



- **Compliance & Enforcement**
- **McGirt Update**
- **GHG Supreme Court Case**

**Presented by: Donald K. Shandy**

**May 5, 2022**





# Compliance and Enforcement

## I. Six National Compliance Initiatives - FY 2022-2023

A. Air

B. Water

C. Hazardous Chemicals



# Compliance and Enforcement

## Air

### A. Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants

- Enforcement actions resulting in reduction of over 15.7 million pounds of methane
- Enforcement actions resulting in a reduction of approximately 6.7 million pounds of VOCs and HAPs as well as other harmful air pollutants.





# Compliance and Enforcement

## Air

### B. Stopping Aftermarket Defeat Devices for Vehicles and Engines

- Resolved 40 civil enforcement cases
- Provided inspector training for 26 states and the District of Columbia
- Supported states' efforts in inspections and taking enforcement actions



# Compliance and Enforcement

## Water

### A. Reducing Significant Non-Compliance (SNC) with National Pollutant Discharge Elimination System (NPDES) Permits

- Reduced SNC rate both for EPA directly implemented programs and by working with NPDES authorized states
- Facilitated discussion with NPDES authorized states to ensure most serious SNC-level violators slated to be addressed





# Compliance and Enforcement

## Reducing Significant Non-Compliance with National Pollutant Discharge Elimination System (NPDES) Permits (Cont.)

- Provided training on early detection of SNC using EPA's ECHO Early Warning Dashboard
- Continued to help small systems: EPA's Compliance Advisor technical assistance; technical assistance webinar series focused on helping solve common compliance problems; issued four compliance advisories
- Worked to improve electronic transfer of data from state systems to EPA's system



# Compliance and Enforcement

## Water

### B. Reducing Non-Compliance with Drinking Water Standards at Community Water Systems

- 47 Safe Drinking Water Act orders were issued to public water systems in “vulnerable or overburdened communities”
- Performed offsite compliance monitoring of double the CWSs and led or accompanied primacy programs on onsite inspections





# Compliance and Enforcement

## Reducing Non-Compliance with Drinking Water Standards at Community Water Systems (Cont.)

- Provided web-based and field-based inspector trainings to support primacy programs
- Increased EPA's enforcement and compliance assurance capacity in the drinking water program; all 10 EPA regions now have credentialed SDWA inspectors or inspectors in training





# Compliance and Enforcement

## Reducing Non-Compliance with Drinking Water Standards at Community Water Systems (Cont.)

- Launched a Compliance Advisor program to provide on-the-ground technical assistance
  1. The Compliance program includes recommendations to improve system compliance, development of system operation protocols, resource evaluations, and operator training





# Compliance and Enforcement

## II. Questions?





# McGirt Update

## I. McGirt Recap

### A. McGirt's predecessor – Murphy (deadlocked 4-4)

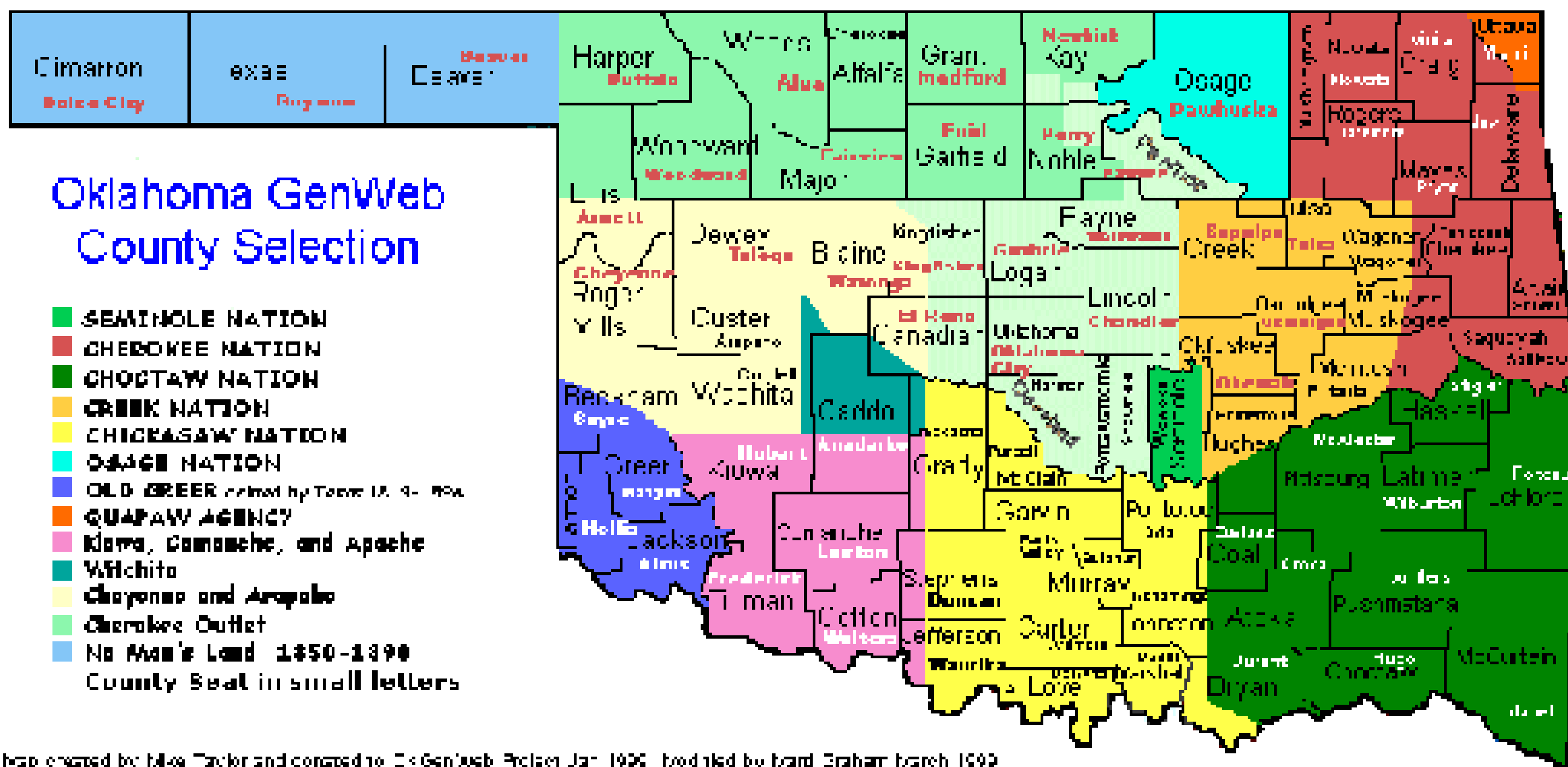
- Justice Breyer's comment during Murphy hearing

