UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

Otter Tail Power Company, Minnkota Power Cooperative, Inc., ALLETE, Inc. d/b/a, Minnesota Power, Northern States Power Company, a Minnesota Corporation, and Great River Energy,

Plaintiffs,

v.

Civil Action No. 0:11-cv-01070 (DWF-LIB)

Leech Lake Band of Ojibwe, Its Reservation Business Council, and RBC Council Members Arthur "Archie" LaRose, Eugene "Ribs" Whitebird, Robbie Howe-Bebeau, and Steve White, in their official capacities as RBC Council Members,

Defendants.

PLAINTIFFS' REPLY MEMORANDUM OF LAW IN SUPPORT OF RULE 65 MOTION FOR TEMPORARAY RESTRAINING ORDER AND IMMEDIATE PRELIMINARY INJUNCTIVE RELIEF

I. Introduction

There is a presumption against tribal civil jurisdiction over non-Indians under *Montana v. United States*, 450 U.S. 544, 564-65 (1981)(tribes do not, as a general matter, possess authority over non-Indians who come within their borders) and the Tribe bears the burden of proving that Indian jurisdiction applies. Unless it satisfies the heavy burden of establishing an exception to the *Montana* prohibition, the Tribe has no authority to

regulate non-Indians and their use of non-Indian land located within its reservation's boundaries or a nonmember's activities on such land. *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 328 (2008); *Nevada v. Hicks*, 533 U.S. 353, 359-60 (2001)(the general rule of *Montana* applies to both Indian and non-Indian land, and "the absence of tribal ownership has been virtually conclusive of the absence of tribal civil jurisdiction."). Where, as here, the tribe fails to clearly satisfy its burden of proof to a federal court that a *Montana* exception applies, the tribal exhaustion doctrine does not apply. *Strate v. A1 Contractors*, 520 U.S. 438, 459-60, n.14 (1997); *Nevada v. Hicks*, 533 U.S. at 369. Entry of immediate injunctive relief by the federal court is therefore appropriate to bar the tribe from improperly seeking to assert jurisdiction that is outside its authority. *Northern States Power Co. v. Prairie Island Mdewakanton Sioux Indian Cmty.*, 991 F.2d 458, 463-64 (8th Cir. 1993); *accord Crowe & Dunlevy, P.C. v. Stidham*, File No. 09-5071 (10th Cir. May 27, 2011).

As demonstrated below, none of the four grounds asserted by the Tribe in its Memorandum of Law opposing the Utilities' Rule 65 Motion has merit under applicable law governing the outcome in this action, nor are any of these defenses sufficient under the four factor balancing test enunciated in *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981)(*en banc*) to deny the immediate injunctive relief requested by the Utilities.

II. Argument

A. The Tribe has Failed to Establish a *Montana* Exception Applies to the Utilities' Activities on and Use of Non-Indian Lands

The Tribe readily concedes, as it must, that *Montana* and its progeny govern whether the Tribe has any regulatory or adjudicatory jurisdiction over the Utilities and their transmission line construction activities (the "Project") on non-Indian land located within the historic boundaries of the Reservation.[1] *See* Defendants' Memorandum of Law at 3, 17, & 21. The dispute between the parties is centered solely on whether, when the

[1] Levi Brown's statements in paragraph 7 & 8 of his affidavit and related exhibits showing some tribal members individually may hold a fee simple interest in a limited number of parcels for the route of the transmission line have no legal significance concerning *Montana* and its progeny. *See* Supplemental Affidavit of Thomas Erik Bailey, Exhibits 1-5 (hereafter "Bailey Supplemental Aff."). While Mr. Brown takes exception to the use of the Supreme Court's term-of-art phrase "non-Indian fee land" to describe the land over which the Project will be routed, it is clear that he does not dispute the BIA's determination that the transmission line routing will not affect any tribal "trust land" (whether trust land of the Tribe's or an individual allottee's) over which the Tribe may exercise the power to exclude. Non-Indian land includes government-owned and private fee simple lands (whether owned individually by an Indian or non-Indian) or land akin to such lands over which the Tribe may not "assert a landowner's right to occupy and exclude." *See Strate*, 520 U.S. at 456; *Nevada v. Hicks*, 533 U.S. at 359-60 This is consistent with the Supreme Court's repeated pronouncements that "[o]ur cases have made clear that once tribal land is converted into fee simple, the tribe loses plenary jurisdiction over it." *See Plains Commerce Bank*, 554 U.S. at 328 (emphasis added); *Brendale v. Confederated Tribes and Bands of Yakima Indian Nation*, 492 U.S. 408 (1989)(as a general rule, "the tribe has no authority itself, by way of tribal ordinance or actions in tribal court, to regulate the use of fee land.")(emphasis added); *also Cass County v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103 (1998)(fee lands reacquired by a tribe within its reservation boundaries remain subject to state taxation like all other fee lands unless and until such lands are formally returned to trust status via the 25 CFR Part 151 process).

