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## Federal Law Controls Leasing on Tribal Lands

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*Kodiak Oil & Gas (USA) Inc. v. Burr*, Nos. 18-1824, 18-1856, 2019 U.S. App. LEXIS 23368 (8th Cir. Aug. 5, 2019)

The Eighth Circuit Court of Appeals upheld a district court injunction barring a suit by MHA Nation (Three Affiliated Tribes) members seeking royalties for the flaring of natural gas from wells on reservation lands from being adjudicated by a tribal court. The court found that “unlike ‘routine contracts’ that are ‘governed by general common law principles of contract,’ oil and gas leases on federally-held Indian trust land are governed by federal law” and, as the tribal court’s adjudicative authority is limited to cases arising under tribal law, it lacked jurisdiction as to the issues at hand.

In *Kodiak*, the MHA Nation filed suit to obtain royalty payments for natural gas allegedly wastefully burned off from the Defendant’s oil wells on tribal land held in trust by the U.S. Department of the Interior. After the tribal court and the MHA Nation Supreme Court held that the tribal court had jurisdiction, the Defendants filed suit in the federal district court, which found that tribal court lacked jurisdiction.

On appeal, the tribal court officials argued that the district court’s finding contradicted *Montana v. United States*, 450 U.S. 544 (1981), which established two exceptions to the general rule that tribes do not possess authority over non-Indians within their borders, being (1) in instances of contract disputes occurring on-reservation between tribal members and non-tribal entities, and (2) when the conduct of non-Indians on tribal lands threatens or has a direct effect on the political integrity, the economic welfare, or the health and welfare of the tribe.

The appeals court rejected this argument reasoning that the *Montana* exceptions only apply to the extent they are necessary to protect tribal self-government or to control internal relations. Additionally the court found that the *Montana* exceptions did not apply because the entire leasing relationship was mediated by the federal government, which controls oil and gas leasing on tribal lands, and a dispute over payment of royalties does not involve conduct that threatens political integrity, public health, or safety.

Tribal court officials further argued that tribal courts may hear federal causes of action pursuant to *Nevada v. Hicks*, 533 U.S. 353 (2001). This argument was also rejected, with the court holding that, where non-tribal members are concerned, tribal court adjudicatory jurisdiction, in the absence of congressional authorization, is limited to claims arising under tribal law. Since the claim was based on federal, rather than tribal, law, the court held that federal law applies.

For a copy of the *Kodiak* decision, or to discuss jurisdiction on tribal lands, please contact the Oil and Gas Group at Dickie, McCamey & Chilcote, P.C.



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