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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ST. ISIDORE FARM LLC, an Idaho limited)	Case No.
liability company; and GOBERS, LLC, a)	
Washington limited liability company,)	
)	
Plaintiffs,	)	VERIFIED COMPLAINT FOR
	)	DECLARATORY JUDGMENT AND
vs.	)	INJUNCTIVE RELIEF
)	
COEUR D'ALENE TRIBE OF INDIANS, a	)	MOTION FOR TEMPORARY
federally-recognized Indian tribe, JOHN DOES	)	RESTRAINING ORDER AND
1-10, each of which are Members of the Coeur	)	PRELIMINARY INJUNCTION, AND
D'Alene Tribe of Indians	)	OTHER RELIEF
)	
Defendants.)	

COME NOW Plaintiffs, St. Isidore Farm LLC and Gobers, LLC, by and through their attorneys of record Ausey H. Robnett, Gregg R. Smith, *pro hac vice* pending, and Jerry K. Boyd, of the law firm of Paine Hamblen LLP, who allege as follows:

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF,
MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION,
AND OTHER RELIEF**

I. CASE OR CONTROVERSY AND PARTIES

1. This action for Declaratory Relief presents an actual case or controversy between the parties named herein. Golden v. Zwickler, 394 U.S. 103 (1969) and 28 U.S.C § 2201. Plaintiffs herein were named as defendants in an action filed in Coeur d'Alene Tribal Court, pursuant to Case No. CV-SC-2013-0112, wherein it is alleged that said non-Indian business entity plaintiffs who were carrying out business activities on fee lands violated Coeur d'Alene Tribal Code Chapter 57. A copy of said Complaint and the Answer, timely filed by the herein captioned plaintiffs is attached hereto as Exhibit 1. A copy of Coeur D'Alene Tribal Code Chapter 57 is attached as Exhibit 2.

2. Plaintiff St. Isidore Farm LLC, is an Idaho limited liability company in which all fees and assessments have been paid. All business activities of Plaintiff are carried out on fee lands owned by said Plaintiff. Plaintiff is not a domestic or foreign business chartered pursuant to the Coeur d'Alene Tribal Code. Plaintiff is furthermore, not a domestic or foreign business entity chartered under any code of laws enacted by any tribe of Indians.

3. Plaintiff Gobers, LLC, is a Washington limited liability company and an Idaho foreign business entity with its primary place of business within the State of Washington. Plaintiff is not a domestic or foreign business chartered pursuant to the Coeur d'Alene Tribal Code. Plaintiff is furthermore, not a domestic or foreign business entity chartered under any code of laws enacted by any tribe of Indians.

4. Defendant Coeur d'Alene Tribe of Indians is a federally-recognized Indian tribe.

5. Defendants John Does 1-10, are Members of the Coeur d'Alene Tribe of Indians or agents thereof who individually or collectively are cloaked under the color of law to carry out or

enforce any provisions of Coeur d'Alene Tribal Code Chapter 57 and or any other Chapter thereof.

The term *John Does* is used in this context as a gender neutral reference to those Coeur D'Alene Tribal Members or agents thereof who are acting pursuant to or under the auspices of the Coeur D'Alene Tribe of Indians and or the Coeur d'Alene Tribal Code.

II. JURISDICTION OVER PARTIES

6. As this case concerns the civil jurisdiction of a federally-recognized Indian Tribe over a non-Indian business entity, Plaintiff St. Isidore, Farm, LLC, conducting its business operations on land owned in fee within a reservation boundary, this Court has jurisdiction pursuant to 28 U.S.C. § 1331 and Montana v. United States, 450 U.S. 544 (1981). Further, federal question jurisdiction is authorized as the non-Indian plaintiffs seek declaratory relief against defendant Indian Tribe pursuant to 28 U.S.C. § 2201.

7. The lawsuit pending in Coeur d'Alene Tribal Court asserts civil jurisdiction of a federally-recognized Indian Tribe over a non-Indian business entity, Plaintiff Gobers, LLC, who has entered into a written contractual relationship with non-Indian Plaintiff business entity, St. Isidore Farm LLC, pursuant to Montana v. United States, 450 U.S. 544 (1981). Further, federal question jurisdiction is authorized as the non-Indian Plaintiffs seek declaratory relief against defendant Indian Tribe pursuant to 28 U.S.C. § 2201.

8. The case filed in Coeur d'Alene Tribal Court also concerns the criminal jurisdiction of a federally-recognized Indian Tribe over a non-Indian business entity, St. Isidore Farm LLC, which carries out its business activities on non-Tribal fee lands. Coeur d'Alene Tribal Code Chapter 57-11.01(b) provides that subsequent to the issuance of "a written notice by the Coeur d'Alene Tribe **shall** be a misdemeanor, punishable by imprisonment for a period of up to one

year and fine of up to \$5,000." (Emphasis added.) It is alleged by the Defendants that a written notice was issued during October of 2012, and a subsequent written e-mail and letter notice was issued on April 1, 2013. A copy of the written letter and e-mail notice are attached as Exhibit 3. The Coeur d'Alene Tribe lacks criminal jurisdiction over the activities of non-tribal persons acting on fee lands within the boundaries of a Tribal reservation. Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978).

9. The case filed in Coeur d'Alene Tribal Court also concerns the criminal jurisdiction of a federally-recognized Indian Tribe over a non-Indian business entity, Gobers, LLC, which carries out its business activities on fee lands. Plaintiff non-Indian Gobers, LLC delivers septage to Plaintiff non-Indian St. Isidore Farm LLC fee lands pursuant to the terms and conditions of said written contract.

10. Coeur d'Alene Tribal Code Chapter 57-11.01(b) provides that subsequent to the issuance of "a written notice by the Coeur d'Alene Tribe **shall** be a misdemeanor, punishable by imprisonment for a period of up to one year and fine of up to \$5,000." (Emphasis added.) It is alleged by the Defendants that a written notice was issued during October of 2012 and a subsequent written notice was issued on April 1, 2013. The Coeur D'Alene Tribe lacks criminal jurisdiction over the activities of non-tribal persons acting on fee lands within the boundaries of a Tribal reservation. Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978).

11. To enforce and implement the civil and criminal sanctions contained within Chapter 57, the Code further states that a lien **shall** be placed upon the real property wherein the alleged violations took place. Ex. 2 at 57-12.01 et seq. Said lien constitutes an unlawful restraint on

alienation and an unlawful taking pursuant to the Fifth Amendment of the United States Constitution.

12. Further, as this case concerns a deprivation of property rights under color of Tribal law, jurisdiction is proper pursuant to the Fifth Amendment of the United States Constitution and also 28 U.S.C. § 1343.

III. FACTUAL BACKGROUND

REGULATION OF TREATED HUMAN WASTE (SEPTAGE)

13. The United States, through the Environmental Protection Agency (“EPA”), regulates the discharge of pollutants into water under the Clean Water Act. See 33 U.S.C. § 1311.

14. Compliance with the Clean Water Act is achieved through the National Pollutant Discharge Elimination System (“NPDES”). 33 U.S.C. § 1342.

15. NPDES permits are issued by the EPA, or by a state agency in those jurisdictions in which the EPA has authorized a state to administer the NPDES program. 33 U.S.C. § 1342.

16. In the State of Idaho, NPDES permits are administered by the EPA, rather than a state agency. See Idaho Code 39-175C.

17. For land application of domestic sewage sludge (septage) to non-public contact sites from which there is no discharge into waterways, NPDES permits are not required. However, the land application must still comply with the federal regulations governing land application of septage. 40 CFR 503.10 *et seq.*

18. The State of Idaho, through the Idaho Department of Environmental Quality (“DEQ”), regulates and issues permits for the application of septage to land as a fertilizer, pursuant to Idaho’s EPA-approved septage management program. 40 CFR 501.11 *et seq.*; 40 C.F.R. 503.10 *et seq.*; IDAPA 58.01.16.650.

19. The Idaho Department of Environmental Quality ("DEQ") reviewed and approved the St. Isidore Farm LLC owned fee property site for the proposed injection of septage by means of a written letter dated May 4, 2012. A copy of said letter is attached as Exhibit 4.

20. The DEQ reviewed and approved the St. Isidore Farm LLC Phase 1 injection of septage into the non-Indian fee lands by means of a written letter dated September 27, 2012. A copy of said letter is attached as Exhibit 5.

21. The DEQ reviewed and approved the St. Isidore Farm LLC Operations Manual for the injection of septage into the non-Indian fee lands owned and operated by non-Indian business entity, St. Isidore Farm LLC, by means of a written letter dated April 22, 2013 and another letter dated April 23, 2013. Said letters are attached as a part of Exhibit 6.

ST. ISIDORE FARM LLC

22. St. Isidore Farm LLC is an Idaho limited liability company (at times, "Farm") located in Benewah County, Idaho, approximately 1.5 miles north of the town of Plummer, Idaho. St. Isidore Farm LLC is not a chartered business entity pursuant to Coeur d'Alene Tribal Code Chapter 50 (Business Corporations); Chapter 53 (Limited Liability Companies), nor has St. Isidore Farm LLC neither registered to do business with the Coeur d'Alene Tribe of Indians (Chapter 40) nor otherwise consented to the jurisdiction of the Coeur d'Alene Tribe of Indians.

23. St. Isidore Farm LLC is in the agricultural business of growing specific crops raised for cattle feed and to carry out that lawful business the Farm is involved in, including but not limited to the purchase of, pursuant to a written contract, septage which is injected into the soils as a fertilizer.

24. St. Isidore Farm LLC owns non-Tribal fee lands comprised of 271 acres. The legal description of the fee land is set forth as an exhibit to the Coeur d'Alene Tribal Court Answer attached hereto as Exhibit 1.

25. The fee land owned by St. Isidore Farm LLC is zoned Agricultural by Benewah County. The northern portion of said fee land is a forested site used periodically for logging. The northern forested portion of said fee land is up-gradient from those portions of the land that is utilized for the growing of crops and into which the septage is injected.

26. There are no residences on the property north of St. Isidore Farm LLC. South of the Farm is a grass/hay pasture. There are no residences on the property south of the Farm. East of the Farm is a property currently in agricultural production for blue grass. The western boarder of the Farm is Highway 95. There is a residence on this property, located approximately 500 feet from and across the highway from the Farm.

27. On information and belief, and to the best presently available information, fee land owned by St. Isidore Farm LLC is not bordered by the Defendant Coeur d'Alene Tribe, except on the northern forested boundary, which is up-gradient from the portions of said fee property where the septage is being injected into the soils.

28. There are no bodies of surface water near St. Isidore Farm LLC, nor are there any rivers or year-round streams. The depth from the surface to any static groundwater ranges from 24 to 126 feet, depending upon the location on the Farm.

29. On or before April 3, 2012, St. Isidore Farm LLC submitted to the DEQ its application for the injection of domestic septage into the soil for the purposes of agricultural fertilizer, entitled St. Isidore Farm, Septage Reclamation Facility.

30. On or before July 17, 2012, the Farm submitted to the DEQ its construction plans and specifications to build its facility in three separate phases.