Project indisputably does not cross over or impact upon tribal or allottee trust lands, one of the *Montana* exceptions applies to extend the Tribe's "sharply circumscribed" jurisdiction to the Project.

The Tribe contends that it can assert tribal regulatory jurisdiction over the Utilities' activities on non-Indian lands because the first *Montana* exception applies. But the sole evidentiary basis the Tribe offers to meet its burden of demonstrating that the exception applies is that the "Utilities entered into a consensual relationship with the Tribe by executing a Settlement Agreement." Defendants' Memorandum of Law at 3; *see also* 7 ("The Utilities entered into a consensual relationship with the Tribe . . . by way of a Settlement Agreement . . ."). There is, however, a fatal flaw in this argument in that while claiming the Settlement Agreement establishes that a consensual relationship exists, at the same time the Tribe has repeatedly and forcefully maintained that the so-called Settlement Agreement does not exist and is void ab initio. In its motion to dismiss the present case, in its pleadings in tribal court, in its pleadings before the MPUC, and in correspondence with the Utilities, the Tribe has unequivocally and consistently stated that the Settlement Agreement is null and void. *See*, *e.g.*, Baer Aff. II, , Ex 1 at p. 1 ("The document you call a "settlement agreement" is merely ink on paper, not an agreement."); p. 3 ("Return to Sender – no agreement – come to the table."); Baer Aff. I, Ex. H at ¶¶66-69; Defendants' Memorandum in Support of Motion to Dismiss at p. 6; Bailey Supp. Aff. Ex. 1 (MPUC Transcript) pp. 11, l. 1-3 ("there's no dispute on the tribes standpoint, it

was never authorized.") and 19, l. 1-4 ("We brought an action against the utilities to have a declaratory judgment saying … the settlement agreement is null and void."). For purposes of these proceedings, the Utilities accept this assertion on its face and stipulate to the Tribe's claim that no final, valid, binding settlement agreement was ever reached between them.[2]

This leaves the Tribe in the untenable position of claiming that a "consensual relationship" based on a settlement agreement that the Tribe says (and the Utilities stipulate here) does not exist. Simply put, the Tribe cannot have it both ways, insisting on the one hand that there is no binding settlement agreement with the Utilities while claiming on the other that this very "nonexistent" settlement satisfies *Montana's* very "limited" consensual relationship exception.[3] *See Plains Commerce Bank*, 554 U.S. at

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[2] Until the Tribe claimed, many months after its tribal representatives signed the document, that the settlement agreement was improperly executed by the Tribe under tribal law and that no valid agreement existed, the Utilities assumed that they had a "nonconsensual" jurisdictional dispute settlement, the purpose of which was to avoid the very litigation they now finds themselves embroiled in. If no agreement exists, as claimed by the Tribe, then no consensual relationship could have arisen. As summed up by the Tribe in rejecting payment under the purported agreement, the document entitled settlement agreement is "just so much paper." *See* Baer Aff. II, Exh. 1 at 1; *also* 17 C.J.S Contracts §4 (2011)("a void contract is one which is of no force an effect, and no rights . . . vest under it"). The Utilities note, in addition, that the settlement agreement itself states that it does not create a consensual relationship, and therefore provides no support to the Tribe's claim that the non-existent agreement creates a consensual relationship. *See* Baer Aff. I, Ex C(1) at bate stamp #000053 at ¶ 7. Indeed relying on a "settlement agreement" of admittedly disputed claims to create a consensual relationship is tantamount to claiming that this litigation creates such a relationship.

