



Potential Land and Natural Resources Policy Implications of *McGirt v. Oklahoma*

August 21, 2020

On July 9, 2020, the [Supreme Court](#) ruled that Congress had never [disestablished](#) the Muscogee (Creek) Nation's (MCN) reservation, set aside for MCN in the 19th century, and thus the reservation remains "[Indian country](#)" for purposes of criminal jurisdiction under the [Major Crimes Act](#). According to the [dissenting opinion](#), the MCN's reservation spans 3 million acres. In addition, four other tribes share a common history with MCN (Cherokee, Choctaw, Chickasaw, and Seminole Nations of Oklahoma, together referred to as the *Five Tribes*), meaning nearly 19 million acres in eastern Oklahoma could be considered an Indian reservation. The *McGirt* decision has potential land and natural resources policy implications discussed in this Insight.

Because this case dealt with criminal jurisdiction, the impacts, if any, to civil jurisdiction are not immediately clear. Tribal land areas in Oklahoma often have complex histories involving treaties, common law, statutes, and regulations. Additionally, many laws and regulations apply only to the Five Tribes—an in-depth analysis of which is outside the scope of this Insight. This Insight provides an overview of observer and stakeholder comments on a variety of potential impacts to land and natural resources.

Potential Land and Natural Resources Implications

Because of the decision, some assert that [much of eastern Oklahoma](#) is an Indian reservation. Others contend, however, that the other four of the Five Tribes [might be in a position to seek a separate legal ruling through litigation](#). Further, some assert the decision may impact [civil regulatory authority within MCN's reservation](#).

Some observers, [including MCN](#), state that not much will change for most residents living in this area. For instance, [some assert](#) land ownership will not change in eastern Oklahoma and existing federal law would limit tribal civil regulatory jurisdiction over non-Indians within the reservation. But some stakeholders describe [potential challenges](#) with jurisdictional issues. For example, following the decision, Oklahoma's governor formed a [commission](#) to advise the governor on civil, criminal, and regulatory concerns.

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Concerns raised by the decision have been addressed by one of the other Five Tribes. The [Choctaw Nation](#) issued a statement to the public that emergency services such as 9-1-1 remain in place, as well as all agreements the tribe has with the state, such as hunting and fishing agreements. The Choctaw Nation stated private property ownership on its lands will not be affected.

Other stakeholders have discussed the possibility of [re-recognizing reservation boundaries](#) for other tribes if Congress did not expressly diminish their boundaries. Some observers discussing the [potential issue areas](#) arising from the decision assert there could be implications for taxation and alcohol sales, expansion of Indian gaming, and the possibility of the Five Tribes more easily bringing [land into trust](#).

Policy Considerations

The policy considerations of the decision have many complexities and interdependencies, some of which may take years to fully develop. However, Congress may consider potential issues in the areas of land and natural resources. Although the rest of the Five Tribes may be similarly situated, the below policy considerations specifically address MCN's re-recognized boundaries.

Impacts to Appropriations

The [Bureau of Indian Affairs](#) (BIA) is the primary land management agency for land held in trust on behalf of Indian tribes. Much of the MCN reservation is [fee land](#), and BIA does not have a role in land management activities, such as [leases](#) or [rights-of-way](#), that include fee interests. BIA may still have limited responsibilities regarding fee land held by tribes, such as [recording land title documents](#). If MCN is able to more easily have land brought into trust within its re-recognized boundaries, it would add additional acreage under BIA responsibility. Thus, BIA may request funding for increased land management activities for those lands. Congress could request that BIA determine potential impacts to its management responsibilities and budget.

[Some](#) have suggested that new water rights claims might arise as a result of this decision. Any such claims would need to be negotiated or litigated through historically lengthy processes. Were any such rights awarded via settlement, Congress could be asked to consider authorizing legislation similar to prior enacted [Indian water rights settlements](#).

Federal Agency Considerations

One consideration is whether federal laws might apply in lieu of state laws to the land and natural resources on the fee land within the MCN reservation. For example, the [oil and gas industry](#) and [pipeline operators](#) have expressed concern about being subject to federal or tribal rules instead of state regulation on operations previously considered to be on state land. Also, some laws, such as the [National Historic Preservation Act](#) (54 U.S.C. §§300101 et seq.), are applied differently when federal projects are within the boundaries of a reservation. Agencies have certain obligations when maintaining the federal trust responsibility to tribes and engaging in government-to-government consultations on federal actions within the boundaries of an Indian reservation. Depending on the scope of how the ruling is applied, federal agencies may seek additional resources to meet their responsibilities to MCN under applicable laws and policies.

Federal lands and facilities are located within the MCN reservation, including several Department of Defense sites, U.S. Army Corps of Engineers reservoirs, and a U.S. Fish and Wildlife Service national wildlife refuge. Any potential impacts to the status of federal land ownership remain to be seen. Even if federal land status remains unaltered by this decision, how federal agencies interact with MCN could change. For example, the Department of the Interior [encourages partnerships](#) with tribes for managing

federal lands—such partnerships could be bolstered by being within MCN’s re-recognized boundaries. Also, in the 116th Congress, [legislation has been introduced](#) that would restore certain federal properties to a tribe located within its reservation boundaries for wildlife management purposes. Congress may request federal land management agencies managing lands within MCN’s reservation boundaries report on implications for land management policies and budgets.

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