31. On September 27, 2012, the DEQ approved St. Isidore Farm LLC's three phased construction plans and specifications.

32. On or about October 2, 2012, the Coeur d'Alene Tribe alleges in its Complaint, filed in Coeur D'Alene Tribal Court that it provided a written notice objecting to St. Isidore Farm LLC's operations.

33. On April 10, 2013, the DEQ inspected the Farm's septage transfer and storage facilities and land application site.

34. On April 12, 2013, Rob Tate, P.E., of Tate Engineering, submitted record drawings and an Operations and Maintenance Manual (O&M) to Idaho DEQ for phase 1 of the Farm's three phase septage land application facility.

35. On April 22, 2013, the DEQ approved the record drawings submitted by Rob Tate, P.E., of Tate Engineering, for Phase 1 of the Farm's septage land application facility.

36. Phase 1 includes the following:

Division of the designated 112 acres into seven (7) zones for the purpose of injecting prescribed volumes of treated domestic septage several inches below the surface of the land as a fertilizer for wheat, triticale, or hay grass.

Use of two (2) 11,000 gallon underground steel tanks designed to receive and temporarily store screened domestic septage. Leakage tests on these tanks have confirmed that no leakage is occurring.

Use of a 29,000 gallon emergency tank in the event of an overflow.

Use of carbon filters on the storage tanks to scrub odors from the passive venting system.

Use of a 500 gallon tank to collect runoff from the Farm's asphalt receiving pad while the facility is operating.

37. On April 23, 2013, the DEQ approved St. Isidore Farm LLC's Operations and Maintenance Manual for its domestic septage application operations at the Farm. This manual includes the daily operational procedures at the Farm and includes information regarding emergency and clean up procedures.

38. On April 24, 2013, the DEQ approved St. Isidore Farm LLC's septage land application to start applying septage in 2013 based upon the Farm's facility agricultural specialist, Phil Lampert, and the observations of the DEQ staff during their inspection on April 10, 2013. DEQ approval is valid until December 31, 2017.

39. On or about May 4, 2013, the Coeur d'Alene Tribal Police ("Tribal Police") entered on to the St. Isidore Farm LLC property and threatened to impose the Farm with a \$5,000 fine each day if it continued its operations.

40. On or about May 15, 2013, the Tribal Police entered the St. Isidore Farm LLC property and demanded that the Farm's employees stop applying the septage to the property. If the Farm's employees refused to stop, the Tribal Police threatened to arrest said St. Isidore Farm LLC employees. The Farm's employees stopped working and called their supervisor, Mr. Johnson, a Manager and Member of St. Isidore Farm LLC, who called the Benewah County Sheriff's Department and spoke with Sheriff Dave Resser. Based upon Mr. Johnson's conversation with Sheriff Resser, Mr. Johnson instructed the employees of St. Isidore Farm LLC to return to work.

41. On or about May 20-31, 2013, the Farm's employees observed the Tribal Police walking around the perimeters of the St. Isidore Farm LLC property, which is protected by a locked gate.

42. On May 15, 2013, the Tribal Police entered the St. Isidore Farm LLC property and questioned one of the Farm's employees who, was driving a tanker truck. The Tribal Officer asked for the employee's name, and took note of the tanker truck's license plate number.

GOBERS, LLC

43. Gobers, LLC ("Gobers") is a Washington limited liability company with its principal place of business in Spokane, Washington, and is registered to do business as a foreign limited liability company in Idaho. Gobers, LLC is not a business entity chartered under the Coeur d'Alene Tribal Code, Chapter 53 (Limited Liability Companies) or Chapter 50 (Business Corporations). Gobers, LLC has not registered to do business with the Coeur d'Alene Tribe of Indians under Coeur d'Alene Tribal Code Chapter 40 nor has it otherwise consented to the jurisdiction of the Coeur d'Alene Tribe of Indians.

44. Gobers, LLC is in the business of pumping residential and commercial septic tanks.

45. Gobers, LLC owns no real property or conducts any business operations within the Coeur d'Alene Tribe of Indian's reservation boundaries.

46. The only connection Gobers, LLC has with the Coeur d'Alene Tribe of Indians is the use of public highways (Highway 95) and other right-of-ways through the reservation boundaries as part of its business operations to transport septage to and from facilities in which it does business.

47. Gobers, LLC entered into a Septage Receiving Contract (the "Contract") with St. Isidore Farm LLC for the sale and purchase of residential septage.

48. Under the Contract, Gobers, LLC transports, delivers and sells to St. Isidore Farm LLC residential septage during the Farm's operating hours.

49. St. Isidore, Farm, LLC receives the septage from Gobers, LLC during operating hours, and in turn compensates Gobers, LLC three cents per gallon of septage on a monthly basis.

50. Upon delivery of the septage and subsequent removal of any solids contained therein, Gobers' responsibility under the written contract ceases.

THE COEUR D'ALENE TRIBE OF INDIANS

51. The Coeur d'Alene Tribe of Indians is a federally-recognized Indian Tribe established by Executive Order in 1873.

52. As stated above, NPDES permits are issued by the EPA, or by a state agency in those jurisdictions in which the EPA has authorized a state to administer the NPDES program. 33 U.S.C. § 1342.

53. In the State of Idaho, NPDES permits are administered by the EPA, rather than a state agency. See Idaho Code 39-175C.

54. For land application of domestic septage to non-public contact sites from which there is no discharge into waterways, NPDES permits are not required. However, the land application must still comply with the federal regulations governing land application of septage. 40 CFR 503.10 et seq.

55. On March 6, 2013, the Coeur d'Alene tribe adopted an ordinance entitled the Tribal Waste Management Act, Coeur d'Alene Tribal Code Chapter 57. *See generally* 57-1.01 ~ 57-15.01.

IV. CAUSES OF ACTION

LACK OF CRIMINAL JURISDICTION

56. CTC 57-11.01(b) provides, by its own terms, that it is a criminal ordinance, the violation of which is subject to imprisonment for a period of up to one year and a criminal fine of \$5,000.00 per day in which an alleged violation takes place.

57. Neither St. Isidore Farm LLC nor Gobers, LLC are Indian business entities. All business activities that are the subject of the lawsuit filed in Coeur d'Alene Tribal Court were carried out on non-Indian or non-Tribal fee lands owned by St. Isidore Farm LLC.

58. Consequently, the Coeur d'Alene Tribe lacks the jurisdiction to enforce CTC 57-11.01 as against Plaintiffs pursuant to Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978).

59. The invocation of criminal jurisdiction over non-Indian business entities operating entirely on non-Indian fee lands interferes with and serves to deprive the State of Idaho of its ability to regulate and control non-Indian persons and business entities residing within the state boundaries.

LACK OF CIVIL JURISDICTION

60. The Coeur d'Alene Tribe lacks personal and subject matter jurisdiction over non-Indians on non-Tribal fee land. Montana v. United States, 450 U.S. 544 (1981).

61. The fact that Gobers, LLC is a Washington domestic business entity and St. Isidore Farm LLC is an Idaho domestic business entity does not deprive said business entities of their status as a "person" who is a citizen of the state in which it is chartered.

62. A business entity is defined as a "person" under the laws of the United States. *See generally*, Clapper v. Amnesty Int., ___ U.S. ___, 133 S. Ct. 1138 (2013) (citing n. 1, 50 U.S.C.

§ 1801(i)), *see also* U.S. v. Bornes, ___ U.S. ___, 133 S. Ct. 12 (2012) (citing 15 U.S.C. § 1681); Citizens United v. Federal Election Commission, 558 U.S. 310 (2010).

63. A non-Indian business entity operating within the boundaries of an Indian Reservation on non-Tribal fee lands is a "person". Plains Commerce Bank v. Long Family Land and Cattle Co., 554 U.S. 316, 324-325 (2008).

64. The lack of jurisdiction to zone or regulate the use of non-Indian fee land within reservation applies to the Coeur d'Alene Tribe and its attempt to regulate the business activities of the Plaintiffs. Brendale v. Confederated Yakima Indian Nation, 492 U.S. 408 (1989).

65. The lack of jurisdiction to govern the conduct of non-Indian business entity Gobers, LLC, who admittedly engages in driving on State of Idaho Highway 95, within reservation boundaries, applies to the Coeur D'Alene Tribe. Strate v. A-1 Contractors, 520 U.S. 438 (1997).

66. The allegation made by the Coeur D'Alene Tribe at allegation XIII that it was *wrongful conduct* for Gobers, LLC to collect septage from the State of Washington and transport it to Idaho is an infringement on the United States Constitution Commerce Clause. The interstate transport of a lawful commodity by a properly licensed business entity is protected under the Commerce Clause.

67. The injection of septage into non-Indian fee lands by a non-Indian business entity carried out in a manner consistent with the written authority granted by the DEQ and 40 C.F.R. § 503, does not give rise to any recognized exceptions to the general rule articulated in U.S. v. Montana relating to civil personal and subject matter jurisdiction and/or Oliphant v. Suquamish Indian Tribe, in the criminal context. "To invoke the second Montana exception, the impact must be 'demonstrably serious and must imperil the political integrity, the economic security, or the health and welfare of the Tribe.'" Wilson v. Marchington, 127 F.3d 805, 815 (9th Cir. 1997)

(quoting Brendale v. Confederated Tribes & Bands of the Yakima Indians, 492 U.S. 408, 431, (1989)).

68. The presence of an alternate adjudicatory system for the resolution of civil lawsuits involving non-tribal members arising out of accidents on non-tribal land does not affect the political integrity, the economic security, or the health or welfare of the Tribe within the meaning of the second Montana exception. Strate v. A-1 Contractors, 520 U.S. 438, 459 (1997).

[U]nless the drain of the nonmember's conduct upon tribal services and resources is so severe that it actually 'imperil[s]' the political integrity of the Indian tribe, there can be no assertion of civil authority....

Atkinson Trading Co. v. Shirley, 532 U.S. 645, 657 n. 12 (2001).

If the tribe were to have jurisdiction over every matter related to the health and welfare of the tribe, without more, **the exception would "severely shrink the rule."** Strate, at 458. (Emphasis added).

DECLARATORY RELIEF

Based on the foregoing, the herein captioned Plaintiffs pray for the following declaratory, injunctive and other relief:

1) That this Court enter an Order declaring that the exclusive jurisdiction over the controversy articulated in the Coeur d'Alene Tribal Court Complaint lies within the United States District Court for the District of Idaho;

2) That this Court enter an Order declaring that non-Indian business entities, Gobers, LLC and St. Isidore Farm LLC are *persons* subject to the protections and rights of other non-Indian civil litigants acting on non-Tribal fee lands pursuant to Montana v. United States, 450 U.S. 544 (1981).

3) That this Court enter an Order declaring that non-Indian business entities , Gobers, LLC and St. Isidore Farm LLC are *persons* subject to the protections and rights of other non-Indian criminal litigants acting on non-Tribal fee lands pursuant to Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978).

4) That non-Indian business entities Gobers, LLC and St. Isidore Farm LLC, who applied for and received written approval from the State of Idaho Department of Environmental Quality, for the injection of septage within the lands owned in fee by St. Isidore Farm LLC, are subject to the laws of the State of Idaho.

