

Tribe Hits Back At BP Bid To Get Out Of Tribal Court Suit

By **Adam Lidgett**

Law360, New York (October 30, 2017, 5:13 PM EDT) -- The Yerington Paiute Tribe, its chair and its tribal court pushed back in Nevada federal court Friday against a bid by two BP units to bar the tribe from suing them in the tribal court over environmental damage at an abandoned copper mine.

The tribal court said in its opposition to the injunction motion, which BP America Inc. and Atlantic Richfield Co. made in September when they filed the federal suit, that the companies haven't shown that the federal court has jurisdiction over the tribal court.

Tribal sovereignty is "like an umbrella," the tribal court said, with its protections expanding over other tribal departments and divisions.

"Equally important, the plaintiffs' complaint and pleadings in this case nowhere show that either Congress or the tribe has waived the tribe's sovereign immunity from suit," the tribal court said.

In their own opposition filing, the tribe and Chairman Laurie A. Thom said that it wouldn't be proper to engage in "motion practice" before the federal court makes a ruling on their bid to dismiss the federal complaint, which they **filed Thursday**. They said that the move for a preliminary injunction is the companies trying to get the tribe to waive its immunity by "engaging."

"The tribe declines to take that bait, and stands on its position that this court lacks subject matter jurisdiction in the first instance," the tribe and Thom said.

The tribe, Thom and Yerington Paiute Tribal Court Judge Sandra-Mae Pickens filed motions on Thursday to dismiss the federal suit altogether, arguing they are protected by the tribe's sovereign immunity. Pickens filed her own opposition to the preliminary injunction motion on Thursday as well.

The companies' suit **is seeking** to enjoin the tribe from pursuing claims in the underlying tribal court action. That case stems from mining conducted by the Anaconda Mining Co., ARCO's predecessor, from the 1950s through 1970s at the Anaconda Copper Mine and from contamination that migrated onto tribal property.

ARCO and its corporate parent BP have said that under U.S. Supreme Court precedent, the tribal court can't exercise subject-matter jurisdiction over the tribe's claims, given that the companies aren't tribal members and they aren't alleged to have conducted any of the alleged activity on tribal land. The mine doesn't overlap with any tribal territory, ARCO and BP said.

"The tribe stands on its motion to dismiss for lack of jurisdiction," Austin Tighe, an attorney for the tribe and Thom, said in a statement. "If a court lacks jurisdiction, any request for a preliminary

injunction is rendered moot.”

Counsel for the tribal court declined to comment on Monday beyond its filing.

Representatives for the other parties did not immediately respond to requests for comment on Monday.

BP and ARCO are represented by Robert A. Dotson and Jill I. Greiner of Dotson Law, and Kenzo Kawanabe, Adam S. Cohen, Constance L. Rogers and Kyle W. Brenton of Davis Graham & Stubbs LLP.

Pickens is represented by Daniel T. Hayward and Joshua M. Halen of Laxalt & Nomura Ltd.

The tribe and Thom are represented by Michael Angelovich and Austin Tighe of Nix Patterson & Roach LLP and Robert F. Saint-Aubin of Saint-Aubin Chtd.

The tribal court is represented by Charles R. Zeh of the Law Offices of Charles R. Zeh.

The case is BP America Inc. et al. v. Yerington Paiute Tribe et al., case number 3:17-cv-00588, in the U.S. District Court for the District of Nevada.

--Editing by Mark Lebetkin.