### B. Supreme Court held that McGirt matter should have proceeded in federal court pursuant to the Major Crimes Act (5-4 decision)

- Held that the Creek “reservation” was never disestablished
- Expansive application to five tribes – Creek, Cherokee, Choctaw, Seminole and Chickasaw
- Chief Justice Roberts' dissent









# McGirt Update

## II. Status of Law After McGirt

### A. Bosse v. Oklahoma (May 19, 2021)

- Bosse is not Native American, but his alleged crimes occurred within boundaries of the Chickasaw Nation
- Oklahoma Court of Criminal Appeals held that consistent with *McGirt*, Oklahoma did not have jurisdiction to prosecute him
- U.S. Supreme Court put Oklahoma's court ruling on hold until Oklahoma files its petition for review





# McGirt Update

## II. Status of Law After McGirt (Cont.)

### B. In re the Income Tax Protest of Alicia Stroble (April 12, 2022)

- To qualify for Exempt Tribal Income:
  1. An enrolled member of a tribe
  2. Income earned from sources within “Indian Country” under the jurisdiction of member’s tribe
  3. Live in “Indian Country” under the jurisdiction of member’s tribe





# McGirt Update

## II. Status of Law After McGirt (Cont.)

### B. In re the Income Tax Protest of Alicia Stroble (April 12, 2022)

- ALJ for the Oklahoma Tax Commission held Protestant's income earned from the Muscogee (Creek) Nation were Exempt Tribal Income because after *McGirt*, Protestant resided in Indian Country



# McGirt Update

## II. Status of Law After McGirt (Cont.)

### C. State of Oklahoma v. Victor Manuel Castro-Huerta

- Facts
  1. Defendant is a non-Indian. Abused five-year-old stepdaughter who was Indian
  2. Charged and convicted in state court and sentenced to 35 years imprisonment





# McGirt Update

## II. Status of Law After McGirt (Cont.)

### C. State of Oklahoma v. Victor Manuel Castro-Huerta (Cont.)

- On Appeal, the Oklahoma Court of Criminal Appeals expanded McGirt saying the federal government has exclusive (not concurrent) jurisdiction over a crime committed by a non-Indian against an Indian.
- Questions presented to the Supreme Court:
  1. Whether a State has authority to prosecute non-Indians who commit crimes against Indians in Indian Country
  2. Whether McGirt should be overruled



# McGirt Update

## II. Status of Law After McGirt (Cont.)

### C. State of Oklahoma v. Victor Manuel Castro-Huerta (Cont.)

- Oral argument before U.S. Supreme Court on April 27, 2022
- Two main issues the justices focused on
  1. Legal implications of recognizing state concurrent jurisdiction
  2. Immediate, practical repercussions of McGirt decision





# McGirt Update

## II. Status of Law After McGirt (Cont.)

### D. Practical Implications of McGirt and its Progeny

## III. Questions?



# GHG Supreme Court Case

## I. West Virginia v. EPA - Background

A. Oral argument held before Supreme Court February 28

B. Question before the Court

- Does the Clean Air Act grant EPA the power to govern CO2 emissions from existing power plants by using “outside-the-fenceline” measures





# GHG Supreme Court Case

## II. West Virginia v. EPA - Facts

- A. Obama Administration promulgates Clean Power Plan (CPP) in 2015
- B. CPP allows generation shifting/outside-the-fenceline measures
- C. Trump Administration repeals and replaces CPP with Affordable Clean Energy Rule (ACE)



# GHG Supreme Court Case

## II. West Virginia v. EPA – Facts (Cont.)

D. D.C. Circuit held EPA's reason for abandoning CPP was erroneous





# GHG Supreme Court Case

## II. West Virginia v. EPA – Main Arguments

### A. Did use of outside-the-fenceline measures violate the Major Questions Doctrine?

- Major Questions Doctrine requires Congress to clearly grant power when delegating authority to an agency to make “vast economic and politically significant decisions”



# GHG Supreme Court Case

## II. West Virginia v. EPA – Main Issues (Cont.)

### B. Is the case moot?

- EPA is not currently considering a rule that include outside-the-fenceline measures

## III. What is SCOTUS really aiming at here?

- *Chevron* doctrine
- Some on the court want to curb agency power

### ❖ Practical Implications





# GHG Supreme Court Case

## IV. Questions?





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- \*Subsequent information should not be understood as, or considered a substitute for, specific legal advice. For inquiries, please contact Donald K. Shandy, or another licensed attorney.
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