5) That the imposition of a monetary sanction of \$5,000 per day pursuant to CTC Chapter 57, and alleged within the Coeur d'Alene Tribal Court Complaint is an unlawful taking and in violation of the United States Constitution Fifth Amendment.

6) That the imposition of a monetary sanction of \$5,000 per day pursuant to CTC Chapter 57, and alleged within the Coeur d'Alene Tribal Court Complaint subsequent to a written notice, is a criminal sanction imposed on non-Indian business entities operating on fee lands.

7) That the imposition of a lien on the non-Tribal fee lands owned by St. Isidore Farm LLC is an unlawful taking in violation of the United States Constitution Fifth Amendment.

8) That the injection of septage pursuant to the authority granted by the State of Idaho Department of Environmental Quality does not cause any risk to the health and welfare of the Coeur d'Alene Tribe, or its political or economic well being.

9) That this Court enter an Order declaring that the State of Idaho Department of Environmental Quality has the exclusive jurisdiction over the St. Isidore Farm LLC injection of septage into the soil of the non-Tribal fee land which it owns.

10) That this Court enter a Stay of Proceedings prohibiting the Coeur d'Alene Tribe and the Coeur d'Alene Tribal Court from proceeding further with its lawsuit against the herein captioned Plaintiffs.

11) That this Court enter an Order declaring that Defendants John Doe 1-10, while cloaked in the color of law, willfully and intentionally violated the civil rights of the herein captioned Plaintiffs.

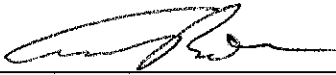
12) That the herein captioned Plaintiffs be granted all other and just legal, equitable and declaratory relief they are entitled to receive.

13) That the herein captioned Plaintiffs be granted their reasonable attorneys fees and costs associated with this action.

-
This Verified Complaint is RESPECTFULLY SUBMITTED this 21st day of June, 2013.

PAINE HAMBLÉN LLP

By: _____


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VERIFICATION

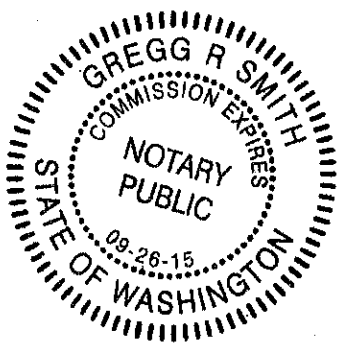
I, Mr. Caleb Wirth, the Manager and Member of St. Isidore Farm, LLC have read the Complaint and the below stated Motion for Temporary Restraining Order and Preliminary Injunction and do hereby agree with those facts and conclusions set forth herein.

DATED this 21st day of June, 2013.

By: *Caleb Wirth*
Caleb Wirth
Manager and Member of St. Isidore, LLC

On this 21st day of June, 2013, before me, the undersigned Notary Public, personally appeared Caleb Wirth, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

(SEAL)

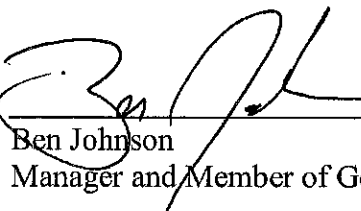


Gregg R. Smith
Gregg R. Smith
Notary Public for the State of Washington
Residing at: Spokane, Washington
Commission expires: 9/26/2015

VERIFICATION

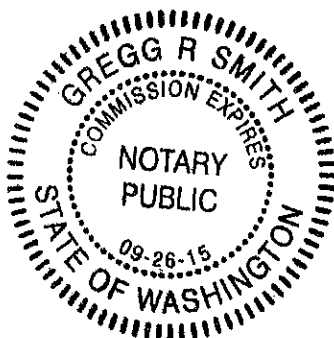
I, Mr. Ben Johnson a Manager and Member of Gobers, LLC have read the Complaint and the below stated Motion for Temporary Restraining Order and Preliminary Injunction and do hereby agree with those facts and conclusions set forth herein.

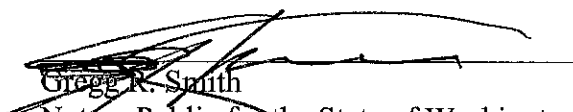
DATED this 21st day of June, 2013.

By 
Ben Johnson
Manager and Member of Gobers, LLC

On this 20th day of June, 2013, before me, the undersigned Notary Public, personally appeared Ben Johnson, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

(SEAL)




Gregg R. Smith
Notary Public for the State of Washington
Residing at: Spokane, Washington
Commission expires: 9/15/2015

**MOTION SEEKING AN ORDER ISSUING A
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

The herein captioned Plaintiffs, non-Indian business entities Gobers, LLC, and St. Isidore Farm LLC, move this Court for the issuance of a Temporary Restraining Order to restrain the Coeur d'Alene Tribe from imposing a daily fine of \$5,000 and imposing a lien upon the real properties owned in fee by Plaintiff non-Indian business entity St. Isidore Farm LLC. It is further moved that this Court enjoin the Coeur d'Alene Tribal Court from proceeding with the prosecution of its lawsuit against the herein captioned Plaintiffs. It is further moved that Defendants John Does 1-10 be restrained and prohibited from in any manner carrying out the imposition of a daily fine, or the imposition of a lien on the herein described non-Tribal fee lands. It is finally moved that this Court enjoin and restrain the Coeur d'Alene Tribal Court from proceeding further with the lawsuit filed under Case No. CV-SC-2013-0112, and which a copy of the Complaint and Answer are attached hereto as Ex. 1.

IMMEDIATE AND IRREPARABLE HARM

The imposition of a daily fine of \$5,000 per day along with a lien on the title to said fee land owned by non-Indian business entity St. Isidore Farm LLC has caused immediate and irreparable harm that can only be redressed by the imposition of a Temporary Restraining Order and Preliminary Injunction. Absent the award of a Temporary Restraining Order and a Preliminary Injunction, the Plaintiffs will be deprived of their valuable real and personal property interests as a result of the ongoing daily fine of \$5,000 as well as the lien on the title to said real property.

The award of a Temporary Restraining Order and a Preliminary Injunction is the only means by which the Plaintiffs will be protected from the imposition of a criminal sanction as

stated within CTC Chapter 57. The conditions for a criminal sanction, which an inspection of CTC Chapter 57-11.01(b) verifies, are mandatory once a written notice of alleged violations have occurred:

Continued violations of the provisions of this Waste Management Act **subsequent to written notice** by the Coeur d'Alene Tribe **shall be a misdemeanor, punishable by imprisonment** for a period of up to one year and fine of up to \$5,000. (Emphasis added). *Id.*

In the present case, a written Notice was provided on or about October 2, 2012, as set forth within said Coeur d'Alene Tribal Court Complaint at section XV. As alleged in the Complaint for Declaratory Relief, herein, at Paragraph 8, and attached as Ex. 4, on April 1, 2013, a further written notice was issued by Coeur d'Alene Tribal attorney Tyrell Stevenson demanding that St. Isidore Farm LLC cease its purchases of septage from Gobers, LLC. Therefore, the herein captioned Plaintiffs are in jeopardy of the imposition of criminal sanctions if a Temporary Restraining Order and Preliminary Injunction are not issued by this Court.

The lien issued pursuant to CTC Chapter 57-12.01 et seq. imposes a restraint on alienation of the real property interests owned by non-Indian Plaintiff St. Isidore Farm LLC. The language of Chapter 57-12.01 et seq. states in mandatory terms that said lien shall attach to the title to the real property in an amount equal to the fines and other allowed expenses that arose from violations of Chapter 57.

The basis for this TEMPORARY RESTRAINING ORDER is that Coeur d'Alene Tribal Code (CTC) Chapter 57, which is alleged to be the basis for that Complaint filed in Coeur d'Alene Tribal Court against the herein captioned Plaintiffs, does not confer civil personal or subject matter jurisdiction over said non-Indian business entities operating on fee lands. Furthermore, CTC Chapter 57 does not confer criminal liability over non-Indian business entities

operating on fee lands. A further basis for this Motion is the Coeur d'Alene Tribal Court Complaint and the Answer filed by the herein captioned Plaintiffs. Ex. 1.

Plaintiffs, non-Indian business entities Gobers, LLC and St. Isidore Farm LLC, are engaged in lawful business endeavors, pursuant to the laws of the State of Idaho and the authority granted by Idaho Department of Environmental Quality, as it relates to those fee lands owned by non-Indian business entity St. Isidore Farm LLC. The herein captioned Plaintiffs have complied with any and all requirements imposed by the State of Idaho Department of Environmental Quality as a condition precedent to receiving operational authority.

BILLS OF ATTAINDER AND *EX POST FACTO* LAWS ARE A VIOLATION OF THE INALIENABLE CONSTITUTIONAL RIGHTS OF ST. ISIDORE FARM LLC AND GOBERS, LLC.

Chapter 57 of the Coeur d'Alene Tribal Code is a prohibited bill of attainder or *ex post facto* law enacted in violation of the Indian Civil Rights Act, 25 U.S.C. § 1302(a)(9). A bill of attainder is a law that may affect the life of an individual or may result in the confiscation of property. 10 U.S. at 137, *infra*. "An *ex post facto* law is one which renders an act punishable in a manner in which it was not punishable when it was committed." Fletcher v. Peck 10 U.S. 87, 138, (1810). CTC Chapter 57 was enacted on March 6, 2013. The first written notice, admonishing the herein captioned Plaintiffs from proceeding with the injection of septage into the fee lands owned by St. Isidore Farm LLC, occurred in October 2012, with a subsequent written demand issued on April 1, 2013. Simply, at the time in which Plaintiff St. Isidore Farm LLC purchased said real property on May 9, 2012 through March 6, 2013, there was no restraint on the usage of septage.

Chapter 57 of the Coeur d'Alene Tribal Code is a bill of attainder and also an *ex post facto* law which abridges the inalienable Constitutional rights of herein captioned Plaintiffs,

Gobers, LLC and St. Isidore Farm LLC, both non-Indian business entities. Said Chapter 57 of the Coeur d'Alene Tribal Code furthermore imposes a mandated restraint on alienation of those fee lands owned by St. Isidore Farm LLC, as a result of a placement of a lien on the title to said fee lands. Said fee lands are subject to the adjudication and regulation by the state of Idaho as said lands are not Tribal Lands.

Said Chapter 57 is a penal statute that has both criminal and civil sanctions, as well as the imposition of the herein described lien on the fee lands owned by St. Isidore Farm LLC. It is a further abridgment of both the inalienable rights of non-Indian St. Isidore Farm LLC, as well as the contract rights of non-Indian Gobers, LLC, to not suffer those immediate and irreparable damages as a result of said bill of attainder and/or *ex post factos* legislation that has been imposed upon non-Indian business entities Gobers, LLC and St. Isidore Farm LLC, Defendants in that Complaint attached hereto as Exhibit 1.

