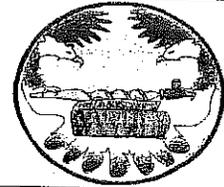


LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

Tribal Court



Court Mailing Address: 7500 Odawa Circle, Harbor Springs, MI 49740

Phone: 231-242-1462

TRIBAL COURT

Case No: C-200-0914

Timothy LaCroix, *et al.*

Petitioners,

vs.

Rick Snyder, Governor Michigan, *et al.*

Respondents.

ORDER OF DISMISSAL FOR LACK OF SUBJECT MATTER JURISDICTION

A. Factual Summary

On September 23, 2014, the Petitioners filed a Complaint seeking immediate injunctive relief against the named Respondents in this case. The Petitioners' Complaint alleged that the Respondents had authorized or were "poised to immediately issue," fresh water withdrawal permits for fracking activities that threatened to affect areas within the ceded waters of the 1836 Treaty of Washington¹, in violation of LTBB and State law, and the Intergovernmental Water Accord of 2004, which Petitioners maintain prohibit certain fracking activity. Petitioner's Complaint, pp. 2-3 (citing LTBB Protection of Great Lakes Code, LTBB Natural Resource Protection Code, Michigan Natural Resources and Environmental Protection Act, Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement, and the Intergovernmental Water Accord of 2004). Pursuant to LTBB Rules of Civil Procedure (LTBBRCP), R. IX, the Petitioners request an immediate injunction enjoining the Respondents from authorizing the complained-of fracking activity.

¹ Of note for a case regarding the legality of proposed fresh-water fracking, the 1836 Treaty of Washington reserves fishing rights within areas of the Great Lakes for the Odawa and Chippewa bands (and their successors in interest) that were signatories to the Treaty. See Treaty with the Ottawa, Mar. 28, 1836, 7 Stat. 491.

B. Discussion

As a threshold matter, the Court notes that it must possess both personal jurisdiction over the parties to a case and subject matter jurisdiction in order to rule on the merits of a case. *See* LTBBRCP, R. XVI. With respect to subject matter jurisdiction in particular, a decision issued by a court on the merits while lacking subject matter jurisdiction leaves the decision void *ab initio*. *Dillon v. Dillon*, 187 P 27 (Cal. App. 1919); *In Re Application of Wyatt*, 300 P. 132 (Cal. App. 1931). That is to say that, when a court is not granted the authority, either by statute or other means, to hear a dispute but does so anyway, the ruling is without effect and unenforceable. *Id.* On the other hand, decisions made by courts while lacking personal jurisdiction over a party are voidable upon the motion of the harmed party. *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80 (1988). Thus, a finding by the Court that it lacks subject matter jurisdiction to hear a case presents a fatal blow to a petitioning party's complaint, such that the Court need not determine whether it has personal jurisdiction over the parties before dismissing the case.

The LTBBRCP are silent on whether the Court may, on its own accord, dismiss a complaint for lack of subject matter jurisdiction. *See generally* LTBBRCP, available at <http://www.ltbodawa-nsn.gov/Tribal%20Court/civilrules%20%28addition%20of%204-21-11%29.pdf>. Accordingly, the Court turns to the Federal Rules of Civil Procedure (FRCP) for guidance on the matter; the Court is required to utilize the FRCP where the LTBBRCP are silent, though federal and state case law interpreting the FRCP are not binding on the Court and "should not be assumed to apply." *Id.* at R. I, Section 2(b)(c); *Northern Anesthesia Provides, Inc. v. Welles*, No. FC-233-0812 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Aug. 6, 2013).

The FRCP that addresses this issue is Rule 12(h)(3), which requires the Court to dismiss a complaint if it determines, "at any time," that it lacks subject matter jurisdiction to hear the complaint. FRCP, R. 12(h)(3) (emphasis added). Such decisions may be made by the Court *sua sponte*. *See, eg, Any Depina, et al. v. Richardson, et al.*, No. 11-11552 (D. Mass. 2013).

Turning to the Petitioners' Complaint, the Court notes that the Petitioners are barred by both LTBB and State law from maintaining a private cause of action against the Respondents to enforce the LTBB and State laws, treaty rights, and compacts cited in the Complaint. More specifically, by their plain and explicit language:

- (1) WOTC 4.604(B) authorizes only the Tribe, and not individual Tribal Citizens or Tribal corporations, to bring suit to enjoin parties from engaging in "drilling" or "diversion" activities with the potential to impact the waters ceded by the 1836 Treaty of Washington in violation of Tribal or Federal law;
- (2) WOTC 4.1110 authorizes only LTBB officers, and other tribal, state, or federal law enforcement agencies, as approved by Tribal Council, to bring suit to enforce the LTBB Natural Resource Protection Code (individuals and corporations are not

authorized to bring suit to enforce the provisions of the Code);

- (3) MCL 324.32713 authorizes only the Attorney General of Michigan, and not private parties, to enforce the Michigan Natural Resources and Environmental Protection Act;
- (4) Section 600(4) of the Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement of 2005 authorizes only parties to the Agreement to seek enforcement of the Agreement; and
- (5) The Intergovernmental Water Accord of 2004 is merely a pledge between the State of Michigan and the several federally-recognized tribes in Michigan to take certain actions and does not create a private right of action to enforce a failure to faithfully adhere to the pledge.

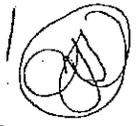
As is clear from a plain reading of the aforementioned texts, the Petitioners do not have, and therefore cannot maintain, a private right of action against the Respondents in this matter.² Because the above-mentioned texts are inapplicable to the Petitioners, they have offered no statutory or other legitimate basis to support a motion for immediate injunctive relief against the named Respondents. Accordingly, the Court must dismiss the Motion for a lack of subject matter jurisdiction.

C. Conclusion

In light of the above findings, the Court DISMISSES the Petitioners' Complaint.

IT IS SO ORDERED

10/2/2014
Date



Allie Greenleaf Maldonado, LTBB Chief Judge

² The Court additionally notes that the 1836 Treaty of Washington, as an agreement between the governments of the U.S. and the Odawa and Chippewa nations, does not grant the Petitioners in this case a private right of action under these circumstances. Indeed, with the exception of some grants made to individual members of the Odawa and Chippewa nations, which are not at issue here, the Treaty is an agreement between sovereigns, not private parties; for the purposes of this action, the Treaty places obligations on governments, which private parties may not enforce absent explicit language otherwise. *See* Treaty with the Ottawa, Mar. 28, 1836, 7 Stat. 491; *U.S. v. Michigan*, No. M26-73 C.A. (W.D. Mich. 1979) (nothing that the fishing rights “reserved by the [Odawa and Chippewa Indians] in 1836 . . . is the communal property of the tribes . . . it does not belong to individual tribal members”). The Court, thus, cannot create an implied private right of action for the Petitioners under the Treaty—and the Treaty does not create an explicit right of action—for an agreement made between sovereigns, though such a right of action undoubtedly exists with the successors in interest to the Odawa and Chippewa nations that were signatories to the Treaty.

CERTIFICATE OF MAILING

I certify that on this date copies of this *Order* were served to the parties by First-Class and/or Internal Mail.

October 2, 2014
Date

Tribal Court Officer