represented by Scott D. Crowell of Crowell Law Office Tribal Advocacy Group LLP and Lael Echo-Hawk of MThirtySix PLLC.

The case is Maverick Gaming LLC v. USA et al., case number 23-35136, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Vaqas Asghar.

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9th Circ. Reels In Wash. Tribes' Fishing Row

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Section: APPELLATE, CALIFORNIA, ENVIRONMENTAL, FOOD & BEVERAGE, GOVERNMENT CONTRACTS

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Highlight: A Ninth Circuit panel on Monday said a Washington federal judge correctly applied a 50-year-old fishing rights decree to rule that Puget Sound waters east of Whidbey Island and south of Fidalgo Island do not fall within the Lummi Nation's traditional fishing territory.

Body

A Ninth Circuit panel on Monday said a Washington federal judge correctly applied a 50-year-old fishing rights decree to rule that Puget Sound waters east of Whidbey Island and south of Fidalgo Island do not fall within the Lummi Nation's traditional fishing territory.

The Lummi Nation sought to overturn a 2021 ruling by U.S. District Judge Ricardo S. Martinez, who sided with the Swinomish Indian Tribal Community, the Tulalip Tribes and the Upper Skagit Indian Tribe in their efforts to block the Lummi Nation from opening a crab fishery in the disputed waters.

In the Ninth Circuit opinion, a three-judge panel reexamined a 1974 decree governing tribal fishing rights by then-U.S. District Judge George Hugo Boldt, as well as work of anthropologist Barbara Lane that heavily factored into the decree, in regard to the "usual and accustomed" fishing grounds of the Lummi Indians at the time of an 1855 Treaty of Point Elliott.

The decree described the Lummi fishing grounds of the as including marine areas of northern Puget Sound from the Fraser River south to the environs of present-day Seattle, as well as various reef net sites, according to the panel, but the judges ultimately concluded that there was no evidence in the record before Judge Boldt indicating the Lummi ever held usual and accustomed fishing grounds in the disputed waters.

9th Circ. Reels In Wash. Tribes' Fishing Row

Some evidence in the record actually suggested the opposite, that Lummi fishing was confined to areas to the west and north of Whidbey Island, the panel said.

The panel also pointed out that the Lummi Nation did not identify any fishing grounds in the disputed waters or any sites near the present environs of Seattle when the Washington Reef Net Owners Association asked it to identify all its usual and accustomed fishing grounds in 1973.

"We find it telling that, asked directly to identify 'in full all locations' claimed to be their 'usual and accustomed' fishing grounds in 1973, the Lummi mentioned no fishing locations east of Whidbey Island and south of Fidalgo Island," the panel said. "The Lummi had the opportunity to claim such locations at trial and did not."

Tribes in the Evergreen State have frequently raised the district court's ongoing jurisdiction to settle claims regarding historical fishing waters, according to the panel.

"The task of interpreting the occasionally cryptic terms of a decades-old decree, itself based on a sometimes thin record of anthropological evidence regarding the practices of Indian tribes more than a century earlier, has not always proved to be an easy one. Nevertheless, it remains the task we have today," the panel said.

An attorney for the Upper Skagit Indian Tribe declined to comment other than to say the tribe is satisfied with Monday's opinion.

Representatives for other parties could not immediately be reached for comment.

Oral arguments in the case were held last November. Circuit Judges Sandra S. Ikuta and Daniel P. Collins and U.S. District Judge Sidney A. Fitzwater sat on the panel for the Ninth Circuit.

Lummi Nation is represented by James R. Sigel, James M. Schurz, Mark D. McPherson, Camille Framroze and Deanne E. Maynard of Morrison Foerster LLP.

Swinomish Indian Tribal Community is represented by Emily H. Haley and James M. Jannetta of the Swinomish Indian Tribal Community's Office of the Tribal Attorney.

Upper Skagit Indian Tribe is represented in-house by David S. Hawkins, and Arthur W. Harrigan Jr. and Tyler L. Farmer of Harrigan Leyh Farmer & Thomsen LLP.

Tulalip Tribes are represented by Mason D. Morisset and Thane D. Somerville of Morisset Schlosser Jozwiak & Somerville PC.

The case is Swinomish Indian Tribal Community et al. v. Lummi Nation, case number 21-35812, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Greg Lamm. Editing by Kristen Becker.

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U.S. border fence damaged indigenous habitats and burial grounds

CE Latin America Migration English

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Body

Phoenix, Arizona - The construction of the wall on the U.S. border with Mexico during the Donald Trump administration caused numerous saguaros in Arizona were demolished, aggravated risks to the population of ocelots in Texas and altered cemeteries of American Indians, a congressional office said Thursday.

A report released by the U.S. Government Accountability Office (GAO) provides the first independent assessment of the damage caused by the construction of more than 450 miles (724 kilometers) of fence, which was exempt from in-depth environmental studies and largely disregarded the concerns of Native American communities in the rush to complete the barrier.