TEMPORARY RESTRAINING ORDER BOND

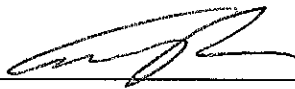
It is further moved that this Court impose a TEMPORARY RESTRAINING ORDER bond in an amount not greater than \$500 inasmuch as the Coeur d'Alene Tribe has failed to articulate within its Complaint any actual damages or any plausible threat of damages that it may incur as a result of those lawful acts being carried out by the herein captioned Plaintiffs (Defendants in the Tribal Complaint).

Finally, this Motion for TEMPORARY RESTRAINING ORDER is supported by the Memorandum of Authorities in Support of Motion for Temporary Restraining Order and Preliminary Injunction, the Verified Complaint for Declaratory Relief, the Complaint filed within the Coeur d'Alene Tribal Court, the Answer filed in response to said Complaint, copy of

Chapter 57 of the Coeur d'Alene Tribal Code, and all related documents filed, or which will be filed, by the time and date of the hearing.

RESPECTFULLY SUBMITTED this 21st day of June 2013.

PAINE HAMBLÉN LLP

By: 
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EXHIBIT 1

EVERETT B. COULTER, JR.
EVANS, CRAVEN & LACKIE, P.S.
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Spokane, WA 99201-0910
(509) 455-5200; (509) 455-3632

Attorneys for Plaintiff

FILED
Date: 6/3/13
Time: 1:51 PM
Coeur d'Alene
Tribal Court
Court Clerk
V. S.

IN THE TRIBAL COURT OF THE COEUR D' ALENE TRIBE
OF THE COEUR D' ALENE INDIAN RESERVATION

COEUR D'ALENE TRIBE, a federally
recognized Indian Tribe,

Plaintiff,

vs.

GOBERS, LLC, a Washington limited
liability corporation; and ST ISIDORE
FARM, LLC, an Idaho limited liability
company,

Defendants.

Case No. CV-36-2013-0112

COMPLAINT

COMES NOW the Plaintiff, The Coeur d'Alene Tribe, a native sovereign entity,
by and through its attorneys, Everett B. Coulter, Jr., of Evans, Craven & Lackie, P.S., and
herewith allege the following:

PARTIES

I.

Plaintiff is the Coeur d'Alene Tribe, a federally recognized Indian Tribe and a
sovereign government with a reservation located in Kootenai and Benewah Counties
within the state of Idaho.

II.

Gobers, LLC, is believed to be a Washington limited liability corporation doing
business within the confines of the Coeur d'Alene Tribal Reservation in Benewah
County, Idaho.

COMPLAINT

Page 1

III.

St. Isidore Farm, LLC, is an Idaho limited corporation that owns real property in Benewah County, Idaho, described as:

Lots 1 & 2 and portion of Lot 3 lying east of Highway 95 all in Section six
(6) Township 46 North, Range 4 West under Parcel ID No.
RP46N04W061200A

JURISDICTION & VENUE

IV.

Defendants' actions are conducted on private fee land within the Coeur d'Alene Tribe's reservation.

V.

St. Isidore Farm, LLC, as the fee owner of real property previously described in paragraph III, located in Benewah County, Idaho, and within the confines of the Coeur d'Alene Tribal Reservation, accepts human waste, sludge, and solid waste as defined by Coeur d'Alene Tribal Code ("CTC") 57-4.01.

VI.

Gobers, LLC, is in the business of collecting human waste from septic tanks, honey buckets, and other human waste for disposal and delivers such human waste, septic tank collections, honey bucket collections, sludge, and solid waste to St. Isidore Farm's real property for land application.

VII.

The application of human waste, septic tank collections, honey bucket collections, sludge, and solid waste by way of land application within the Coeur d'Alene Tribal Reservation constitutes conduct that is a threat to the health and welfare of the Coeur d'Alene Tribe and its members as well a threat to the political integrity and economic security of the Coeur d'Alene Tribe and its members.

VIII.

The United States Department of Environmental Protection and the State of Idaho Department of Environmental Quality both consider disposal of human waste, sludge, and solid waste as a threat to the health and welfare of residents in the state of Idaho.

IX.

The Coeur d'Alene Tribe, pursuant to applicable federal Indian law, has the legal right to regulate Defendants' conduct on non-Indian fee land, and such regulation includes the right of adjudication.

X.

The Coeur d'Alene Tribe, through the duly elected Coeur d'Alene Tribal Council, passed the Coeur d'Alene Tribal Waste Management Act under Chapter 57 of the Coeur d'Alene Tribal Code.

XI.

The Coeur d'Alene Tribal Waste Management Act provides for jurisdiction over the Defendants' conduct in the Coeur d'Alene Tribal Court, which includes money damages as well as injunctive relief.

XII.

The Coeur d'Alene Tribe and the Coeur d'Alene Tribal Court have jurisdiction over the Defendants for the allegations contained herein.

WRONGFUL CONDUCT

XIII.

Defendant Gobers, LLC, hauls human waste, septic tank pumpings, honey bucket collections as well as sludge and solid waste from the state of Washington to a parcel of real property located within the confines of the Coeur d'Alene Indian Reservation and delivers said substances for application upon the real property owned by St. Isidore Farms. Such conduct is in violation of CTC 57-9.01(G) and CTC 57-10.01(G).

XIV.

St. Isidore Farms, as the owner of real property, accepts the transported human waste, septic tank materials, honey bucket pumpings, sludge, and solid waste, and takes said substances for land application, injection, and burial in violation of CTC 57-9.01(G).

XV.

The Coeur d'Alene Tribe provided notice and objection to Ben Johnson and Gobers on or about October 2, 2012. Defendants ignored the Plaintiff's objection.

XVI.

Coeur d'Alene Tribal Code 57-8.01 provides for approval by the Coeur d'Alene Tribe for the conduct Defendants are undertaking and none of the Defendants have obtained or requested approval.

SOVEREIGN IMMUNITY

XVII.

Nothing contained within this Complaint constitutes a waiver or diminishment of the inherent sovereign immunity of the Coeur d'Alene Tribe as specifically provided by CTC 56-15.01.

RELIEF SOUGHT

XVIII.

The Coeur d'Alene Tribe seeks monetary damages as provided by CTC 57-11.01(A).

XIX.

The Coeur d'Alene Tribe seeks injunctive relief against all Defendants as provided by CTC 57-11.01(C).

WHEREFORE, Plaintiff prays for the following relief:


- 1) For monetary damages in the amount of \$5,000 per violation per day as provided by CTC 57-11.01(A);
- 2) For injunctive relief in joining all Defendants from applying human waste to the real property as identified in paragraph III and being within the confines of the Coeur d'Alene Tribal Reservation;

3) For Plaintiff's costs and reasonable attorney's fees for bringing this action;
and

4) For such other and further relief as the Court may deem just and equitable.

DATED this 24th day of May, 2013.

EVANS, CRAVEN & LACKIE, P.S.

By 
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Attorneys for Defendants

IN THE TRIBAL COURT OF THE COEUR D'ALENE TRIBE
OF THE COEUR D'ALENE INDIAN RESERVATION

COEUR D'ALENE TRIBE, a federally)	
recognized Indian Tribe,	)	Case No. CV-SC-2013-0112
)	
Plaintiff,	)	DEFENDANTS' ANSWER TO
	)	COMPLAINT
vs.)	
)	
GOBERS, LLC, a Washington limited liability)	
corporation; and ST, ISIDORE FARM LLC, an)	
Idaho limited liability company,)	
)	
Defendants,)	
)	

COME NOW the Defendant non-Indian Gobers, LLC, and the Defendant non-Indian St. Isidore Farm, LLC, by and through their attorneys of record, who answer as follows:

PARTIES

I.

Admit.

II.

Admit to the extent that Gobers, LLC is a Washington limited liability company. By way of further explanation, affirmative defense and denial, Defendant Gobers is a non-Indian business entity over which the Plaintiff lacks personal jurisdiction and subject matter

jurisdiction. The remainder of this allegation is specifically denied as non-Indian Defendant Gobers, LLC, is not doing business within the confines of the Coeur d'Alene Tribal Reservation.

III.

Admit only to the extent that St. Isidore Farm, LLC, is a non-Indian Idaho limited liability company that owns non-Tribal real property located in Benewah County, State of Idaho. A complete legal description of said non-Tribal fee land is attached hereto as Exhibit 1. By way of further explanation, affirmative defense, and denial, Defendant St. Isidore Farm, LLC is a non-Indian business entity operating on fee land over which the Plaintiff has no personal or subject matter jurisdiction. Deny to the extent that Defendant non-Indian Gobers, LLC does not own any land located in Benewah County, State of Idaho.

JURISDICTION AND VENUE

IV.

Admit only to extent that non-Indian business entity St. Isidore Farm, LLC conducts business on non-Tribal fee land. By way of further explanation and affirmative defense, Defendant Gobers, LLC, is a non-Indian business entity that carries out its business with St. Isidore Farm, LLC by means of a written contract.

V.

Admit only to the extent that Defendant non-Indian St. Isidore Farm, LLC is the owner of real property described in Allegation No. III. Defendant non-Indian St. Isidore Farm, LLC further admits that it accepts, pursuant to the terms and conditions of a written contract, liquid septage for usage as subterranean injection into the real property owned by said defendant, St. Isidore Farm, LLC. By way of further explanation, affirmative defense, and denial, said septage is purchased pursuant to a written contract and applied by means of subterranean injection into said real property as approved by the State of Idaho, Department of Environmental

Quality, pursuant to Application No. 12217. Defendant non-Indian St. Isidore Farm, LLC has no basis upon which to admit or deny whether the septage that it receives, as specifically defined by Coeur d'Alene Tribal Code (CTC) 57-4.01, is within said definition, and therefore said allegation is denied. By way of further affirmative defense and denial, said CTC 57-4.01 does not confer jurisdiction of the Coeur d'Alene Tribal Court over the non-Indian Defendants and the fee land owned by St. Isidore Farm, LLC. By way of further denial and affirmative defense, the laws of the State of Idaho Department of Environmental Quality govern the application of septage onto those non-Tribal fee lands that are the subject of this dispute.

VI.

Admit only to the extent that Defendant non-Indian Gobers, LLC is in the business of collecting septage which is delivered pursuant to the terms and conditions of a written contract to Defendant non-Indian St. Isidore Farm, LLC. Defendant non-Indian Gobers, LLC, furthermore admits that pursuant to a written contract, a certain amount of said septage is delivered to Defendant non-Indian St. Isidore Farm, LLC, for subterranean injection into those fee lands owned by Defendant non-Indian St. Isidore Farm, LLC pursuant to authority granted by the State of Idaho Department of Environmental Quality. Defendant non-Indian Gobers, LLC, specifically denies any and all other allegations.

VII.

Deny. By way of further denial and affirmative defense, the Application of Septage on fee land by and through a non-Indian business entity does not create or constitute a threat to the health and welfare of the Coeur d'Alene Tribe and its members, or a threat to the political integrity and economic security of the Coeur d'Alene Tribe and its members. By way of further affirmative defense and denial, Plaintiff has not and will not in the future suffer any actual

damage to its health and welfare of the Coeur d'Alene Tribe and its members, as well as its political integrity and economic security.

VIII.

Deny. By way of further denial and affirmative defense, the State of Idaho has approved of the subterranean injection of septage within the soils owned by Defendant non-Indian St. Isidore Farm, LLC.

