WPX Energy Williston LLC v. Honorable B.J. Jones, --- F.4th ---, 2023 WL 4308905 (8th Cir., July 3, 2023).

- **Holding**: Oil company was required to exhaust tribal court remedies before bringing federal action to enjoin proceedings by allotment owners claiming breach of agreement with the company to prohibit smoking by company employees while on right-of-way through allotments.
- **Summary**: WPX Energy Williston, LLC, an oil and gas company, acquired a right-of-way over and across four allotments owned by enrolled members of the Mandan, Hidatsa, and Arikara Nation (the Fettigs). Federal regulations provide that in obtaining consent from allotment owners, the parties may agree to additional "restrictions or conditions" and "negotiated remedies" that are incorporated into the right-of-way grant as "side letter agreements." WPX and the four members agreed to a provision prohibiting WPX employees from smoking on those portions of the right-of-way running over their allotments, with a $5,000 fine per incident. The Fettigs brought an action in the Three Affliated Tribes District Court, alleging a breach of the side letter agreement. In response to WPX's jurisdictional challenge, the District Court concluded it had jurisdiction under the *Montana v. U.S.,* exceptions, granting a tribe jurisdiction over the activities of nonmembers when they enter into consensual commercial relationships with a tribe or its members, or when a nonmember's conduct threatens a tribe's health or welfare. WPX appealed to the Mandan, Hidatsa, and Arikara Nation Supreme Court, but while the appeal was pending, brought an action in federal district court, which concluded that WPX had exhausted its tribal remedies, that the Tribe lacked jurisdiction, and that WPX was entitled to a preliminary injunction preventing the tribal court from proceeding.

  Judge Jones and the Three Affiliated Tribes District Court filed a notice of appeal with the 8th Circuit from the district court's order granting a preliminary injunction. The court of appeals concluded that WPX had not exhausted its tribal court remedies, given that the Mandan, Hidatsa, and Arikara Nation Supreme Court had not yet ruled on the jurisdictional question, and rejected WPX's argument that it was "plain" that the tribal court lacked jurisdiction, so that further litigation in the tribal courts would serve no purpose other than delay. WPX asserted that the tribal court plainly lacked jurisdiction in light of *Kodiak Oil & Gas (USA) Inc. v. Burr*, 932 F.3d 1125 (8th Cir. 2019), where the court held that a tribal court lacked jurisdiction over a suit concerning oil and gas leases between companies and tribal members on allotments of land on the Fort Berthold Reservation. The court distinguished *Kodiak Oil* because "the disputed conduct of nonmembers in that case—the failure to pay adequate royalties—was an activity that took place between a non-Indian company and the federal government, not between the company and tribal members." In this case, the dispute arose "from the alleged violation of a condition that was independently negotiated by the parties." and "requires an application of *Montana* in a new context that differs from the scenario presented in *Kodiak*."
- **Relevant (2023) Deskbook Section**: 3:14, 6:4, 6:9