Now, Customs and Border Protection (CBP) and the Department of the Interior must work together to mitigate the damage, GAO said. It recommended that the agencies coordinate to decide how much the repair work will cost, how to fund it and how long it will take.

A CBP spokesman said Wednesday that the agency is preparing a response to the report. A spokeswoman for the Interior Department said the agency had no comment.

"What makes Trump's border wall so egregious is that his administration exempted itself from dozens of environmental, public health, cultural preservation and even bidding laws to build it," said U.S. Rep. Raul Grijalva, a Democrat from southern Arizona who requested the GAO review.

"Even before construction began, communities, tribes and other stakeholders were sounding alarms about the colossal damage that would be caused by the omission of those fundamental protections."

Grijalva said he has urged his fellow lawmakers to transfer at least \$225 million in the next budget from the Department of Homeland Security to the Department of the Interior and Forest Service for restoration actions.

Trump and his supporters have argued that a strong physical barrier along the border is necessary to prevent illegal entry of people and drugs into the United States.

"We apply a balanced common sense approach in order to address environmental concerns and prioritize our primary goal of securing the nation's border in order to reduce the entry of a vast array of complex threats into the United States," said Mark Morgan, acting commissioner of Customs and Border Protection during the Trump administration.

"On a personal note I will say I'm fine with us disrupting a butterfly's habitat or if a few cacti die in exchange for us disrupting a cartel's operational ability to threaten the safety and national security of our country," said Morgan, a visiting professor at the Heritage Foundation, a conservative think tank based in Washington.

U.S. border fence damaged indigenous habitats and burial grounds

"The wall has saved lives and nullified the ability of the cartels to increase their operational control of our country's borders."

Various environmental groups said the GAO report confirmed their initial complaints. They said future restoration work could benefit from greater involvement by the Interior Department, a primary manager of the federal lands where much of the damage occurred.

"We hope this report will help people understand the extent of destruction the wall has actually inflicted," said Laiken Jordahl, a Southwest conservation advocate at the Center for Biological Diversity, one of the groups consulted.

A crucial aspect of the report was "identifying the fact that the Interior Department needs to play a larger role in damage restoration," said Michael Dax, Western program director for the Wildlands Network, which also provided feedback to the GAO.

Emily Burns, program director for the environmental group Sky Islands Alliance, said, "It's refreshing to see accountability from the federal government."

The U.S. southern border stretches some 2,200 miles through California, Arizona, New Mexico and Texas. Various sections of what Trump described as his "big, beautiful wall" were installed from January 2017 to January 2021 by contractors for CBP and the Department of Defense.

President Joe Biden suspended construction when he took office in January 2021.

In preparing the report, GAO consulted with federal agencies and nongovernmental environmental groups. It also sought input from the Tohono O'odham tribe, which has an extensive reservation spanning parts of Arizona and Sonora, Mexico; and the Viejas Band of Kumeyaay Indians community in California.

Respondents told GAO that construction in parts of the Rio Grande Valley in Texas fragmented ocelot habitat by preventing them from crossing the border and put them at risk of extinction.

GAO was also told that lighting along the border harms bird migration and the feeding habits of some species. Larger animals such as felines and pronghorns that used to cross the border at the vehicle barriers, which had wider openings, are now unable to do so because of the high steel bollards that were erected with only inches (centimeters) between them.

Many saguaros in Arizona's Sonoran Desert were knocked down during construction, and in some areas at least half of those that were transplanted elsewhere were killed.

Damage was also reported in Quitobaquito Springs, an oasis located a few hundred yards from the border within Organ Pipe Cactus National Park. The area encompasses sacred burial grounds of the Tohono O'odham people.

The GAO said CBP later addressed safety hazards caused by construction, such as the erection of concrete barriers to repair earthen levees in the Rio Grande Valley.

However, the agency said more action is needed.

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INTERIOR DEPARTMENT ANNOUNCES FIRST INDIAN YOUTH SERVICE CORPS GRANT AWARDS

US Fed News

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Body

WASHINGTON, Sept. 11 -- The U.S. Department of the Interior issued the following press release:

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Contact: Interior_Press@ios.doi.gov

WASHINGTON-The Department of the Interior today announced nearly \$3.5 million in 2023 Indian Youth Service Corps (IYSC) grants to eight projects involving more than 20 Tribes and Tribal organizations. These are the first awards for the IYSC, established by Secretary Deb Haaland as a partner-based program designed to provide Indigenous youth with meaningful, Tribally led public service opportunities to support the conservation and protection of natural and cultural resources through construction, restoration, or rehabilitation of natural, cultural, historic, archaeological, recreational or scenic resources. Participants will receive a mix of work experience, basic and life skills, education, training and mentoring.

"Growing up in New Mexico, I helped my grandfather tend to our family's cornfield. My experiences taught me invaluable lessons about how deep our connection to the earth really is," said Secretary Deb Haaland. "I launched the Indian Youth Service Corps to help empower the next generation of Native leaders as they engage in the co-stewardship of public lands and the application of Indigenous Knowledge. The Corps will help these young people strengthen their connection to the lands and waters that their ancestors have cared for since time immemorial."

