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## Recent Developments

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## RECENT DEVELOPMENTS

*Lawrence County v. Lead-Deadwood School District No. 40-1*, \_\_\_ U.S. \_\_\_, 53 U.S.L.W. 4063 (January 9, 1985).

In *Lawrence County v. Lead-Deadwood School District No. 40-1*, the U.S. Supreme Court scrutinized the validity of a South Dakota statute which regulated the spending of federal funds which counties receive in lieu of property taxes. Under the Payment in Lieu of Taxes Act, the federal government is required to make annual payments to counties and certain other local units of government in which "entitlement lands" are located. Entitlement lands include wilderness areas, national parks, and lands administered by the Bureau of Land Management. The payments are made to compensate the local governments for the revenues lost because of the tax-exempt federal lands located within their borders. The act provides that the counties "may use the payment for any governmental purpose."

The challenged South Dakota statute required the county governments to distribute the payments received from the federal government in the same way in which they distribute general tax revenues. The effect of this statute was that the appellant Lawrence County was required to allocate sixty percent of its federal revenues to the school districts in the county. When the county refused to distribute the federal funds according to the statutory plan, the Lead-Deadwood School District sought a writ of mandamus in state court to compel the county to do so. A local court granted the writ, and the South Dakota Supreme Court upheld the decision.

The United States Supreme Court reversed, holding that the South Dakota statute was invalid under the Supremacy Clause of the United States Constitution. The Court found that the statute was inconsistent with the purposes and objectives of the federal act. Congress intended for the local units of government to have wide discretion in spending the in-lieu-of-tax money. The act was intended not only to compensate for the loss of potential tax revenues, but to provide for the unique expenses caused by the presence of the federal entitlement lands as well.

*Chemical Manufacturers Association v. Natural Resources Defense Council, Inc.*, \_\_\_ U.S. \_\_\_, 53 U.S.L.W. 4193 (February 27, 1985).

The Clean Water Act places restrictions on firms or individuals who discharge pollutants into waterways. The act charges the Environmental

Protection Agency (EPA) with promulgating regulations and standards necessary to implement it. The EPA sets uniform discharge limitations, based on specific statutory factors such as type of industrial process, or type of pollutant. The EPA also establishes a procedure that allows a specific plant or industry to obtain a variance where the factors relating to the plant or industry are fundamentally different from the factors used to set the applicable uniform limitations.

The Natural Resources Defense Council (NRDC) brought suit to enjoin this variance procedure as it applies to toxic pollutants. The NRDC argued that the procedure violates the statutory provision prohibiting the EPA administrator from modifying any requirement for toxic pollutant discharge limitations. The EPA countered that the variance was not a modification within the meaning of the act, but involved only fine-tuning of the limitations to reflect the factors relevant to specific industries. EPA claimed the variances were necessary because it could not effectively set uniform standards which apply to all types of industry and pollutants without incurring enormous expense.

The U.S. Supreme Court, in a five-to-four decision, upheld the variance procedure. The Court held that the EPA's interpretation of the statutory provision is entitled to deference because it is the view of the agency charged with administering the statute. The Court found that the EPA's interpretation was "sufficiently rational" to preclude the Court from substituting its judgment for that of the agency. Moreover, the Court found that the variance procedure was a sensible procedure not inconsistent with the language, goals, or operation of the act.

*United States v. Louisiana*, \_\_ U.S. \_\_, 53 U.S.L.W. 4186 (February 26, 1985).

In *United States v. Louisiana*, the U.S. Supreme Court determined whether the land underlying the Mississippi Sound belongs to the states of Alabama and Mississippi, or to the federal government. The issue arose out of a boundary dispute between the two states. Under the Submerged Lands Act, a state is entitled to ownership in the land and minerals beneath the navigable waters within its borders. The act also recognizes a seaward boundary for a distance of three miles from the coastline of each coastal state.

The Mississippi Sound is a body of water south of the states of Mississippi and Alabama, and north of a line of barrier islands in the Gulf of Mexico. The Sound is about eighty miles long and ten miles wide. A

special master appointed in the case found that the Sound belongs to the states. He found that, because the Sound is inland waters within the meaning of the Submerged Lands Act, the coastal boundary must be measured from the south end of the barrier islands rather than from the mainland.

The Supreme Court upheld the special master's determination, reasoning that the Sound is inland waters by virtue of being a "historic bay." The Court defined "historic bay" as a bay over which a coastal nation has traditionally asserted and maintained dominion with the acquiescence of foreign nations. It found that the United States had exercised sovereignty over the Mississippi Sound as inland waters since the time of the Louisiana Purchase, without protest by foreign nations.

*County of Oneida, New York v. Oneida Indian Nation of New York State*, \_\_\_ U.S. \_\_\_, 53 U.S.L.W. 4225 (March 4, 1985).

This case arose out of a 1970 lawsuit by the Oneida Tribe against the counties of Oneida and Madison, New York. The tribe sought to have a 1795 conveyance of 100,000 acres of land to the state of New York declared invalid. It also sought damages for the fair rental value of the land. The counties admitted that the conveyance was in violation of the Trade and Intercourse Act of 1793, but argued that the tribe had no statutory or common law cause of action against them. The counties also filed a third-party complaint against the state of New York for indemnity.

The United States District Court for the Northern District of New York held a trifurcated trial of the issues in the case. The court held that the counties were liable to the tribe for wrongful possession of the land. It assessed damages against the counties in the amount of \$16,694 for the fair rental value of the property over the two-year period specified in the complaint. In the third phase, the court held that the state of New York must indemnify the counties for the damages owed to the Oneidas. The counties and the state appealed, and the Second Circuit Court of Appeals affirmed.

The United States Supreme Court held that the Oneidas had a common law right to sue for unlawful possession and upheld the award of damages. The Court reasoned that its previous decisions had implicitly recognized in the Indians a federal common law right to enforce their aboriginal land rights. It rejected the petitioners' argument that the Nonintercourse Act of 1793 pre-empted this common law right. The Court noted that the Nonintercourse Act failed to establish a comprehensive remedial plan for

dealing with Indian property rights. The Court similarly held that the transfer of the land was not ratified by federally approved treaties in 1798 and 1802 in which the tribe ceded additional lands to the state of New York. Any attempt to extinguish title to Indian lands must be "plain and unambiguous."

The Court also held that there is no federal statute of limitations governing the common law action to enforce the Indians' property rights. The Court refused to follow the general rule and apply an analogous statute of limitations period. It found that to do so would be inconsistent with federal policy. While the Court noted that one would have thought that such claims would have been barred more than a century-and-a-half ago, it could find no applicable statutory limitation or other relevant legal basis for denying the Oneidas' right to bring the claim.

Finally, the Court reversed the lower courts' decision on indemnity. It held that the federal courts have no jurisdiction over the state of New York on a claim of indemnity to its counties. Such a claim raised an issue of state law. There is no indication that the state of New York waived its immunity to suit in federal suit on this question.