[3] *See* Defendants' Memorandum of Law at 22 ("The 'Settlement Agreement'

333 (with only one minor exception, Supreme Court has never upheld under *Montana* the extension of tribal civil authority over nonmembers on non-Indian land); *Atkinson Trading Company v. Shirley*, 532 U.S. 645, 647 (2001)(exceptions are "limited" ones).

Likewise, the Tribe is in the same predicament when it comes to contending that it has satisfied the second *Montana* exception. Again, the sole evidentiary basis the Tribe offers to meet its burden of demonstrating that this exception applies is that, through the void settlement agreement, the Utilities "entered into a consensual relationship with the Tribe compromising treaty rights, which by their very nature have a direct effect on the political integrity, the economic security or health or welfare of the Tribe." Defendants' Memorandum of Law at 3-4, *see also* 17, 21, and 22. Nowhere, however, does the Tribe explain how it can satisfy the "elevated" second *Montana* exception when no settlement agreement exists and there have been, therefore, no "treaty rights bargained away and purchased."

Nor, in any event, can the Tribe demonstrate how the granting of easements for the Project on government-owned forest land and private fee land (whether owned by non-Indians or Indians) – which the record shows results, at most, in limited and deminimus "injury" to the Tribe's claimed treaty gathering rights – "imperils" the subsistence of the

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forms, in and of itself, an adequate and completely sufficient basis to meet the *Montana* test irrespective of any property rights that may be impaired.").

tribal community or can be fairly called "catastrophic consequences."[4]

And this gets to the real crux of the Tribe's issue with the Utilities' Project. The Tribe's real issue is with the current state of federal law applicable to this case. The Tribe is unhappy that state and federal permitting agencies all granted permits to allow the Project to be constructed on government-owned forest land and private fee lands within the Reservation. The Tribe is unhappy that the law does not grant it a tribal right to exclude the Utilities from these lands that the Tribe admits it does not own or control. Essentially, the Tribe would ask this Court to revert to 1855 and assume that all of the land of the Reservation was still controlled by the Tribe. The Tribe would have the Court ignore (i) the Nelson Act of 1889 and legislation creating the Chippewa National Forest[5]

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[4] In essence, the Tribe is claiming that the showing of even a de minimus impact on its gathering rights gives it the power to regulate any activities of any "public" or "private" fee landowner within the Reservation's historical boundaries, thus creating a new "exception" to *Montana's* general rule, and one that swallows the general rule whole. This dramatic expansion of Indian authority over non-Indians and over non-tribal land within the Reservation is at odds with established and controlling case law which requires that the "offending" encroachment must literally imperil the political existence of the tribal government, such as a coup, in order even to be considered for this exception. *See Atkinson Trading Co. v. Shirley*, 552 U.S. at 657, n. 12 ; *Attorney's Process and Investigation Servs, Inc. v. Sac & Fox Tribe of the Mississippi in Iowa*, 609 F.3d 927, 939, n. 6 (8th Cir. 2010).

[5] Using its "plenary and exclusive authority" over Indian affairs, Congress created the Chippewa National Forest on June 27, 1902 with passage of the Morris Act (32 Stat. 400) which declared two hundred thousand acres as government owned land for the Department of Agriculture to be known as "forestry lands." The Minnesota National Forest Act of May 23, 1908 (35 Stat. 268) "created in the State of Minnesota a national forest" describing in detailed metes and bounds the boundaries of that forest. The Minnesota National Forest was officially renamed the Chippewa National Forest on June

that permanently changed the character of the land status for the vast majority of acres within the Reservation, and (ii) the development of U.S. Supreme Court and other federal case law that precludes any tribal jurisdiction over non-Indian activities on and use of non-Indian land within the Reservation unless the Tribe can first meet the very "limited" *Montana* exceptions.

In essence, the real dispute here is between the Tribe and the federal government and private fee land owners,[6] not with the Utilities.[7] This is made all more evident by the Tribe's oft repeated complaint in numerous forums objecting to the federal agency action permitting the Utilities to proceed with the Project. *See* Defendants' Tribal Court

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18, 1928 by President Calvin Coolidge. Whether these lands were ever allotted is not relevant since it is clear that by congressional action the lands in questions were set aside under federal government control and ownership to be operated as a national forest.

