

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

TOWN OF BROWNING, a
Montana Municipal Corporation,

Plaintiff,

v.

WILLIE A. SHARP, JR.;
FORRESTINA CALF BOSS RIBS;
PAUL McEVERS; WILLIAM OLD
CHIEF; CHERYL LITTLE DOG;
SHAWN LAHR; ALVIN YELLOW
OWL; DEREK KLINE; HARRY
BARNES; ILIFF KIPP; TYSON
RUNNING WOLF; JOE McKAY;
EARL OLD PERSON; and NELSE
ST. GODDARD,

Defendants.

CV-14-24-GF-BMM-JTJ

**FINDINGS AND
RECOMMENDATIONS**

BACKGROUND

Defendants have filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(7) for failure to join a party under Rule 19. (Doc. 74). Defendants contend that the Blackfeet Tribe represents a required party under Rule 19. The Blackfeet Tribe possesses sovereign immunity and cannot be joined to this action. Defendants argue that this case therefore must be dismissed. The Town of Browning opposes Defendants' motion.

ANALYSIS

Federal Rule of Civil Procedure 19(a) describes which persons are required to be joined if feasible. Federal Rule of Civil Procedure 19(b) instructs the Court how to proceed when a required party cannot be joined to the action. The Town of Browning contends that the Blackfeet Tribe is not a party required to be joined under Rule 19(a).

Rule 19(a) provides that a person must be joined if the Court cannot accord complete relief among the existing parties. Fed. R. Civ. P. 19(a). Alternatively, a person must be joined if that person claims an interest relating to the subject of the action and disposing of the action in that person's absence may impair or impede that person's ability to protect his interest. *Id.* In addition, a person must be joined if an existing party could be subjected to inconsistent obligations because of the non-party's interest in the action. *Id.*

Whether the Blackfeet Tribe represents a required party

Defendants contend that the Blackfeet Tribe represents a required party. The Town of Browning alleges that Defendants have been stealing revenue from it by instructing water utility customers to pay the Blackfeet Tribe's water utility, the Two Medicine Water Company, instead of paying the Town of Browning. In its amended complaint, the Town of Browning seeks an injunction to prevent defendants from "depriving the Town of property without due process of the law."

(Doc. 57). The Town of Browning has clarified that it seeks an injunction to prevent Defendants from requesting water utility customers pay the Two Medicine Water Company, and an order requiring water utility customers to “revert back to paying the Town” for the water utility services. (Doc. 127).

Defendants have alleged that the water being provided to water utility customers is actually water owned by the Blackfeet Tribe. Defendants have requested that water utility customers pay the Two Medicine Water Company, the water utility company of the Blackfeet Tribe. The Blackfeet Tribe, along with the Two Medicine Water Company, undoubtedly possesses an interest in receiving payment for water and services that they provide. If this Court were to grant the injunctive relief the Town of Browning seeks, this Court may be precluding the Blackfeet Tribe and the Two Medicine Water Company from collecting revenue for water and services that they provide. Such an injunction would impair or impede the Blackfeet Tribe’s ability to protect its interest to revenue for water and services that it provides. The Blackfeet Tribe is therefore a required party pursuant to Rule 19(a).

Proceeding without the Blackfeet Tribe

Defendants contend that the Blackfeet Tribe possesses sovereign immunity which precludes it from being joined to this action. Defendants argue that this Court therefore must dismiss this action. The Town of Browning argues merely

that the Blackfeet Tribe does not represent a required party. The Town of Browning offers no suggestions on how the Court should proceed if it determines that the Blackfeet Tribe does represent a required party.

Rule 19(b) provides that when joinder of a required party is not feasible, the Court must determine whether the action should proceed among the existing parties, or whether the action should be dismissed. Rule 19(b) provides a list of factors the court is to consider, including the extent to which a judgment rendered in the person's absence might prejudice that person or existing parties; the extent to which any prejudice could be lessened or avoided; whether a judgment rendered in the person's absence would be adequate; and whether the plaintiff would have an adequate remedy if the action were dismissed for non-joinder.

During oral argument on this motion, the parties discussed a parallel action currently before the Blackfeet Tribal Court. The Blackfeet Tribe filed an action on March 28, 2014, in which it alleges a breach of contract claim against the Town of Browning. (Doc. 27-1 at 27). The Town of Browning filed its complaint in this case on April 9, 2014. (Doc. 1). In the tribal court action, the Blackfeet Tribe alleges that the Town of Browning collected utility revenue for water which flowed from the Blackfeet Tribe's water supply pursuant to the Memorandum of Agreement. The Blackfeet Tribe alleges that the Town of Browning has failed to pay the Blackfeet Tribe for this water, as required by the Memorandum of

Agreement. The Blackfeet Tribe's complaint alleges that the Town of Browning owed it \$383,589.16 in revenue as of October 1, 2013.

The Town of Browning has claimed sovereign immunity which would preclude the lawsuit from continuing in the Blackfeet Tribal Court. The parties informed the Court during the April 13, 2015, hearing that the Blackfeet Tribal Court has denied the Town of Browning's motion to dismiss on the grounds of sovereign immunity. That decision is currently being appealed. If the Town of Browning possesses sovereign immunity, which would preclude it from appearing in the Blackfeet Tribal Court, then this Court represents the only court with jurisdiction to hear this dispute. Under these circumstances, the Town of Browning would have no adequate remedy if this Court dismissed this case for non-joinder of the Blackfeet Tribe. At this time it appears, however, that the Blackfeet Tribal Court represents a forum where this matter can be resolved.

This Court recommends that this action be stayed pending resolution of the action in the Blackfeet Tribal Court. Whether an alternative forum exists is an important question for this Court to consider before ruling on Defendant's 12(b)(7) motion to dismiss. If the appellate court for the Blackfeet Tribal Court ultimately determines that the Blackfeet Tribal Court does not have jurisdiction over the Town of Browning, then this Court will consider whether to proceed with this action even without the Blackfeet Tribe as a party.

The Court **FINDS:**

1. The Blackfeet Tribe represents a necessary party to this action.
2. The Town of Browning may not have any adequate remedy if this action is dismissed.

The Court **RECOMMENDS:**

The District Court should STAY this matter pending resolution of the parallel action in the Blackfeet Tribal Court.

The District Court should order the parties to submit status reports every three months detailing the progress of the matter in the Blackfeet Tribal Court.

The District Court should order the parties to inform the Court immediately if the Blackfeet Tribal Court determines that it lacks jurisdiction over the Town of Browning.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO
OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in

whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge.

DATED this 22nd day of April, 2015.



John Johnston
United States Magistrate Judge