

Supreme Court Declines Tribal Challenge

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The movement to protect sacred sites scored a major victory on Monday when the Supreme Court refused to hear a case affecting the Hoopa Valley Tribe of California.

Without comment, the nine Justices turned down a non-Indian woman's attempt to harvest timber on land she owns on the northern California reservation. The decision lets stand a federal appeals court ruling which subjects Roberta Bugenig to tribal jurisdiction.

The action affirms the tribe's ability to protect land used for the White Deerskin Dance, one of its most sacred ceremonies. Under a tribal ordinance approved by the Bureau of Indian Affairs, logging is prohibited within a half-mile radius of an area where part of the 10-day event takes place.

The case also raises hopes for other tribes as they seek to exert powers over non-members. In the wake of recent Supreme Court rulings deemed destructive to sovereignty, tribal leaders and their advocates have asked Congress for help.

For that reason, the dispute will never be settled, according to Bugenig's attorney "She's not the type of person to give up," said James Burling of the Pacific Legal Foundation, an organization which is currently representing non-Indian farmers in the Klamath Basin.

"Ultimately, she would like to cut the trees on the property," he said. "That would make her happy."

Agreeing was a Minnesota attorney who filed a legal brief on behalf of the Citizens Equal Rights Alliance, a group which opposes tribal authority over non-Indians. "I think it's fundamentally improper to be subjected to a government to which you can't participate," said Randy Thompson of Stapleton, Nolan, MacGregor and Thompson, a St. Paul-based law firm.

"I don't think this decision will stand long-term," he said. "It's just fundamentally contrary to the Constitution that it won't stand."

For the tribe, the case has dragged out for years. In 1995, Bugenig purchased 40 acres of land and asked the state of California for a permit to haul timber.

The request was initially granted but revoked after the tribe raised the issue with the state. The tribe then sued Bugenig and prevented logging on a two and one-half acre parcel of her land.

The dispute reached federal court where the tribe's rights were affirmed. A three-judge panel reversed but after a rehearing held at tribal request, the 9th Circuit Court of Appeals last September said Congress properly delegated authority over non-members.

That key point is the subject of a tribal push to reverse several decisions which have exempted non-Indians from tribal jurisdiction. Legislation currently being drafted would apply to a host of situations, including taxation and sacred sites.

Tribal leaders are in Washington, D.C., this week to discuss the issue and others at the Sacred Lands Forum sponsored by the National Congress of American Indians. Assistant Secretary Neal McCaleb is expected to announce his own initiative tomorrow.

Hoopa tribal chairman Clifford Lyle Marshall did not return a call by press time.

Related Decisions: Bugenig v. Hoopa Valley Tribe, No 99-15654 (9th Cir. September 11, 2001)
Bugenig v. Hoopa Valley Tribe No 99-15654 (9th Cir. October 2000, Withdrawn)
Bugenig v. Hoopa Valley Tribe No. C-98-3409 (US District Court. Mar 4, 1999)