IX.

Deny. By way of further denial and affirmative defense to the extent that the Coeur d'Alene Tribal Code is civil in nature, there is no basis upon which to regulate the conduct of a non-Indian business entity operating on fee land. To the extent that the Coeur d'Alene Tribal Code applies to those allegations complained of herein are criminal in nature, the Coeur d'Alene Tribal Court lacks jurisdiction over non-Indian Defendants Gobers, LLC and St. Isidore Farm, LLC, as those actions giving rise to this Complaint were carried out by non-Indians on non-Tribal fee land owned by St. Isidore Farm, LLC.

X.

No basis upon which to admit or deny whether the Coeur d'Alene Tribe, through its duly elected Tribal Council, passed the Coeur d'Alene Tribal Waste Management Act pursuant to Chapter 57 of the Coeur d'Alene Tribal Code ("CTC"), therefore said allegation is denied in its entirety. By way of further denial and affirmative defense, CTC Chapter 57 amounts to a Bill of Attainder with the specific and proximate effect of denying Defendants herein of their legal and constitutional rights. A Bill of Attainder is in violation of the United States Constitution, Article I. Said Coeur d'Alene Tribal Code Chapter 57 was enacted after Defendant non-Indian St. Isidore Farm, LLC was granted authority by the State of Idaho, Department of Environmental Quality, the legal right to accept septage for subterranean injection into lands which it owns. By

way of further denial and affirmative defense, Defendant non-Indian Gobers, LLC does not apply septage into lands within the State of Idaho.

XI.

Deny. By way of further denial and affirmative defense, the Coeur d'Alene Tribal Court lacks both subject matter and personal jurisdiction, over Defendants St. Isidore Farm, LLC and Defendant Gobers, LLC, both of which are non-Indian business entities. Defendants deny any remaining allegations concerning CTC Chapter 57.

XII.

Deny. By way of further denial and affirmative defense, the Coeur d'Alene Tribal Court lacks personal and subject matter jurisdiction over Defendant non-Indian Gobers, LLC. By way of this response, Defendant non-Indian Gobers, LLC, does not consent to personal jurisdiction within the Coeur d'Alene Tribal Court. By way of additional affirmative defense and denial, the Coeur D'Alene Tribal Court lacks personal and subject matter jurisdiction over Defendant non-Indian Gobers, LLC, as its sole relationship to this dispute is a written contractual relationship that it maintains with non-Indian Defendant, St. Isidore Farm, LLC. With regard to Defendant non-Indian St. Isidore Farm, LLC, the Coeur d'Alene Tribal Court lacks personal and subject matter jurisdiction as all complained of acts occurred on fee land over which it was operating its business pursuant to the laws of the State of Idaho and pursuant to the authority granted by the State of Idaho, Department of Environmental Quality. Defendant non-Indian St. Isidore Farm, LLC, by this response, specifically does not consent to personal or subject matter jurisdiction within the Coeur d'Alene Tribal Court. By way of additional affirmative defense, any allegation of civil liability is wholly lacking as Defendant, St. Isidore Farm, LLC, is a non-Indian carrying out its business affairs on fee land. Any allegations of criminal liability being asserted by

Plaintiffs are also lacking in personal and subject matter jurisdiction as the complained of acts are being carried out by a non-Indian business entity on fee land.

XIII.

Deny. By way of further denial and affirmative defense, non-Indian business entity, Gobers, LLC, lawfully and pursuant to a written contract with Defendant non-Indian St. Isidore Farm, LLC, delivered liquid septage to the specified St. Isidore Farm, LLC owned fee property. The transportation of septage by Defendant non-Indian Gobers, LLC, from Washington to Idaho is a lawful act protected by the United States Constitution, Commerce Clause, as well as the laws of the State of Washington and the State of Idaho. It is specifically denied that CTC Chapter 57 governs the delivery of septage by Defendant non-Indian Gobers, LLC. On the basis of further denial and affirmative defense, CTC Chapter 57 is a Bill of Attainder in deprivation of the contract and other civil rights possessed by Defendant non-Indian Gobers, LLC.

XIV.

Deny. Other than to admit that Defendant non-Indian St. Isidore Farm, LLC is the owner in fee of the real property which is the subject of this dispute. By way of further denial and explanation, Defendant non-Indian St. Isidore Farm, LLC, has entered into a written contract with Defendant non-Indian Gobers, LLC, for the receipt and delivery of liquid septage. By way of further affirmative defense and denial, said CTC Chapter 57 is an *expo facto* law or Bill of Attainder that is in violation of the Indian Civil Rights Act, 25 U.S.C. § 1302(a)(9), and as an inalienable right under the United States Constitution.

XV.

Deny. Notice that was given on or about October 2, 2012, and/or any other subsequent notices that may have been given by Plaintiff does not allow the instant lawsuit to come within the civil and criminal provisions of Chapter 57 of the Coeur d'Alene Tribal Code. By way of

further affirmative defense and denial, the Tribal Court lacks civil or criminal jurisdiction over the activities of a non-Indian business entity whose activities are carried out solely on fee land. To the extent and in the event that this instant cause of action is defined as a civil dispute, CTC Chapter 57 does not confer Tribal Court jurisdiction over non-tribal member business entities carrying out activities on fee land, and therefore this allegation is denied.

XVI.

Deny. The verbiage contained within CTC Chapter 57 speaks for itself. The Coeur D'Alene Tribe and its agencies lack jurisdiction over the herein captioned Defendants. By way of further denial and affirmative defense, CTC Chapter 57 does not apply to non-Indian defendants carrying out activities on fee lands owned by non-Indian Defendant, St. Isidore Farm, LLC.

SOVEREIGN IMMUNITY

XVII.

No basis upon which to admit or deny, therefore deny.

RELIEF SOUGHT

XVIII.

Admit. By way of further affirmative defense and denial, CTC Chapter 57 in its entirety, is a Bill of Attainder and in violation of the Indian Civil Rights Act and the United States Constitution. All acts complained of herein are carried out by non-Indian business entities operating directly, or by way of a written contract, on fee land owned by Defendant non-Indian St. Isidore Farm, LLC. Finally, and in furtherance of its affirmative defense and denial, St. Isidore Farm, LLC, is carrying out all business activities in accord with the laws of the State of Idaho and pursuant to the authority granted by the State of Idaho, Department of

Environmental Quality which permits the subterranean application of septage into the herein-described real property owned by non-Indian Defendant, St. Isidore Farm, LLC.

XIX.

Admit. By way of further affirmative defense and denial, CTC Chapter 57 in its entirety, is a Bill of Attainder and in violation of the United States Constitution. All acts complained of herein are carried out by non-Indian business entities operating on fee land owned by non-Indian St. Isidore Farm, LLC. Finally, and in furtherance of its affirmative defense and denial, St. Isidore Farm, LLC, is carrying out all business activities in accord with the laws of the State of Idaho and the authority granted by the State of Idaho, Department of Environmental Quality which permits the subterranean application of septage into the herein-described real property owned by non-Indian Defendant, St. Isidore Farm, LLC.

RELIEF REQUESTED BY DEFENDANTS

WHEREFORE, based on the following admissions, denials, and affirmative defenses as articulated herein, Defendants pray for the following relief:

- (1) That Plaintiff be denied any monetary damages;
- (2) That Plaintiff be denied any injunctive relief;
- (3) That Plaintiff be denied any claim for attorney's fees and costs;
- (4) That Plaintiff be denied any and all other further relief.

DEFENDANTS' AFFIRMATIVE DEFENSES

I.

Defendants hereby restate as if fully set forth herein, all prior denials, and previously articulated affirmative defenses, and further explanations of said denials, and affirmative defenses.

II.

Plaintiff failed to name the State of Idaho as a necessary party and therefore this lawsuit must be dismissed.

III.

Coeur d'Alene Tribal Court lacks personal jurisdiction over Defendant non-Indian Gobers, LLC, as its relationship to any alleged acts set forth herein is pursuant to a written contract with Defendant non-Indian St. Isidore Farm, LLC.

IV.

Coeur d'Alene Tribal Court lacks subject matter jurisdiction over non-Indian defendant business entity, Gobers, LLC, as its relationship to any acts alleged herein are pursuant to a written contract between itself and Defendant St. Isidore Farm, LLC.

V.

Coeur d'Alene Tribal Court lacks civil jurisdiction over non-Indian business entity defendants who are conducting business on fee lands.

VI.

Coeur d'Alene Tribal Court lacks criminal jurisdiction over non-Indian defendants carrying out said alleged criminal acts on fee lands owned by Defendant, St. Isidore Farm, LLC.

VII.

CTC Chapter 57 is an *expo facto* law and/or a Bill of Attainder in violation of the Indian Civil Rights Act, 25 U.S.C. § 1302(a)(9), that deprives non-Indian business entity Defendants of their lawful civil rights to conduct business on fee land. CTC Chapter 57 does not apply to Defendants or their activities on non-Tribal fee lands.

VIII.

Non-Indian business entities, Gobers, LLC and St. Isidore Farm, LLC, are entitled to the same protections as living persons residing or carrying out their business affairs on fee lands located within the boundaries of the Coeur D'Alene Reservation.

IX.

The herein-captioned lawsuit violates the United States Constitution Commerce Clause as it complains of septage being delivered by non-Indian business entity, Gobers, LLC, from the State of Washington to Defendant non-Indian business entity, St. Isidore Farm, LLC, located within the State of Idaho and within the boundaries of the Coeur d'Alene Indian Reservation.

X.

CTC Chapter 57, as it may apply to non-Indian Defendants doing business on fee lands lawfully and pursuant to all required applications and permits as may be granted by the State of Idaho, Department of Environmental Quality, infringes upon the sovereignty of the State of Idaho.

XI.

The State of Idaho Department of Environmental Quality has sole authority to grant approval of applications submitted by persons and business entities within the State of Idaho, and to carry out and enforce the applicable laws and regulations governing the subterranean application of septage into those fee lands owned by non-Indian Defendant St. Isidore Farm, LLC. The State of Idaho Department of Environmental Quality is the sole governmental agency that has the authority to regulate the acts of non-Indian business entity St. Isidore Farm, LLC.

XII.

Septage placed within the ground by Defendant non-Indian St. Isidore Farm, LLC does not give rise to a threat to the health and welfare of the Coeur d'Alene Tribe and its members as well as a threat to the political integrity and economic security of the Coeur d'Alene Tribe and its members.

XIII.

The language contained within CTC 57.9.01(g) specifically excludes municipalities that are depositing septage into land which further causes CTC Chapter 57 to be a Bill of Attainder which was drafted and adopted by the Tribal Council in deprivation of Defendants' legal and civil rights.

XIV.

CTC Chapter 57, and specifically Subchapter 57.9.01, amounts to an unlawful taking, therefore a violation of the Fifth Amendment to the U.S. Constitution.

XV.

The Coeur d'Alene Tribal Council, in enacting CTC Chapter 57, acted knowingly that Defendants were non-Indian Tribal business entities and that the real property owned by St. Isidore Farm, LLC, was fee land.

XVI.

