Hill v. U.S. Department of the Interior, 2023 WL 6927266 (D.D.C., Oct. 19, 2023).

- **Holding**: Plaintiffs, tribal member allottees on the Crow Reservation, failed to state a claim that the Secretary, by publishing findings that triggered enforcement of the Crow Tribe's Water Rights Settlement Act of 2010, violated either the Fifth Amendment or her trust obligations to the allottees, whose reserved water rights, under the terms of the Settlement, would thereafter be fulfilled from the "Tribal Water Right," which was declared to be "in complete replacement of and substitution for, and full satisfaction of," the allottees' water-rights claims, including "any claims of the allottees against the United States that the allottees have or could have asserted."
- **Summary**: Plaintiffs, tribal member allottees on the Crow Reservation, brought an action challenging the Secretary of the Interior's published findings that all conditions specified in § 410 of the Crow Tribe's Water Rights Settlement Act of 2010 had been fulfilled and that the Settlement Act, including its authorization of a "waiver and release of all claims for water rights within the Reservation ... that the United States, acting as trustee for the allottees, asserted, or could have asserted" on their behalf, was thereafter enforceable. The settlement created a "Tribal Water Right" from which the water rights of allottees would be fulfilled. The Tribal Water Right was declared to be "in complete replacement of and substitution for, and full satisfaction of," the allottees' water-rights claims, including "any claims of the allottees against the United States that the allottees have or could have asserted." *Id*. § 409(a)(2).

  Allottees' prior efforts to challenge the compact between the U.S., the Tribe, and the State of Montana had failed, including objections filed with the Montana Water Court, an appeal to the Montana Supreme Court, and a putative class action brought in Montana federal court. The present action was filed on June 21, 2022, nearly six years after the Secretary's finding were published on June 22, 2016. While the action was presented solely as a challenge to the Secretary's published findings, much of its substance constituted a challenge to the terms of the Settlement Act itself. Before the court was a motion to dismiss based on lack of standing and failure to state a claim.

  With regard to standing, the Plainitffs alleged that the terms of the settlement diminished the value of their *Winters* water rights and the value of their allotments, which the court accepted as a sufficient injury under Article III. The court found that the alleged injury was "narrowly" traceable to the Secretary's published findings, since the waivers and release of their claims could not have taken effect if the findings were void, and "barely" redressable, given that a declaratory judgment that the Act was void because of a deficiency in the findings would provide at least partial relief to the plaintiffs.

  On the merits, however, the court concluded that the plaintiffs failed to state a claim. First, the plaintiffs asserted that the Secretary's publication of the findings did not meet the deadline stated in the Act, because the U.S reached agreement with the tribal chairman to extend the deadline, and the Act required that any extension be "agreed to by the Tribe and the Secretary." Plaintiffs argued that only the entire tribal council could agree to an extension, an argument the court rejected because "the Settlement Act says nothing about who has the authority to agree to a deadline extension on behalf of 'the Tribe.'"

Second, the court rejected the argument that the findings were premature because the allottees' federal court litigation challenging the jurisdiction of the Montana Water Court was still on appeal to the Ninth Circuit at the time the findings were published, so that court proceedings were not "final." Looking to the Settlement Act, which defined "final" to mean the completion of any direct appeal to the Montana Supreme Court *or* " completion of any appeal to the appropriate United States Court of Appeals, including the expiration of time in which a petition for certiorari may be filed in the United States Supreme Court, denial of such petition, or issuance of a final judgment of the United States Supreme Court, whichever occurs last," the court concluded that the reference to state and federal court proceedings was in the disjunctive, so that the compact became final upon the completion of the state court proceedings; further, it would make "no sense to require a decision from a U.S. Court of Appeals to finalize a decision made by a court, such as the Montana Water Court, whose decisions it has no jurisdiction to review."

Third, the court rejected the plaintiffs' argument that the Government had violated its trust responsibilities to protect their *Winters* water rights, relying heavily on the holding in *Arizona v. Navajo Nation*, 599 U.S. 555 (2023), to find that "Plaintiffs stumble out of the gate by declining to identify in their Amended Complaint a substantive source of law — e.g., a treaty, statute, or regulation — that establishes a specific trust duty that they believe Defendants violated," and rejecting plaintiffs' argument that general trust obligations are sufficient to support claims for equitable relief. Where Plaintiffs did attempt to identify a specific treaty, statute, or regulation imposing a trust responsibility they fell short: for instance, the plaintiffs cited 25 U.S.C. § 381, requiring the Secretary to prescribe rules and regulations for the just distribution of water on reservations, but failed to allege that "the trust duty violated here was the Secretary's duty to prescribe regulations pursuant to 25 U.S.C. § 381 …[n]or could they; the Secretary has prescribed such regulations." The court also rejected plaintiffs' seeming argument that "to fulfill its trustee duties as established by section 305(a) of the Settlement Act, Interior needed to ensure that a Tribal Water Code and Current Use List existed before publishing the statement of findings in the Federal Register," because "nowhere does the Settlement Act provide that the creation of the Tribal Water Code or preparation of a Current Use List are prerequisites for the publication of the statement of findings." In short, "[b]ecause Plaintiffs have not identified a specific provision creating trust duties that they plausibly allege Defendants violated, Count III — whether considered as part of a larger APA cause of action or separately — is infirm."

Finally, the court rejected plaintiff's Fifth Amendment claims asserting violations of procedural due process, substantive due process, and equal protection. With regard to procedural due process, the court found that plaintiffs "were, in fact, on notice when Congress enacted the Settlement Act in 2010 that certain waivers and releases affecting their *Winters* water rights would go into effect on the enforceability date," and "with respect to the opportunity to be heard," the Ninth Circuit had already decided that "the legislative process was the only process to which Plaintiffs were entitled." With regard to substantive due process, the court found the plaintiffs had plainly failed to meet the pleading hurdle of alleging action that shocked the conscience. With regard to the equal

protection claims asserting that the publication of findings triggering enforcement of the Settlement Act "constitutes invidious discrimination between the Crow Indian Plaintiff individual Indian Winters doctrine water right owners and non-Indian fee owners of former Crow Reservation allotments based on a racial classification," the court noted that statutory provisions drawing distinctions between Indians and non-Indians are not subject to strict scrutiny. Applying rational-basis review, the court concluded that "Congress's decision to distinguish between the Tribal Water Right and water rights recognized under state law in the Settlement Act readily survives rational-basis review."

- **Relevant (2023) Deskbook Sections**: 8:27, 8:29, 14:22