Oklahoma v. U.S. Department of Interior, ___ F. Supp. 3d ___, 2022 WL 16837057 (W.D. Okla. Nov. 9, 2022)

- **Holding:** Office of Surface Mining Reclamation and Enforcement acted consistently with the Surface Mining Control and Reclamation Act in assuming regulatory control over mining operations subject to the Act on Indian lands within Oklahoma after issuance of *Oklahoma v. McGirt*.
- **Summary:** This decision is one of two issued together in companion suits brought by the Oklahoma against OSMRE after the agency notified the State that it would displace the former's regulatory program with respect to surface mining and reclamation operations within the Muscogee (Creek) Reservation. The companion suit was identical, differing only in that it raised the challenge with respect to such operations within the Choctaw and Cherokee Reservations. The basis for the agency's decisions was *McGirt v. Oklahoma*, 142 S. Ct. 2452 (2020), in which the Supreme Court held that the Muscogee (Creek) Reservation had not been disestablished. The Oklahoma court of criminal appeals subsequently applied *McGirt*'s analysis and holding to the Choctaw and Cherokee Reservations. In December 2021, the district court denied the State's motion for preliminary injunction in this case. *Oklahoma v. U.S. Dep't of Interior*, 577 F. Supp. 3d 1266 (W.D. Okla. 2021), summarized at https://docs.google.com/document/d/1ErJLeqnowxAemZx0WHurSrZWLM0kpbkr/edit. The district court consolidated the two cases for purposes of cross-summary judgment briefing purposes and issued identical opinions granting Defendants' motions. *See Oklahoma v. U.S. Dep't of Interior*, ___ F. Supp. 3d ___, 2022 WL 16838032 (W.D. Okla. Nov. 9, 2022).

  SMCRA authorizes States to assume exclusive regulatory control over surface mining and reclamation under an OSMRE-approved program except on federal and "Indian lands." The statute defines the latter as "all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe." 30 U.S.C. § 1291(9). Oklahoma received programmatic approval in 1982, with its program codified in state law that recognized non-applicability to Indian lands. OSMRE also "provides that '[n]o State law or regulation ... shall be superseded by any provision of this chapter or any regulation issued pursuant thereto, except insofar as such State law or regulation is inconsistent with the provisions of this chapter, ... but state laws that provide for 'more stringent' regulation or for which SMCRA contains no provision 'shall not be construed to be inconsistent.'" *Id.* §§ 1255(a) & (b).

  The court had little analytical difficulty rejecting Oklahoma's challenge. First, "[b]ecause the Creek, Choctaw, and Cherokee Reservations were not disestablished and qualify as 'Indian reservation[s] under the jurisdiction of the United States,' each of them is also a 'Federal Indian reservation' under SMCRA." Next, "because the reservations are Indian land, SMCRA plainly precludes a State from administering its state program on the land." It also concluded that "SMCRA's text and structure indicate Congress' intent to preempt state regulation of surface coal mining and reclamation activities that occurs outside of an approved state program." The court deemed the savings provisions in § 1255 unhelpful to the State's position, since the section

> merely reflects that States may incorporate more extensive and more stringent regulations into their state programs. It does not, however, change the jurisdictional limits of a state program or authorize states to regulate surface mining via a set of state laws that operate independent of SMCRA. In any event, § 1255 provides that inconsistent state laws are superseded by SMCRA. Applying state surface mining and reclamation laws to Indian land–even those that are more stringent than SMCRA's minimum standards–would be inconsistent with the exclusive authority granted to OSMRE and Indian tribes on Indian land.

The court also found the State's reliance on *City of Sherrill, N.Y. v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005), inapposite notwithstanding Oklahoma's "long-exercised regulatory authority over surface mining on the reservations." It reasoned, relying on *Cayuga Nation v. Tanner*, 6 F.4th 361 (2d Cir. 2021), *cert. denied*, 142 S. Ct. 775 (2022), that "the parties' claims concern whether a 'specific sliver' of state regulatory authority is preempted by a federal statute, a question that is answered by SMCRA's plain language" and that the case did not "implicate broad claims of tribal immunity from local regulation or an Indian tribe's possessory rights over land that long ago passed into private ownership."

Finally, the court rejected Oklahoma's contention that the OSMRE actions violated the Administrative Procedure Act by failing "to adequately explain its decision, failed to consider important reliance interests before transferring regulatory authority, and fail[ing] to engage in notice and comment procedures." Even had the agency committed these violations, the errors in the court's view were harmless:

> Once the Supreme Court and the Oklahoma Court of Criminal Appeals determined that the Reservations had not been disestablished, SMCRA's unambiguous language required OSMRE to assume regulatory authority with respect to operations within the Reservations and to notify Oklahoma that it could no longer administer its state program. SMCRA permits no other interpretation. Although this is not the result Oklahoma would prefer, no amount of administrative process will change the fact that SMCRA precludes state regulation on Indian land.

- **Relevant (2022) Deskbook Sections:** 10:13 nn.11, 13