The Coeur d'Alene Tribal Council acted in bad faith and malice by enacting CTC 57 and were knowledgeable of the fact that no actual harm has come to any members of the Coeur d'Alene Tribe as a result of the subterranean application of liquid septage by Defendant non-Indian St. Isidore Farm, LLC.

XVII.

The imposition of a lien upon the fee land owned by non-Tribal business entity Defendant, St. Isidore Farm, LLC, constitutes a taking pursuant to the United States Constitution Fifth Amendment. Said imposition of a lien, as set forth in Subsection A, mandates said lien by usage of the word "shall."

XVIII.

Coeur d'Alene Tribe has suffered no actual damages as a result of any acts carried out by the non-Indian business entity Defendants herein.

XIX

Said Complaint filed against the herein captioned defendants failed to comply with Coeur D'Alene Tribal Code Chapter 4, Civil Procedures, which requires that a Complaint be witnessed by a "duly qualified Judge of the Tribal Court or the Court Clerk" and should therefore be dismissed. CTC 4-3.01.

PRAAYER FOR RELIEF

Based on the foregoing, it is prayed that this Court dismiss the Plaintiff's Complaint for lack of personal and subject matter jurisdiction over the herein-captioned non-Indian business entity Defendants.

It is further prayed that this Court award Defendants their reasonable attorney's fees and costs associated with defending this matter.

It is further prayed that this Court enter any and all other just and equitable remedies of which the Defendants are entitled.

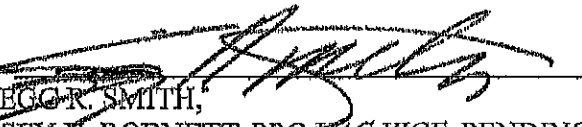
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RESPECTFULLY SUBMITTED this 20th day of June 2013.

PAINE HAMBLÉN LLP

By: 
GREGG R. SMITH,
AUSEY H. ROBNETT ~~PRO HAC VICE~~ PENDING
JERRY K. BOYD
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ausey.robnett@painehamblen.com
jerry.boyd@painehamblen.com

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of June, 2013, I caused to be served a copy of the foregoing Answer, on:

Everett B. Coulter
Evans, Craven & Lackie, P.S.
818 Riverside Ave, Suite 250
Spokane, WA 99201

By: 

Government Lots One (1) and Two (2), and that part of Government Lot Three (3) lying east of Highway 95, in Section 6, Township 46 North, Range 4 West, Boise Meridian, Benewah County, Idaho.

and

The South Half of the Northeast Quarter ($S\frac{1}{2}NE\frac{1}{4}$), and the North Half of the Southeast Quarter ($N\frac{1}{2}SE\frac{1}{4}$) of Section 6, Township 46 North, Range 4 West, Boise Meridian, Benewah County, Idaho.

and

A strip or tract of land lying within the Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$) of Section 6, Township 46 North, Range 4 West, Boise Meridian, Benewah County, Idaho, more particularly described as follows: Beginning at the Northeast corner of said Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$), and running thence South along the East line of said Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$) to the Southeast corner thereof; thence West along the South line of said Southeast Quarter of the Northwest Quarter

($SE\frac{1}{4}NW\frac{1}{4}$) to a point where it intersects the Right-of-Way of Idaho Highway No. 95;

thence in a generally Northerly direction along the East side of the Right of Way of said Highway No. 95 to a point intersecting the North line of said Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$);

thence in an Easterly direction along the North line of said Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$) to the Point of Beginning.

and

That portion of the Northeast Quarter of the Southwest Quarter ($NE\frac{1}{4}SW\frac{1}{4}$) of Section 6, Township 46 North, Range 4 West, Boise Meridian, Benewah County, Idaho, which lies east of Idaho Highway No. 95.

EXCEPTING THEREFROM a tract of land located in the $NE\frac{1}{4}SW\frac{1}{4}$ of Section 6, Township 46 North, Range 4 West, Boise Meridian, Benewah County, Idaho, deeded to General Telephone Company of the Northwest Inc. in Warranty Deed recorded April 04, 1973 as Instrument Number 126292 in Book 100 of Deeds at Page 2303, more particularly described as follows:

Beginning at a point on the easterly right-of-way line of U.S. Highway No. 95 at Station 1873+80 as identified on State of Idaho Department of Highway plans dated November 3, 1960;

thence N $26^{\circ}41'$ E along said Easterly right-of-way line a distance of 135 feet;

thence S $63^{\circ}19'$ E a distance of 100 feet;

thence S $26^{\circ}41'$ W a distance of 135 feet;

thence N $63^{\circ}19'$ W a distance of 100 feet to the point of beginning.

EXHIBIT 2

Chapter 57

TRIBAL WASTE MANAGEMENT ACT

57-1.01	Short Title
57-2.01	Authority
57-3.01	Purpose
57-4.01	Definitions
57-5.01	Applicability
57-6.01	Storage of Solid Waste
57-7.01	Transportation of Solid Waste
57-8.01	Disposal of Solid Waste
57-9.01	Prohibited Acts
57-10.01	Exemptions
57-11.01	Penalties
57-12.01	Lien
57-13.01	No Other Remedies Affected
57-14.01	Effect, Severability
57-15.01	Sovereign Immunity

Chapter 57

TRIBAL WASTE MANAGEMENT ACT

57-1.01

Short Title

This Chapter 57 shall be known and may be cited as the Tribal Waste Management Act (hereinafter sometimes referred to as the "TWMA" or "Act").

57-2.01

Authority

- (a) Article VII, Section 1(c) and (d) of the Coeur d'Alene Tribal Constitution gives the Coeur d'Alene Tribal Council the power to make laws, including codes, ordinances, resolutions, and statutes.
- (b) The Coeur d'Alene Tribe has occupied an area now known as North Idaho since time immemorial, and exercised stewardship and dominion over the area's natural resources as a sovereign government throughout that time. The Coeur d'Alene Tribal Council finds that the regulation of waste management within the Coeur d'Alene Reservation constitutes a core function of its inherent sovereign power to regulate the health, safety and well-being of the air, water and land within that area.

57-3.01

Purpose

Pursuant to the authority vested in the Coeur d'Alene Tribal Council by the Constitution and Bylaws of the Coeur d'Alene Tribe and through its authority and duty to promulgate and enforce ordinances for the health, welfare and safety of the Tribe, there is hereby established and created a Tribal Waste Management Act, created for the following purposes:

- a. To protect the health, welfare, political integrity and economic security of the Coeur d'Alene Tribe, its members and all residents of the Coeur d'Alene Reservation.
- b. To prevent the deterioration of the Reservation environment, including air, surface and ground waters, biota and soils from the impacts of improper disposal of Solid Waste.
- c. To provide and promote Tribal environmental protection services within the Reservation to prevent littering, open dumping, and improper disposal of waste through regulation of the storage, collection, transportation and disposal of solid and hazardous wastes on the Reservation.
- d. To comply with the disposal of wastes on the Reservation as required by Federal Law.

57-4.01**Definitions**

For the purposes of this Tribal Waste Management Act, the following definitions shall apply:

- (a) **Appropriate Container:** means a watertight, non-leaking container equipped with a tight-fitting lid. The container shall be designed and constructed for the purpose of storing and/or transporting the hazardous waste being stored or transported.
- (b) **Approved Disposal Facility:** means a facility where any final treatment, utilization, processing, transfer or deposit of solid waste occurs, and for which a permit has been obtained from the Coeur d'Alene Tribal Waste Management Program.
- (c) **Commercial Solid Waste:** means solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing commercial activities, and non-processing wastes such as office and packing wastes generated at industrial facilities.
- (d) **Council or Tribal Council:** means the Coeur d'Alene Tribal Council.
- (e) **Composting:** means depositing in an appropriate on-site container at a residential location, vegetative materials from a household's waste stream to create a mixture of organic matter used for fertilizing and conditioning land, such as for use in gardens. This does not include sewage waste generated from domestic, municipal or portable sources.
- (f) **Container Site:** means a solid waste disposal facility regulated and managed by a unit of local government or a solid waste management district as an integral part of a solid waste management system licensed or otherwise approved by the Coeur d'Alene Tribe. Container sites are generally open to the public for the collection of solid waste that is generated by more than one household or firm. Such solid wastes are disposed of into a container designed for that purpose with a total capacity of not more than 50 cubic yards.
- (g) **Department:** means the Coeur d'Alene Tribe Natural Resource Department.
- (h) **Disposal:** means the discharging, abandoning, depositing, injecting, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water within the Reservation or other territory subject to the jurisdiction of the Coeur d'Alene Tribe.
- (i) **Household Hazardous Waste:** means products commonly used in the home that, due to corrosivity, ignitability, reactivity, toxicity, or other chemical or physical properties, are dangerous to human health or the environment. Household hazardous waste includes but is not limited to cleaning, home maintenance, automobile, personal care, medicines, and yard maintenance products.
- (j) **Hazardous Waste:** means a solid waste, or combination of solid wastes, which because of quantity, concentration, or physical, chemical, or infectious characteristics may:

- a. Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
- b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.
- c. The term hazardous waste shall include the following:
 - i. Hazardous waste as defined in 40 C.F.R. section 261.3, as amended from time to time;
 - ii. Any hazardous air pollutant listed under the Clean Air Act, as codified in part at 42 U.S.C. Section 7412, as amended from time to time;
 - iii. Any hazardous substance contained in 49 C.F.R. Section 172.101, Appendix A (List of Hazardous Substances and Reportable Quantities), as amended from time to time.
- (k) Littering: means throwing solid waste out of any vehicle or form of transportation or scattering solid waste in any manner.
- (l) Nuisance: means a condition that occurs as a result of the handling, treatment, storage, or disposal of solid waste, which condition threatens human health or the environment, is indecent or offensive to the senses, is an obstruction to the free use of property, or interferes with the comfortable enjoyment of life or property.
- (m) Open Dump: means any facility or site at which solid waste is disposed of that is not an approved disposal site.
- (n) Open Burning: means the burning of solid waste in an open area, pile, barrel, or in any other uncontrolled manner.
- (o) Person: means any individual, corporation, firm, partnership, joint venture, association, social club, estate, trust, federal, tribal, state, county, city, or district government, or other political subdivision thereof or any other group or combination acting as a unit whether incorporated or not, including a person acting in fiduciary or representative capacity.
- (p) Reservation: means all land, air and water located within the exterior boundaries of the Coeur d'Alene Reservation.
- (q) Recycling: means the recovery of materials from solid waste for re-use or remanufacturing to create a new product.
- (r) Recovery: means the recovery of materials or energy from solid waste.
- (s) Sludge: means any solid, semisolid or liquid waste generated from a municipal,

commercial, or industrial wastewater treatment plant, or from residential septic systems, or from portable restroom reservoirs, water supply treatment plants, or air pollution control facility or any other such waste having similar characteristics and effects.

