

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

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

Plaintiffs,

v.

COEUR D'ALENE TRIBE OF
INDIANS, a federally recognized Indian
tribe, JOHN DOES 1 - 10, each of which
are Members of the Coeur d'Alene Tribe
of Indians,

Defendants.

Case No. 1:10-CV-001-EJL

ORDER

Pending before the Court in the above-entitled matter is Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction (Dkt. 3). The motion was filed on June 21, 2013. Defendant Coeur d'Alene Tribe of Indians ("Tribe") has not appeared in this action, but counsel for Plaintiffs informed the Court's staff attorney that the Tribe's counsel was in receipt of the pleadings, a waiver of service had been requested and counsel for the Tribe had been conferring with Plaintiffs' counsel regarding this motion.

Federal Rule of Civil Procedure 65(b) controls the issuance of a temporary restraining order (“TRO”). Normally, a TRO cannot be issued without notice unless the facts in an affidavit or verified complaint clearly shows that immediate and irreparable injury, loss or damage will result to the movant before the adverse party can be heard and the movant’s attorney certifies in writing any efforts made to give notice and reasons why it should not be required. Fed. R. Civ. P. 65(b)(A) and (B).

Plaintiffs seek this Court to enjoin and restrain the Tribe and the Coeur d’Alene Tribal Court from levying civil fines, placing liens on the real property owned by Plaintiff St. Isidore Farm LLC and pursuing criminal actions against the Plaintiffs for the land application of domestic sewage sludge (septage) to non-public contact sites from which there is no discharge into waterways. Plaintiffs allege they are in compliance with all federal and state regulations for the discharge of septage and the Tribe’s more restrictive discharge provisions are not applicable to non-Indian land owned by non-Indians located within the boundaries of the Coeur d’Alene Reservation. Plaintiffs allege they are being fined by the Tribe and are facing criminal liability as well as liens being placed on their property for not being in compliance with the Tribe’s laws and regulations.

Temporary restraining orders are designed to preserve the status quo pending the ultimate outcome of litigation. The Ninth Circuit has not articulated a special test for a TRO, so the test for a TRO is the same as for a preliminary injunction. “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the

balance of equities tips in his favor, and that an injunction is in the public interest.”

Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20 (2008).

The Court finds in this case and at this stage of the litigation, Plaintiffs have satisfied the four factors to support the issuance of a TRO. The ongoing civil fines and Tribal Court proceedings support a finding that Plaintiffs are likely to suffer immediate and irreparable harm in the absence of a TRO. The case law presented regarding the Tribe’s ability to regulate activity on non-Indian land appear to support that Plaintiffs are likely to succeed on the legal merits of their claims. The balance of equities tips in Plaintiffs’ favor as the granting of the restraining order will not harm or limit the Tribe’s future prosecution of the Plaintiffs if the Plaintiffs are not successful on the merits. Finally, the issuance of the TRO in this case is in the public interest. The public has an interest in having septage discharge on land subject to some regulations for the protection of public health, but the Plaintiffs have established that the septage discharge in this case does not threaten public health. It is in the public interest to have a federal court resolve the legal arguments regarding regulation of non-Indian property located within an Indian reservation. For these reasons the Court will issue a TRO and set a briefing schedule so that the Defendants can be heard on the motion for preliminary injunction.

ORDER

After considering the Motion, Verified Complaint, and the entire court file, it is hereby Ordered and Decreed that the motion for a temporary restraining order (Dkt. 3) is **GRANTED**. No bond shall be required for the issuance of this TRO. The Defendants are hereby restrained 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. The Coeur d'Alene Tribal Court is enjoined from proceeding with the prosecution of the Tribe's lawsuit against the herein captioned Plaintiffs. Defendants John Does 1-10 are 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. The Coeur d'Alene Tribal Court is enjoined and restrained from proceeding further with the lawsuit filed under cause number: CV-SC-2013-0112.

Pending the Court's determination on the motion for preliminary injunction, Plaintiffs continue their operations alleged to be in violation of the Tribal Code at their own potential peril if Plaintiffs are not successful on the merits of their action in Federal Court. Stated another way, if Plaintiffs do not prevail on the motion for preliminary injunction, nothing in this Order prevents the Tribe from potentially seeking relief in the Coeur d'Alene Tribal Court, for any alleged violations that occur via Plaintiffs' operations until the Court rules on the motion for preliminary injunction.

The Court encourages the parties to meet and work out a stipulation to leave the temporary restraining order in place until the Court rules on the motion for preliminary

injunction. This would allow adequate time for briefing to be submitted to the Court and for the Court to schedule an evidentiary hearing on the motion for preliminary injunction when it is next at the Federal Courthouse in Coeur d'Alene. Absent a stipulation by the parties, the Court will expedite the briefing schedule as the TRO expires in fourteen (14) days. Therefore, Defendants' response to the motion for preliminary injunction shall be filed on or before July 8, 2013 and any reply by Plaintiffs shall be filed on or before July 11, 2013. The Court will determine if a hearing on the motion for preliminary injunction is necessary after reviewing the briefing of the parties.

Plaintiffs shall serve this Order on Defendants immediately and shall also send a copy of this Order to Defendant's counsel via email.

IT IS SO ORDERED.



DATED: **June 28, 2013**

A handwritten signature in black ink, appearing to read "Edward J. Lodge".

Honorable Edward J. Lodge
U. S. District Judge