[6] Nowhere does the Tribe ever allege that the Project's right-of-way easements from public and private landowners within the historic exterior boundaries of the Reservation were not validly obtained and executed. Neither has it alleged that the Tribe somehow retained landowner property rights over these government and fee lands. Rather, the nature of the alleged "injury" caused to the Tribe by the Project is the lack of tribal consent to cross the Reservation boundaries generally. This argument was specifically rejected in the much more compelling circumstances of a right-of-way that crossed over tribal lands on the Red Lake Reservation. *See Nord v. Kelly*, 530 F.3d 848 (8th Cir. 2008). In *Nord*, the Eighth Circuit held that unless an Indian tribe specifically retains "gatekeeping rights" in the right-of-way agreement, the right to exclude and regulate is extinguished, as is tribal court jurisdiction. *Accord Boxx v. Long Warrior*, 265 F.3d 771, 775 (9th Cir. 2001). In short, the tribal "right" and "injury" complained of by the Tribe simply do not exist as a matter of law.

[7] The Utilities have obtained all applicable state and federal permits/approvals in routing the transmission line. And all pre-construction work done to date has been undertaken with the specific approval of the land owners on whose lands the work has taken place. *See* Bailey Aff. at ¶¶ 4-5.

Complaint at ¶¶50 & 53 at Baer Aff. I bates stamp #000180-181; Bailey Aff. Exs. E-G; Baer Aff. I, Ex. E(d) at bates stamp #000092.

The Affidavit of Levi Brown submitted by the Tribe makes clear that the Tribe's real dispute here is not with the Utilities, but rather with the State and Federal agencies for having granted the Utilities permits and easements to build the transmission line on non-tribal trust and non-allottee trust land within the historic boundaries of the Reservation. *See* Brown Aff. ¶¶ 9 & 10. Mr. Brown states that the Tribe's Resource Management Staff acted as a cooperating agency but alludes that it was improper for the federal government to grant an easement to the Utilities. As noted in Bailey Aff., Ex. G, however, the Tribe sought to have the federal agencies withdraw their approvals and easements for the Project, but that effort was rejected. In pursuing claims against the Utilities instead of the federal government (the one party against whom the Tribe could properly assert a legal claim for any purported "treaty rights" injury), the Tribe appears to be trying to avoid established case law fatal to its position.[8]

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[8] For example, in *Navajo Nation v. U.S. Forest Service*, 535 F.3d 1058 (9th Cir. 2008), *cert. denied* 129 S. Ct. 2763 (2009), several tribes sued the U.S. government to revoke a special use permit that allegedly impacted treaty rights. *Id.* at 1063. Similar to some of the Tribe's assertions here, the tribes in *Navajo Nation* claimed that the agency failed to discharge its consultation duties and granted a permit for infrastructure construction that would interfere with treaty rights. The court rejected this claim, finding that the relevant federal statutes and rules had been followed and, in any case, the activity did not substantially burden the Indian activity alleged to have been circumscribed by the construction project. *Id.* at 1080.

In a fact pattern closely analogous to the present case, a federal district court also rejected a claim against a utility for allegedly violating inherent treaty rights. In *Nez*

Because the Tribe cannot meet its burden to establish that a *Montana* exception applies for its claimed regulatory jurisdiction over the Project, the tribal court has no adjudicatory jurisdiction either. *Nevada v. Hicks*, 533 U.S. at 367 n.8 (if a *Montana* analysis determines regulatory jurisdiction does not exist, adjudicatory jurisdiction also does not exist). Accordingly, the tribal exhaustion doctrine does not apply either. *Id.* at 369 (tribal court exhaustion is unnecessary where tribe's jurisdiction is clearly precluded); *Strate*, 520 U.S. at 459-60 n. 14 (when it is "plain" that tribal court jurisdiction is lacking, the "prudential" exhaustion requirement "would serve no purpose other than delay" and therefore does not apply).[9]

Perce Tribe v. Idaho Power Co., 847 F. Supp. 791 (D. Idaho 1994), the Federal Energy Regulatory Commission ("FERC") granted permits to allow a utility to build a dam that impacted a river that ran through the reservation. *Id.* at 794. Members of the tribe negotiated with FERC and consulted on impacts from the proposed project but did not sign the settlement agreement. The tribe attempted to assert that it essentially had veto rights. That claim was rejected. *Id.* at 779. In further dismissing the tribe's claim for damages to its treaty rights allegedly arising from the dam, the district court found that the tribe's treaty rights did not allow it to stop all development that might impact their treaty. *See also Snoqualime Indian Tribe v. Fed. Elec. Regulatory Comm'n*, 545 F.3d 1207, 1216-17 (9th Cir. 2008)(rejecting tribal claim that FERC hydro license should be revoked for failure to adequately consult tribe).