- (t) **Solid Waste:** means all putrescible (decomposition of organic matter and proteins by microorganisms, resulting in production of foul-smelling matter/material) and non-putrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, Sludge, construction and demolition wastes, dead animals including offal, discarded home and industrial appliances, wood products or wood byproducts and inert materials. Solid Waste does not include such wastes regulated by the United States Environmental Protection Agency (EPA) or the Coeur d'Alene Tribe under the Clean Water Act or the Clean Air Act, and does not include slash and forest debris regulated under laws administered by the Department of Natural Resources or marketable byproducts.
- (u) **State:** means the State of Idaho or any administrative agency thereof.
- (v) **Storage or Store:** mean confining, containing or stockpiling of solid waste prior to collection and transport to an approved disposal site or facility authorized to accept solid waste that is outside the boundaries of the Reservation.
- (w) **Tribe:** means the Coeur d'Alene Tribe, a federally recognized Indian Tribe, and any of its administrative subdivisions.
- (x) **Violation:** means any violation of this Act.

57-5.01

Applicability

This Tribal Waste Management Act shall be applicable and shall extend to all lands within the exterior boundaries of the Coeur d'Alene Reservation, and to all Persons engaging in activities related to the transport, storage and/or disposal of Solid Waste within the Reservation. The Coeur d'Alene Tribal Court shall have exclusive jurisdiction to hear and decide cases related to violations of the Waste Management Act.

57-6.01

Storage of Solid Waste

- (a) Solid waste may be temporarily stored at residences, businesses or Tribal offices within the Reservation so long as they do not create a nuisance or a threat to the public health or environment.
- (b) No person shall store hazardous waste at their residence or business location except under the following conditions:
 - a. Small quantities of hazardous waste associated with regular and normal home and yard use may be stored at a person's residence if kept in an appropriate container and for a limited period of time.

- b. Small quantities of hazardous waste associated with regular and normal agricultural or business use and practice may be stored at the business location, including Tribal offices, if kept in an appropriate container for a limited period of time.
- c. Any person storing hazardous waste at a residence or business location must take precautions to protect the health, safety and welfare of the residents and environment of the Reservation or other territory over which the Tribes have jurisdiction.
- d. No hazardous material shall be stored in such a manner as to create a nuisance or threat to public health and the environment.

57-7.01 **Transportation of Solid Waste**

All solid waste being transported to an appropriate disposal site shall be secured such that no material falls or is blown, dropped or spilled from the transport vehicle at any time.

57-8.01 **Disposal of Solid Waste**

- (a) No person shall dump, deposit or dispose of solid waste at any time, anywhere within the Reservation, except within an approved disposal site in an approved and appropriate manner.
- (b) No person shall burn or incinerate hazardous waste anywhere within the Reservation.
- (c) No person shall improperly dump, deposit, or dispose of solid waste in a trash bin or other temporary solid waste storage container that is not intended for the use of that person.
- (d) No person shall maintain an open dump on their property, whether owned or rented, whether residential or commercial in nature.
- (e) No person shall dispose of sludge anywhere on the Reservation without approval from the Coeur d'Alene Tribe.

57-9.01 **Prohibited Acts**

No person shall engage in the following acts anywhere on the Reservation:

- (a) Open burning of solid wastes without a permit from the Coeur d'Alene Tribe Smoke Management Program.
- (b) Starting, maintaining, or operating an open dump.
- (c) Disposing of solid waste in an un-approved manner.

- (d) Littering.
- (e) Disposal of hazardous waste.
- (f) Transport of solid waste from outside the Reservation with the intent to store or dispose of that waste anywhere within the Reservation.
- (g) Land application, injection, burial and/or other activities related to the disposal of sludge and other sewage products other than in municipal or Tribal treatment plants without the approval of the Coeur d'Alene Tribe.

57-10.01 **Exemptions**

The following wastes and activities are exempted from the provisions of this Act:

- (a) Small quantities of waste that are generated by the normal activities of households, including but not limited to food wastes, rubbish and fireplace ashes.
- (b) Agricultural wastes generated within a farm and incident to the operation of that farm, including wastes from growing and harvesting agricultural crops or from raising animals, that are returned to the soil as fertilizers, and waste pesticides, provided that the farmer disposes of the pesticide residues on the farmer's own farm in accordance with pesticide label disposal instructions.
- (c) The normal operation of a residential septic system.

57-11.01 **Penalties**

- (a) Any person who violates the provisions of this Waste Management Act shall be subject to a civil penalty of up to \$5,000 per violation per day.
- (b) Continued violations of the provisions of this Waste Management Act subsequent to written notice by the Coeur d'Alene Tribe shall be a misdemeanor, punishable by imprisonment for a period of up to one year and fine of up to \$5,000.
- (c) The Coeur d'Alene Tribal Court may order injunctive relief and other remedies as it deems necessary to restore the land to its previous condition or as justice may require.
- (d) In the event that any person, as a result of his or her actions which constitute a violation of this Act, should proximately cause any physical damage to any other person(s) within, or to any real or personal property situated in, the Coeur d'Alene Reservation, the Tribe or any other person affected shall have the right to seek monetary and/or injunctive relief including the imposition of penalties as set forth above.

57-12.01

Lien

- (a) A lien shall be placed upon any real estate whereon waste was disposed of in violation of the provisions of this Act. Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through the operation of any tribal statute of limitations.
- (b) The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment creditor whose interest is perfected under applicable law before notice of the lien has been filed in the appropriate office within the State as designated by applicable law, in which the real property subject to the lien is located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under applicable law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this section. The notice shall be filed in Tribal Court.
- (c) The costs constituting the lien may be recovered in an action in rem in the Tribal Court. Nothing in this section shall affect the right of the Tribe to bring an action against any person to recover all costs and damages for which such person is liable under this Act.

57-13.01

No Other Remedies Affected

Nothing in this Act shall in any way limit an individual's right to pursue, in any judicial forum of competent jurisdiction, a private cause of action for damages which would be considered violations of this Act.

56-14.01

Effect, Severability

This Act supersedes any conflicting or inconsistent provision in this Coeur d'Alene Tribal Law and Order Code, as well as any such conflicting or inconsistent provision in State or local law. If any provision of this Act or the application thereof to any person or circumstance is held by the Coeur d'Alene Tribal Court or a Federal Court sitting in appeal to be invalid, such invalidity shall not affect other provisions or applications of this Act.

56-15.01

Sovereign Immunity

Nothing in this Waste Management Act, including the enforcement of its provisions, shall be construed as a waiver or diminishment of the inherent sovereign immunity of the Coeur d'Alene Tribe.

EXHIBIT 3

tribal
Ben Johnson
Gobers, LLC
509-924-5372
atrustedname@aol.com

-----Original Message-----

From: Tyrel Stevenson <tstevenson@cdatribe-nsn.gov>
To: atrustedname <atrustedname@aol.com>
Sent: Mon, Apr 1, 2013 2:00 pm
Subject: Tribal Waste Management Act

Mr. Johnson,

Please find attached a letter from the Coeur d'Alene Tribe Director of Natural Resources, as well as a copy of the recently adopted Tribal Waste Management Act. You should know that my office has been specifically directed to employ all available resources to enforce the provisions of this Act, and I would encourage your company to consider its course of action carefully. Should you or your legal representatives have any questions related to this matter, please feel free to contact me. Thank you.

Tyrel Stevenson
Coeur d'Alene Tribe
Office of Legal Counsel
850 A Street P.O. Box 408
Plummer, ID 83851
Office: (208) 686-2065
Fax: (208) 686-9102

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COEUR D'ALENE TRIBE

850 A Street
P.O. Box 408
Plummer, ID 83851
Phone (208) 686-1800 • Fax (208) 686-6610

April 1, 2013

Ben Johnson
Managing Member
Gobers, LLC
11215 East Trent Ave.,
Spokane Valley, WA 99206

Dear Mr. Johnson,

The Coeur d'Alene Tribe recently enacted regulations governing the application and transportation of sewage and other waste materials within the exterior boundaries of the Coeur d'Alene Reservation. A copy of that Waste Management Act has been included with this letter for your convenience. Please refer particularly to section 57-9.01: Prohibited Acts, which provides that, "No person shall engage in the following acts anywhere on the Reservation: (f) Transport of solid waste from outside the Reservation with the intent to store or dispose of that waste anywhere within the Reservation, and (g) Land application, injection, burial, and/or other activities related to the disposal of sludge and other sewage products other than in municipal or Tribal treatment plants without the approval of the Coeur d'Alene Tribe."

Please be advised that the Coeur d'Alene Tribe strongly disapproves of the irresponsible manner in which you have chosen to risk the health and safety of the Reservation community for the sake of your own convenience and profit. You must cease these activities immediately or become subject to the enforcement provisions contained in the Tribal Waste Management Act, as well as any other legal remedy which may become available to the Tribe in prosecuting the termination of your activities on the Reservation. If you have any questions, please direct your inquiries to the Coeur d'Alene Tribal In-House Attorney.

Sincerely,

A handwritten signature in dark ink, appearing to read "Alfred M. Norn".

Alfred M. Norn
Director of Natural Resources

EXHIBIT 4



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

2110 Ironwood Parkway, Coeur d'Alene, ID 83814 (208) 769-1422

C. L. "Butch" Otter, Governor
Curt A. Fransen, Director

May 4, 2012

Ben Johnson
Gobers, LLC
11215 E. Trent
Spokane Valley, WA 99206
atrustedname@aol.com

Subject: **Gobers Septage Land Application Facility, Preliminary Engineering Report and Site Approval**

Dear Ben:

The Idaho Department of Environmental Quality (DEQ) has completed the review of the revised preliminary engineering report (PER) titled "Gobers, LLC, Agricultural Reclamation Project, April 12, 2012" prepared by Robert Tate, P.E., of Tate Engineering and submitted to DEQ on April 12, 2012 (P&S #11992). The PER discusses a proposed 150-acre domestic septage land application site located about 1.5 miles north of Plummer, Idaho on the east side of State Highway 95. Three (3) phases of site development are proposed starting with Phase 1 at a capacity of 20,000 gallons of septage per week and by Phase 3 capacity would be increased to 120,000 gallons per week.

On April 3, 2012, DEQ staff (John Tindall and Matt Plaisted) visited the proposed site with you and your consultant, Rob Tate. The purpose of the site visit was to determine if a successful agronomically-based operation could occur at the site. The site has been used for hay production and farm equipment can be driven on the rolling hills of the site.

The PER provides a management plan for the land application of septage from March until September incorporating the use of three (3) crops: spring wheat; winter wheat; and grass/hay crop. Sheet 6 of 10 in the PER shows a 50-foot buffer strip around the entire site and intermittent surface water streams where septage will not be applied. Also shown on Sheet 6, 20-foot vegetative buffer strips will be constructed along the contours of the fields to reduce the potential for run-off. The septage would be screened prior to land application. Page 9 of the PER, shows that there are no public wells within 0.25 miles of the proposed site and the closest domestic private well is 800 feet west of the proposed site.

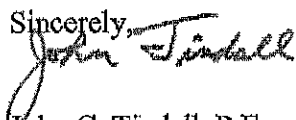
According the section of the Federal Regulations, 40CFR Part 503, detailing the land application of domestic septage and using nitrogen loading rates for the proposed crops recommended by the University of Idaho Agricultural Extension Service, about 54,000 gallons/acre/year of septage could be land applied on this site. That is equivalent to about 2 inches of septage per acre per year. The septage would be used to replace inorganic fertilizers to provide sufficient nitrogen for crop growth while not over-applying nitrogen that could negatively affect ground water quality.

