

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

DAVID VIPOND,

Plaintiff,

v.

DAVID DEGROAT, in his official
capacity as Judge of White Earth Tribal
Court, and DUSTIN ROY, in his official
capacity as Director of White Earth
Division of Natural Resources,

Defendants.

Case No. 0:24-cv-03125-KMM-LIB

**DEFENDANT DAVID DEGROAT'S RESPONSE IN OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

Defendant David DeGroat, in his official capacity as Judge of White Earth Tribal Court, by and through his attorney, submits this Response in Opposition to Plaintiff's Motion for Preliminary Injunction.

As stated in Defendant DeGroat's answer, Plaintiff's claim involving the same questions of fact and law as a previously filed action pending in the White Earth Nation courts may not proceed in this Court unless and until he exhausts his remedies in Tribal Court. Plaintiff's claim is subject to the mandatory exhaustion of tribal court remedies, as required by federal case law. *See Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 15-17 (1987), and *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 856-57 (1985). Answer ¶¶ 5, 144. Defendant DeGroat's answer further explains:

Plaintiff's complaint includes numerous allegations containing legal arguments and conclusions regarding issues in an ongoing lawsuit between Plaintiff and the White Earth Division of Natural Resources (WEDNR), Case No. GC2023-00001, currently pending in White Earth Tribal Court ("the Tribal Court action"). The allegations are directed at the White Earth Nation's regulatory authority over Plaintiff's proposed high-capacity pumping on the White Earth Reservation and the Tribal Court's jurisdiction over WEDNR's lawsuit against Plaintiff. [...] Defendant DeGroat, in his official capacity as Judge of White Earth Tribal Court, emphasizes for purposes of this Answer that he takes no position on the merits of the jurisdictional arguments alleged by Plaintiff. Defendant DeGroat further emphasizes that he takes no position on any of the factual matters alleged by Plaintiff in his Amended Complaint, which matters also may be at issue in the Tribal Court action. The White Earth Tribal Court will consider and address those jurisdictional arguments and factual issues in due course in the Tribal Court action, as required by the tribal court exhaustion rule announced in *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 15-17 (1987), and *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 856-57 (1985). This action must be stayed pending Plaintiff's exhaustion of remedies available in White Earth Tribal Court and White Earth Court of Appeals.

Id. at pp. 1-2.

On October 8, 2024, Defendant Dustin Roy, in his official capacity as Director of White Earth Division of Natural Resources, moved this Court to stay these proceedings

pending Plaintiff's exhaustion of Plaintiff's Tribal Court remedies. Defendant DeGroat filed a response to that motion stating his position that a stay is appropriate.

Subsequently, on October 24, 2024, a hearing on the motion to stay was held before the Honorable Leo I. Brisbois, at which time and on the record, Defendant DeGroat restated his position that a stay of the proceedings is appropriate because the Tribal Court should be able to determine its own jurisdiction in the first instance and therefore the exhaustion doctrine applies. A decision of this Court on Defendant Roy's motion to stay these proceedings is pending.

If this Court reaches consideration of Plaintiff's motion for a preliminary injunction, then Defendant DeGroat respectfully requests that the Court deny Plaintiff's motion because the exhaustion doctrine applies. Plaintiff has not exhausted his Tribal Court remedies, and the Tribal Court has not determined jurisdiction over Plaintiff. Defendant DeGroat emphasizes that he is not taking any position on the factual and legal issues, including Plaintiff's challenge to the White Earth Nation's regulatory and adjudicatory jurisdiction, that will be developed and resolved in the Tribal Court action.

Respectfully submitted on this 1st day of November, 2024.

/s/ Andrea Y. Kingbird

Andrea Y. Kingbird, MN #0387129

General Counsel for the

White Earth Band of the

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