[9] *See also Crowe & Dunlevy, P.C. v. Stidham*, File No. 09-5071 (10th Cir. May 27, 2011)(exhaustion of tribal remedies not required where neither *Montana* exception applied to give tribal court jurisdiction over nonmember attorney in connection with order to reimburse attorney's fees paid even though attorney had practiced before tribal court and was member of tribal bar association). These cases best represent the current state of federal law as to the proper application of the "broader" *Strate* exception to the tribal exhaustion doctrine, rather than the one case cited by the Tribe in support of its contention that exhaustion is "mandatory," *Duncan Energy Co. v. Three Affiliated Tribes*, 27 F.3d 1294 (8th Cir. 1994). *Duncan Energy* was decided several years before the

B. The Tribe's Claims of Unclean Hands and Judicial Estoppel are Meritless

There is no merit to the Tribe's claims of unclean hands and judicial estoppel. Each of these claims piggybacks on the Tribe's own inaccurate and inconsistent claim that the Utilities have "admitted in previous filings . . . that they must obtain permission and compensate the Tribe for impacts to their treaty rights caused as a result of the construction of" the transmission line, or that the "Utilities have taken the position that some permit or permissions must be obtained from" the Tribe. *See* Defendants' Memorandum of Law at 2 and 5.

In fact, the Utilities have made no such admission or taken any such position, as conceded in the Tribe's papers. Rather the Utilities have consistently declared that because the route of the Project "avoids crossing on or over tribal trust land, no easement or other right-of-way approval by the [Tribe] is required for the Project under federal or tribal laws and regulations, and none have been requested." *See* Baer Aff. II., Ex. 3 at p. 10. Moreover, the Tribe itself acknowledges as an "undisputed fact" that the "Utilities have consistently taken the position that because the project avoids crossing on or over tribal trust land, no easement or other right-of-way approval from the Tribe is required." *See* Defendants' Memorandum of Law at 8. This is consistent with the Minnesota Energy Permitting Staff's comment to the Minnesota Public Utilities Commission ("MPUC") that the Utilities have repeatedly contended "no permission is required from the [Tribe] if

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Supreme Court declared the *Strate* exception to the exhaustion doctrine.

the Project avoids tribal trust or fee land." *See* Baer Aff. II, Ex. 2 at p. 5.

Likewise, the Tribe's claim that the Utilities "have been long aware" that a tribal permit was necessary for the Project because the Route Permit identifies it as being "required" is simply not supported by any facts.[10] This claim is based on the Tribe continuing to misstate what the Route Permit actually says, even after being corrected by MPUC staff at the MPUC's June 2, 2011 hearing on the Tribe's petition that the Project's Route Permit be revoked.[11] As noted previously by the Utilities, by its own terms the Route Permit does not require any specific tribal permit as there is none that is required or applicable.[12]

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[10] The Route Permit only requires the Utilities to comply with all "applicable" federal, tribal and state rules and statutes, and to obtain only those local, state, tribal and federal permits that are "required." *See* Baer Aff. I, Ex. F at ¶ 4.8.2 on p. 13. Since under *Montana* and its progeny the Tribe has no regulatory jurisdiction over the Utilities' activities on non-Indian fee lands in connection with the routing and construction of the transmission line, there are no "applicable" tribal regulations or "required" tribal permits for the Project.

[11] *See* Bailey Supplemental Aff., Ex. 6 at p. 48, l. 14-18; Baer Aff. I, Ex. C(2) at bates stamp #000061.