Ben Johnson
May 4, 2012
Page 2

Based on the site visit and review of the PER, the proposed site appears to be suitable for the land application of domestic septage. The following items will need to be addressed before the land application of domestic septage on the proposed site can occur:

1. **Concrete Transfer Pad Drainage** – A 60-foot by 28-foot, 8-inch thick, uncovered concrete pad is proposed to be constructed in Phase 1. Screened septage will be transferred from the delivery trucks to the 8,000 gallon storage tanker and from the storage tanker to the land application farm equipment on the concrete pad. A 6-inch high curb around the pad will provide a containment volume of about 9,000 gallons in case of a spill. The pad will be sloped to a center drain connected to a manhole. Precipitation on the uncovered pad will need to be treated as wastewater (2 feet of annual precipitation equates to about 25,000 gallons of water annually). Consideration should be given to including a valve between the manhole and drainage grate on the pad to prevent the manhole from overflowing (manhole volume is about 560 gallons). Please revise the applicable section of the report to discuss how the pad drainage system will function and be maintained. The calculations for the containment volume should also be provided with consideration for the vehicle access onto the pad. The PER is approved contingent on addressing this issue.
2. **Plans and Specifications for the Septage Receiving/Storage Facilities** – Plans and specifications for the septage receiving/storage facilities will need to be submitted to DEQ for review and approval prior to starting construction.
3. **Operation and Maintenance (O&M) Manual** – An O&M Manual will need to be submitted to DEQ for review and approval. The manual will focus on how through proper management of the site, domestic septage can be land applied while protecting surface water quality, ground water quality and public health. Approval of the site for the land application of septage would be contingent on compliance with the approved O&M Manual.

Please contact me at (208) 666-4629 if you have any questions.

Sincerely,


John C. Tindall, P.E.
John.tindall@deq.idaho.gov

c: Robert Tate, P.E., Tate Engineering, Coeur d'Alene rtate@tate-eng.com
Dick Martindale, PHD, Hayden dmartindale@phd1.idaho.gov
Scott Fields, Coeur d'Alene Tribe, Plummer sffields@cdatribe-nsn.gov
Matt Plaisted, P.E., DEQ, Coeur d'Alene matthew.plaisted@deq.idaho.gov
Gobers Septage Land Application PER. TRIM (P&S #11992)

EXHIBIT 5



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

2110 Ironwood Parkway, Coeur d'Alene, ID 83814 (208) 769-1422

C. L. "Butch" Otter, Governor
Curt A. Fransen, Director

September 27, 2012

Ben Johnson
Gobers, LLC
11215 E Trent
Spokane Valley, WA 99206
atrustedname@aol.com

Subject: **Gobers Septage Land Application Facility, P&S Approval for Phase 1**

Dear Ben:

The plans and specifications (P&S) for the project titled "Gobers LLC, Septage Reclamation Facility Construction Plans, July 2012" (P&S #112049) submitted July 17, 2012 by Rob Tate, P.E., of Tate Engineering to the Idaho Department of Environmental Quality (DEQ) have been reviewed. The P&S cover construction of a 150-acre domestic septage land application site located about 1.5 miles north of Plummer, Idaho on the east side of State Highway 95. Three (3) phases of site development are proposed starting with Phase 1 at a capacity of 20,000 gallons of septage per week, and by Phase 3 capacity would be increased to 120,000 gallons per week.

The preliminary engineering report for this project was approved by DEQ in a letter dated May 4, 2012 (P&S #11992) and the use of the proposed site was also approved by DEQ on May 4, 2012.

Comments in the July 5, 2012 DEQ email have been adequately addressed with these revised P&S. This letter serves as written confirmation of my previous verbal **conditional approval** of these P&S for construction purposes in accordance with the Idaho Wastewater Rules and Section 39-118 of Idaho Code contingent upon addressing the following items:

1. **O&M Manual** – The comments in the September 27, 2012 DEQ email on the O&M Manual submitted July 17, 2012 (P&S #12050) will need to be adequately addressed and the O&M Manual approved by DEQ.
2. **Record Drawings for Phase 1** – Record drawings specifically for Phase 1 will need to be submitted. These record drawings will need to be included in the O&M Manual.
3. **Construction of Phases 2 & 3** – Prior to starting construction of Phases 2 & 3, revised P&S for each phase will need to be submitted to DEQ for review and approval.

Inspection of construction activities approved herein must be done by an Idaho licensed Professional Engineer (P.E.) or by someone under the direct supervision of a P.E. It is assumed that the design firm, Tate Engineering, will be providing inspection services.

If any material deviations to this accepted design are necessary, the design engineer must secure DEQ approval of the changes prior to implementation of the changes.

Ben Johnson
September 27, 2012
Page 2

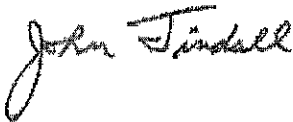
Within thirty (30) days of completion of construction, Section 39-118(3) of Idaho Code requires that record plans and specifications based on information provided by the construction contractor and field observations made by an Idaho Professional Engineer (P.E.) or the P.E.'s designee be submitted to DEQ. The record drawings must depict the actual construction of facilities. The record drawing submittal must be made to DEQ by the P.E. representing the public agency or regulated public utility, if the resultant facilities will be owned and operated by a public agency or regulated public utility; or by the design P.E. or owner designated substitute P.E., if the constructed facilities will not be owned and operated by a public agency or regulated public utility. Such submittal by the P.E. must confirm material compliance with the approved plans or disclose any material deviations from the approved plans.

If construction is not started within one year of the date of this letter, the DEQ construction approval expires. An extension may be granted if the design engineer submits a written request that DEQ re-approve the P&S.

This letter does not constitute approval of stormwater control design. Please contact your local stormwater control authority for details on appropriate requirements. Control of sedimentation and erosion during construction activities must be achieved by the use of acceptable best management practices (BMPs) and is considered the responsibility of the owner/developer of the project.

Please call me at 208-666-4629 if you have any questions.

Sincerely,



John C. Tindall, P.E.
John.tindall@deq.idaho.gov

c: Rob Tate, P.E., Tate Engineering, Coeur d'Alene rtate@tate-eng.com
Benewah County Commissioners, St. Maries ksather@benewahcounty.org
Dick Martindale, PHD, Hayden dmartindale@phd1.idaho.gov
Jim Kackman, Coeur d'Alene Tribe, Plummer jkackman@cdatribe-nsn.gov
Gobers Septage TRIM (P&S #12049)

EXHIBIT 6



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

2110 Ironwood Parkway, Coeur d'Alene, ID 83814 (208) 769-1422

C. L. "Butch" Otter, Governor
Curt A. Fransen, Director

April 22, 2013

Ben Johnson, Owner
St. Isadore Farm, LLC
11215 E. Trent
Spokane Valley, WA 99206
atrustedname@aol.com

Subject: **St. Isadore Farm Septage Land Application Facility, Phase 1, DEQ Record Drawing Acceptance**

Dear Mr. Johnson:

Record drawings submitted by Rob Tate, P.E. of Tate Engineering on April 12, 2013 for the project titled "St. Isadore Farms, Septage Reclamation Facility" (P&S #12217) have been reviewed by the Idaho Department of Environmental Quality (DEQ). The record drawings cover Phase 1 of the planned three (3) phase septage land application facility.

This phase includes the following:

1. 112 acres of farm land split up into seven (7) zones that can be used for land application of screened septage and then planted in either the fall or spring with wheat, triticale or grass for hay. Septage is now being injected a few inches below the surface instead of being surface applied and incorporated within six (6) hours as was done in 2012.
2. Two (2) 11,000 gallon underground steel tanks designed to receive and temporarily store screened septage delivered to the site. Rob Tate, P.E. certified in a letter dated February 4, 2013 that during a 23 hour leakage test, no leakage was observed from the tanks.
3. 29,000 gallons of emergency storage is provided in the event of an overflow.
4. Carbon filters have been installed on the storage tanks to scrub odors from the passive venting system.
5. A 500 gallon tank to collect runoff from the asphalt receiving pad when the facility is operating.

The record drawings have been compared to the construction plans and specifications (P&S #12049) as approved by DEQ on September 27, 2012 and found to be acceptable. The construction P&S covered the facilities to be included in all three (3) phases of the project while these record drawings are specific to the Phase 1 improvements. The submittal is hereby accepted by DEQ per Section 39-118 (3) of Idaho Code as the record drawings for this project.

Prior to starting construction of any additional phases, plans and specifications must be submitted for DEQ review and approval.

Sincerely,

Chris Westerman

Chris Westerman, E.I.T.
chris.westerman@deq.idaho.gov

c: Rob Tate, P.E., Tate Engineering, rtate@tate-eng.com
Benewah County Commissioners, St. Maries ksather@benewahcounty.org
Dick Martindale, PHD, Hayden dmartindale@phd1.idaho.gov
Jim Kackman, Coeur d'Alene Tribe, Plummer jkackman@cdatribe-nsn.gov
File in TRIM: Gobers, 2013AGD1548
(P&S #12217)



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

2110 Ironwood Parkway, Coeur d'Alene, ID 83814 (208) 769-1422

C. L. "Butch" Otter, Governor
Curt Fransen, Director

April 23, 2013

Ben Johnson, Owner
St. Isadore Farms, LLC
11215 E Trent
Spokane Valley, WA 99026
atrustedname@aol.com

Subject: **St. Isadore Farms Septage Land Application Facility, DEQ Operations and Maintenance Manual Acceptance**

Dear Mr. Johnson:

The operations and maintenance manual (O&M) submitted by Rob Tate, P.E. of Tate Engineering on April 12, 2013 for the project titled "St. Isadore Farms - Septage Land Application" (P&S #12217) has been reviewed by the Idaho Department of Environmental Quality (DEQ). The O&M consists of the daily operational procedures at St. Isadore Farms site and includes information regarding emergency and clean up procedures. The plan also includes a set of record drawings for Phase 1.

The O&M manual has been found to be acceptable and satisfies the requirements of IDAPA 58.01.16.430. Additional comments provided by DEQ dated September 27, 2012 and March 30, 2013, have been addressed by this submittal. The O&M manual is hereby accepted by DEQ.

The annual reports must include the information and the forms presented in the O&M manual.

Prior to construction of additional phases at the site, plans and specifications and a revised O&M manual must be submitted and approved by DEQ.

Sincerely,

A handwritten signature in cursive script that reads "Chris Westerman".

Chris Westerman, E.I.T.
chris.westerman@deq.idaho.gov

c: Rob Tate, P.E., Tate Engineering, rtate@tate-eng.com
Benewah County Commissioners, St. Maries ksather@benewahcounty.org
Dick Martindale, PHD, Hayden dmartindale@phd1.idaho.gov
Jim Kackman, Coeur d'Alene Tribe, Plummer jkackman@cdatribe-nsn.gov
File in TRIM: Gobers, 2013AGD1550 (P&S #12217)