

ENVIRONMENTAL HAZARDS AND JURISDICTION ON TRIBAL LANDS

Originally published in *Human Rights Magazine*,
a publication of the American Bar Association Section of Individual Right and Responsibilities

By Theodore J. Griswold, Esq.
Procopio, Cory, Hargreaves & Savitch LLP

Straightforward environmental problems become immensely complicated when they occur on Indian lands. Which laws apply? Who is responsible for enforcement? What happens when jurisdictional lines are blurred and regulatory gridlock occurs?

Trespassing junkyards should be shut down—particularly when they are leaking hazardous materials—but they are not. Illegal dumping should be deterred by erecting road guardrails and fences, but it is not. Slumlords housing dozens of families without running water or sewage disposal should be prosecuted and forced to provide livable conditions to their tenants, but they are not. Instead, under the often misunderstood cloud of “sovereignty” on tribal lands, these issues may take years to resolve, creating health and safety risks for reservation residents.

For Native American tribes, sovereignty signifies the opportunity to self-govern, self-empower, and self-determine. Unfortunately, to a certain less savory element of our population, it is also seen as a legal gray area that can be exploited as enforcement jurisdictions are paralyzed by confusion regarding whose job it is to enforce environmental regulations. To this element, tribal inholdings—lands that are not tribally owned or governed and are instead owned by outsiders—are seen as lawless.



THEODORE J. GRISWOLD

The confusion is understandable because the ownership and governance of lands within reservations can become easily blurred. Reservations have historically been considered off limits to local enforcement agencies under the premise that the reservations are entirely federal lands. However, reservations often have inholding lands. These properties are remnants from the General Allotment Act of 1877 (GAA), in which the federal government created a program that systematically diminished the extent of tribally owned lands in favor of white settlers. While the program was rescinded years later under the Indian Reorganization Act of 1934, the GAA created Swiss cheese-like holes in many reservations throughout the West. While these inholdings are within the outer boundaries of the reservations and often indistinguishable from tribal lands, they are not subject to tribal governance.

Examples of the lingering problems caused by interjurisdictional areas on reservations are not difficult to find, even on a single reservation. When a suspected methamphetamine lab is reported to the local sheriff, the tribe is told that it should refer the matter to federal officials because local authorities cannot confirm that the activities are not on tribal land. After significant delay, federal officials refer the tribe back to local authorities, identifying the problem as a local law enforcement issue on state jurisdictional land. Local authorities again balk at enforcement, asking for documentation. Meanwhile the activity continues, risking the health and safety of the tribe.

Elsewhere on the same reservation, massive junkyards exist in fenced areas, partially on tribal land and partially on an inholding. The junkyards are within the floodplain and near the sole water source for the tribe. Stained soil and seeping barrels are visible from outside the fences. Local officials will not investigate because the activity is at least partially on tribal land, and they suggest the tribe take action on its land before involving the local jurisdiction. When the tribe seeks to terminate the use on tribal land as unauthorized trespass, the operator appeals the eviction to the Bureau of Indian Affairs (BIA) Appeals Board, which may hear the matter two years later. The problem lingers.

An absentee slumlord on the same reservation erects shanty-type living conditions to house dozens of migrant workers, despite the lack of running water, septic systems, or

electricity on his property. County health department officials cannot figure out whether they have jurisdiction and refer the tribe to the Environmental Protection Agency (EPA). The EPA indicates that the issue is a local one. Not until a toddler drowns in an open sewage pool on the property does action get taken. The sewage pool is filled in, but the remainder of the problem persists.

The interjurisdictional problem is not limited to inholdings. A substandard county road winds through the dark hills of the reservation, inviting illegal dumping of debris, dead farm animals, and meth lab waste. Attempts to deter the activity by erecting guardrails

within the county right of way are refused, based on liability concerns. Attempts to improve the road are complicated by the need to coordinate engineering between the BIA and county engineers. The project remains unfunded as a nonpriority.

Each of these situations could find resolution through cooperative law enforcement arrangements between local and federal jurisdictions. The recent focus on the intergovernmental relationships between municipalities and tribal governments has focused mainly on tribes sharing revenues from tribal gaming activities. These discussions also offer an avenue to clear the air on resolving many

interjurisdictional environmental issues. As counties seek to gain a piece of the gaming pie, they should also seek methods of cross-jurisdictional coordination to clean up environmental hazards and to promote a healthy life for all residents of the reservations.

For more information, please contact Theodore J. Griswold at 619.515.3277 or tjg@procopio.com.