

Maxon R. Davis
Paul R. Haffeman
Derek J. Oestreicher
DAVIS, HATLEY, HAFFEMAN & TIGHE, P.C.
The Milwaukee Station, Third Floor
101 River Drive North
P.O. Box 2103
Great Falls, Montana 59403-2103
Telephone: (406) 761-5243
max.davis@dhhtlaw.com
paul.haffeman@dhhtlaw.com
derek.oestreicher@dhhtlaw.com
Attorneys for the Town of Browning

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

TOWN OF BROWNING, a Montana
municipal corporation,

CAUSE NO.
CV-14-24-GF-BMM-RKS

Plaintiff,

-vs-

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.

**BRIEF IN OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS AMENDED
COMPLAINT UNDER RULE
12(b)(7) (Dkt. 74)**

Defendants.

INTRODUCTION

The Town of Browning (hereinafter the “Town”) hereby submits this Brief in Opposition to Defendants’ Motion to Dismiss Amended Complaint Under Rule 12(b)(7) (Dkt. 74). For the sake of brevity, this brief incorporates by reference the Factual Background and Exhibits contained in the Town’s contemporaneously filed Brief in Opposition to Defendants’ Motion to Dismiss Amended Complaint Under Rule 12(b)(1) (Dkt. 70).

ARGUMENT

I. The Blackfeet Tribe is not an indispensable party.

Addressing the issues of this case in the proper context, and not in reference to the irrelevant MOA which has been terminated, it is evident that the Blackfeet Tribe (hereinafter the “Tribe”) is neither a required, nor indispensable party under Rule 19, F.R.Civ.P.

Under the two-part analysis of Rule 19(a), F.R.Civ.P., the Tribe is not a required party. Resolution of this matter will accord complete relief among the existing parties, as an injunction will prevent the individual defendants from further interfering with or exercising unauthorized control over the Town’s utility systems. Since the Tribe would have no authority to interfere with or exercise

control over the Town's utility systems, *see* 25 U.S.C. §§ 1302(a)(5) & (8),¹ an injunction preventing the defendants from doing so will not be injurious to the Tribe.

Furthermore, the BTBC can certainly "continue to assert and implement" the termination of the MOA. Dkt. 75, p. 3. This has nothing to do with the relief requested by the Town. While the defendants suggest that the Town seeks to reinstate the MOA; instead, the Town seeks to prohibit the defendants from illegally taking the Town's property.

The defendants' assertion that an injunction would require the Tribe to provide water to the Town is nonsensical. Dkt. No. 75, p. 4. The Town has not requested this relief, nor has the Town requested the reinstatement of the MOA. In fact, the Town's wells which supply water to the Town's water distribution pipes are still operable, so the Town has no need to obtain water from any tribally owned source. *See* Morris Affidavit, ¶ 5. This action is about the unauthorized use of the Town's assets. An injunction would do nothing more than prevent further interference with the Town's utility systems. Such an injunction would not subject the defendants to inconsistent obligations; rather, an injunction would restrain the

¹The Town concedes that only habeas corpus relief may be granted under the Indian Civil Rights Act. Thus, citations to 25 U.S.C. § 1302(a)(5) is meant purely to demonstrate that the defendants' conduct falls squarely outside the scope of their authority as tribal officers and employees. Since the Tribe could not take the Town's property, the defendants are prohibited from doing the same.

defendants from further acting outside the scope of their authority. The Tribe has no role in this dispute.

The defendants demonstrate their indifference for the confidentiality of settlement proceedings, and apparent ignorance for the Local Rules, by referencing the Town's Settlement Offer to somehow prove that the Tribe is a required party. Dkt. 75, p. 3. Under L.R. 16.5(b)(2), all settlement proceedings are confidential, without exception. The Town has more fully addressed this issue in its Brief in Opposition to Motion to File Under Seal. Dkt. 94. Regardless, the Town's good faith Settlement Offer – pursuant to Court Order – was intended to foster peace and resolution. It hardly suggests that the Tribe is somehow a required party as a matter of law.

The Tribe has no interest in the subject matter of this action, as the utility systems and infrastructure at issue are all legally owned by the Town. Morris Affidavit, ¶¶ 3-8. The Town owns the water chlorinator building located at the Parsons Connection – which is the water pipeline connection point east of the Town that connects the BCWP with the Town's water distribution pipes and infrastructure. *Id.*, ¶ 3. The Town owns the water pipeline running east from the Parsons Connection to the Town's water distribution pipes located both inside and outside the Town's geographical boundaries. *Id.*, ¶ 4. The Town has owned, operated, maintained, and improved the majority of the water distribution pipes

located both inside and outside the Town's geographical boundaries since at least 1934. *Id.*, ¶ 5.

Prior to the construction of the BCWP, the Town provided water utility services to the Town's customers by pumping water from Town-owned wells (which are still operational), through Town-owned water distribution pipes and infrastructure, and to the Town's customers. *Id.* Likewise, the Town provides sewer utility services by pumping solid waste from the homes of the Town's customers, through Town-owned sewage pipes, and to the Town-owned Hodson Sewage Lagoon – which was deeded to the Town in 1970. *Id.*, ¶ 6; *see also* Exhibit E. The Town has never disclaimed, transferred, or conveyed these water and sewer distribution pipes, infrastructure and systems. Morris Affidavit, ¶ 8. The Town still owns the water and sewer distribution pipes, infrastructure and systems located east of the Parsons Connection. *Id.*

Contrary to the defendants' erroneous assertion, if the court grants the injunctive relief requested, the defendants would simply be required to discontinue their unauthorized and illegal use of the Town's utility systems. The Tribe would be under no obligation to supply the Town with water, as the Town can simply begin using its own wells which have historically supplied the Town's customers with water. The Tribe has no interest in the Town's legally owned utility systems and infrastructure. As such, the Tribe is not a required party to this action.

II. The Tribe is not required to be joined under Rule 19(b)

The Tribe must be an indispensable party under Rule 19(a), F.R.Civ.P., for the Court to consider Rule 19(b) analysis. As shown above, the Tribe is not an indispensable party to this action, as such, analysis of Rule 19(b) is unnecessary and irrelevant.

CONCLUSION

For the foregoing reasons, the defendants' Motion to Dismiss (Dkt. 74) should be denied.

DATED this 15th day of September, 2014.

/s/ Derek J. Oestreicher

DEREK J. OESTREICHER

P.O. Box 2103

Great Falls, MT 59403-2103

Attorneys for the Town of Browning

CERTIFICATE OF COMPLIANCE

I certify that this brief, excluding the caption, table of contents, table of authorities, and certificate of service, contains less than 6,500 words in compliance with Local Rule 7.1(d)(2)(A).

/s/ Derek J. Oestreicher

Derek J. Oestreicher

Attorneys for the Town of Browning