[12] The Tribe's assertion that its tribal "Utility Service and Rights-of-Way Ordinance" grants it some permitting/regulatory authority over the Project is directly contradicted by Montana and its progeny and also by the ordinance's own terms. First, Section 1.01(1)(b)(v) of the ordinance specifically notes that by the terms of the February 22, 1855 Chippewa Treaty, the Tribe agreed to "respect and observe the laws of the United States, so far as the same to them are applicable." This means that the "legal authority" for the ordinance is premised on the Montana standard of limited tribal powers over non-members activities on fee land within the Reservation and the Montana general rule applies to restrict the regulatory reach of the ordinance. Second, the Chapter 8 right-of-way property rights provisions in the ordinance are merely a recitation and implementation of requirements and procedures under the 25 CFR Part 169 regulations

In sum, there is no basis for applying either the unclean hands or judicial estoppel doctrines when the Utilities have consistently relied upon established federal law to not seek any permission from the Tribe to locate the Project within the historic exterior boundaries of the Reservation because the Project avoids crossing on or over tribal trust land. There is nothing "unconscionable" or "inequitable" about requesting that federal and state agencies and courts apply the controlling law that limits tribal civil jurisdiction over public and private non-Indian lands within reservation borders.

C. The *Dataphase* Factors Weigh Heavily in Favor of Granting the Injunctive Relief the Utilities Request

As demonstrated above, none of the four grounds asserted by the Tribe is sufficient under the *Dataphase* balancing test to deny the injunctive relief requested by the Utilities. The Tribe's inability to present any credible evidence to meet its burden of establishing that one of the *Montana* exceptions applies to extend its jurisdiction to the Project makes it substantially likely that the Utilities will succeed on the merits, and this factor overwhelmingly weighs in favor of the Utilities. Moreover, the irreparable harm to

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for grants of right-of-ways "over and across any tribal lands." See generally 25 CFR §169.3(emphasis added). Compare Section 8.02(1)("Unless an easement or right-of-way document is signed by the Tribe and approved by the [BIA]") language with 25 CFR §169.3(b)("no right-of-way shall be granted . . . without the prior written consent of the [tribal landowner] and the approval of the [BIA]") language. See also Section 8.03(1) language referring to "as a condition of the consent procedure required by federal [i.e. 25 CFR Part 169] or Tribal law" (emphasis added) and Section 1.01(1)(e) finding that "[u]tilities have installed or placed on tribal and individually owned trust lands without federal approval and in violation of Article 8 of the Treaty" (emphasis added). Here, the BIA has issued its written opinion that the Project does not impact any "tribal lands";

be suffered by the Utilities is not "self-inflicted," as the Tribe claims, but directly caused by the Tribe's violation of federal law in continuing to assert jurisdiction that it does not have. The mere existence of the Tribe's overreaching lawsuit in tribal court and the time and expense it would require to defend that claim is sufficient to satisfy the irreparable harm requirement. *See Crowe & Dunlevy, P.C. v. Stidham*, File No. 09-5071 (10th Cir. May 27, 2011). And the Tribe makes no effort to rebut the Utilities' arguments that delay in the Project caused by the Tribe's unlawful assertion of jurisdiction causes irreparable harm to utility customers who need the Project installed for continued reliable electric service in and around the Project area. *See Northern States Power Co.*, 991 F.2d at 463-64 (irreparable harm found due to delays in timely shipments of parts necessary for plant operation).

Likewise, the balance of harms strongly favors the Utilities since (1) the Tribe will not be harmed by complying with controlling law; (2) the record shows that any alleged "loss" of treaty gathering rights is nominal at best and has already been compensated for through mitigation measures required by the permits and easements for the Project: and (3) the Tribe will still have available to it the option to assert its treaty rights claim against the proper parties, i.e. the federal government and other public and private fee land owners who have granted easements to the Utilities for the Project. Last, the public interest is best served by precluding the Tribe, consistent with *Montana* and its progeny,

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accordingly, the Part 169 right-of-way procedures are not required.

from improperly seeking to interfere with the timely construction of the Project, which is vital to the Utilities' provision of adequate and reliable electric service to customers in the Bemidji-Cass Lake area.

III. Conclusion

Based upon the foregoing, the Utilities request that the Court grant in its entirety their Rule 65 motion for immediate injunctive relief ordering the Tribe to cease and desist from asserting prescriptive and permitting jurisdiction over the Project in any forum, including the MPUC, and to discontinue with any Tribal Court action asserting any prescriptive or permitting authority over the Project or otherwise interfering with the routing and construction of the transmission line.

Dated: June 8, 2011

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