"This program provides vocational skills training and career development opportunities for native youth while also making a real impact in our efforts to protect and conserve our natural and cultural resources," said Assistant Secretary for Indian Affairs Bryan Newland. "Providing access to nature early and often will help foster the next generation of Indigenous land stewards."

The IYSC is implemented by the Departments of the Interior, Agriculture and Commerce and follows guidelines that were established in consultation with Indian Tribes, the Bureau of Indian Affairs and other stakeholders.

The first grants awards announced today are designed to help develop Tribal capacity in conservation, natural resource management, and climate resilience. They also provide Tribes and Tribal organizations with financial resources that enable them to invest in, train and recruit a new generation of skilled Indigenous workers.

The 2023 Indian Youth Service Corps grants were awarded to:

INTERIOR DEPARTMENT ANNOUNCES FIRST INDIAN YOUTH SERVICE CORPS GRANT AWARDS

* Wood for Life (New Mexico, Arizona, Utah, Colorado)- \$1 million awarded to expand the Ancestral Lands Conservation Corps' Wood for Life Program, engaging Native youth from the Navajo Nation, Hopi Tribe, Pueblo of Acoma, Pueblo of Zuni, and Pueblo of Isleta in reforestation efforts, wildland fire mitigation, and forestry, while also supporting local Tribal fuel and firewood needs. Additional program coordination support will be provided by the U.S. Forest Service.

* Ahtna Cultural Heritage Youth Program (Alaska)- \$560,000 awarded to the Ahtna Cultural Center, located within the Wrangell-St. Elias National Park and Preserve, to promote federal-Tribal co-stewardship and expand job opportunities for Ahtna Incorporated's Native youth. Additional program coordination support will be provided by the U.S. National Park Service.

* Wabanaki Youth in Science Program (Maine)- \$528,119 to fund a corps comprised of Native youth from the Wabanaki Nations (Mi'kmaq Nation, Houlton Band of Maliseet Indians, Passamaquoddy Tribe, Penobscot Nation) to promote the transfer of Indigenous Knowledge, expose Native youth to science, technology, engineering, and mathematics education and careers, and bolster federal-Tribal co-stewardship efforts.

* Traditional Farm Corps (New Mexico)- \$480,223 to fund new Native youth corps in collaboration with the Ancestral Lands Conservation Corps, Pueblo of Acoma, Pueblo of Isleta, and Pueblo of Zuni. Youth will work to restore local Indigenous food systems through agriculture, seed saving, and intergenerational knowledge-sharing. The project will revitalize traditional food sovereignty and promote access to fresh, locally sourced foods for the communities served.

* Hopi Youth Service Corps Program (Arizona)- \$300,000 to fund a Native Youth corps comprised of Hopi Youth in collaboration with the Hopi Tribe and Ancestral Lands Conservation Corps to restore, protect and preserve the cultural landscape on the Hopi Reservation.

* 7Gen Service Corps (South Dakota)- \$300,000 awarded to Si & #267;aŋġu Co. to provide interdisciplinary and experiential learning internships for youth of the Rosebud Sioux Tribe. Opportunities will center on Indigenous land and natural resource management, bison restoration, regenerative agriculture, cultural resource management, language revitalization, Indigenous Knowledge, and community and workforce development.

* Connecting System Impacted Native Youth to Careers in Natural Resources (New Mexico)- \$250,000 awarded to the Urban Native Barrio Corps (Ancestral Lands Conservation Corps and La Plazita Institute) to engage Native youth and young adults from the greater Albuquerque area to provide restorative justice programming and technical training in environmental conservation and natural resource management. Additional program coordination support will be provided by the U.S. Fish and Wildlife Service.

* Intergenerational Natural Resources Summer Youth Camp at Coronado National Forest (Arizona)- \$48,400 to benefit Native youth from Tribal communities surrounding Coronado National Forest, including 12 federally recognized Tribes with ancestral ties to the forest (Ak-Chin Indian Community, Fort Sill Apache, Gila River Indian Community, Hopi Tribe, Mescalero Apache Tribe, Pascua Yaqui Tribe, Pueblo of Zuni, Salt River Maricopa Indian Community, San Carlos Apache Tribe, Tohono O'odham Nation, White Mountain Apache Tribe, Yavapai Apache Tribe). Additional program coordination support will be provided by the U.S. Forest Service.

Program activities can include research projects, oral histories, habitat surveys, climate mitigation, trail restoration, invasive species removal, fire fuels reduction, watershed restoration, recreational expansion and the development of educational, informational or communication materials for the public.

IYSC projects will promote self-determination and economic development and can take place on Tribal lands, or on federal lands where Tribes have ancestral connections. All projects on Tribal lands will be designed and managed in a collaborative fashion, including nation-to-nation consultation prior to the start of any project.

For any query with respect to this article or any other content requirement, please contact Editor at contentservices@htlive.com

INTERIOR DEPARTMENT ANNOUNCES FIRST INDIAN YOUTH SERVICE CORPS GRANT AWARDS

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