UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

David Vipond,

Plaintiff,

v.

David DeGroat, et al.,

Defendants.

Case No. 24-cv-3125 (KMM/LIB)

ORDER

Pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. § 636, this matter comes before the undersigned United States Magistrate Judge upon Defendant Dustin Roy's Motion to Stay, [Docket No. 13]. Following a Hearing, the Court took Defendant Roy's Motion to Stay under advisement. (Minutes [Docket No. 36]).

For the reasons discussed herein, Defendant Roy's Motion to Stay, [Docket No. 13], is **GRANTED in part** and **DENIED in part**.

I. Background

The present case arises from Plaintiff David Vipond's desire to install a high-capacity pump to irrigate his farmland with water from the Wild Rice River. (Amended Compl. [Docket No. 4] at 1–2). Plaintiff's farmland is within the White Earth Reservation. (See Id.). He has received a permit to install the pump from the Minnesota Department of Natural Resources ("MNDNR"). (See Id. ¶¶ 9–21). He has not received or applied for a permit from the White Earth Department of Natural Resources ("WEDNR"). (See Id.). Plaintiff has not yet installed the pump. (Id. ¶ 21).

After Plaintiff applied for the Minnesota state permit but before it was issued, the White Earth Reservation Business Committee adopted a resolution which enacted the White Earth Reservation Groundwater and Surface Water Protection Ordinance (the "Ordinance") with an effective date of May 5, 2023. (Id. ¶ 22). The Ordinance initially required a permit for all high-capacity surface pumps (including pre-existing pumps) on the White Earth Reservation or "within the appurtenant five-mile buffer area depicted in Appendix A" of the Ordinance. (See Ordinance [Docket No. 4-1]). The Ordinance requires that the applicant reimburse the WEDNR for all staff time expended in processing the permit application and for the costs of any experts retained by the WEDNR to evaluate the effects of installing the requested pump. (Amended Compl. [Docket No. 4] ¶ 23).

On August 23, 2023, the WEDNR filed suit against Plaintiff in tribal court ("Tribal Court Action") seeking a declaration that Plaintiff may not install or operate a pump on the Wild Rice River without a permit from the WEDNR, as well as, a declaration that the Ordinance governed Plaintiff's ability to install and operate a high-capacity pump to withdraw water from the Wild Rice River. (Id. ¶¶ 25–40). The WEDNR also moved for a preliminary injunction in the Tribal Court prohibiting Plaintiff from installing and operating the pump until the resolution of the Tribal Court Action. (Id.). On September 13, 2023, the preliminary injunction was granted in an ex parte Order. (Id.).

After Plaintiff made a "special appearance" in Tribal Court, he challenged the Preliminary Injunction on jurisdictional grounds. (Id. ¶ 23). After his jurisdictional challenge was denied by the Tribal Court, Plaintiff appealed the denial to the White Earth Court of Appeals which resulted in an Order requiring that the Preliminary Injunction be treated as a temporary restraining order, that the lower court hold a hearing regarding the request for a preliminary injunction, and that the

lower court make specific findings regarding the jurisdictional challenge. (Id.). The parties in the Tribal Court Action then engaged in jurisdictional discovery which appears to remain ongoing. (See Id.).

On June 12, 2024, the White Earth Reservation Business Committee adopted Resolution No. 057-24-030 which, among other things, "suspend[ed]" the Ordinance's permit requirement and other regulatory provisions of the Ordinance with respect to all high-capacity pumps which were duly permitted by the MNDNR on May 5, 2023, and operating in accordance with said state permit. (Id. ¶¶ 40–42).[1] Pursuant to Resolution No. 057-24-030, the WEDNR was required to coordinate with the MNDNR to develop strategies for study and protection of the relevant waterways and to report the results of its studies to the White Earth Reservation Business Committee. (Id.). Resolution No. 057-24-030 also repealed all provisions of the Ordinance that refer to, apply to, or regulate pumps in the "appurtenant five-mile impact (or buffer area around the White Earth Reservation[.]" (Id.).

On August 2, 2024, Plaintiff initiated this federal court action, and on August 5, 2024, Plaintiff filed his operative Amended Complaint which names two defendants: David DeGroat, in his official capacity as a Judge of the White Earth Tribal Court presiding over the Tribal Court Action, and Dustin Roy, in his official capacity as Director of Natural Resources at the WEDNR (collectively "Defendants"). (See Id.). Generally speaking, Plaintiff contends that the lower Tribal Court lacks jurisdiction over the issues raised in the Tribal Court Action because the Tribal Court cannot adjudicate the allocation of water rights on a navigable river under the jurisdiction of the State of Minnesota as those rights relate to him, a nonmember of the White Earth Band. (See Id.

[1] Resolution No. 057-24-030 further provided that the WEDNR would take no immediate action to implement or enforce the provisions of the Ordinance as to such preexisting pumps, and the WEDNR would provide one year's notice before implementing or enforcing any provision of the Ordinance on a previously existing pump. (Id.).

¶¶ 123–140). As relief, Plaintiff seeks (1) a declaration from this Federal Court that the White Earth Tribal Court lacks jurisdiction over him and the Tribal Court action; (2) a declaration that "when the State of Minnesota permits water pumping activity from a navigable body of water for use on non-member fee lands, the pumping activity cannot meet the second Montana[2] exception for tribal court jurisdiction over a non-member for activities on fee lands"; and (3) an Order enjoying Defendants from any further action in the Tribal Court Action. (Id. at 32).

On October 7, 2024, Defendant Roy filed his Answer to the Amended Complaint. (Answer [Docket No. 12]). Defendant DeGroat filed his Answer on October 10, 2024. (Answer [Docket No. 20]).

On October 8, 2024, Defendant Roy filed the present Motion to Stay. [Docket No. 13]. Through his Motion to Stay, Defendant Roy seeks to stay all proceedings in this Federal Court action until Plaintiff exhausts his remedies in the Tribal Court Action, including a full adjudication of the entire Tribal Court Action and appellate proceedings in the White Earth Court of Appeals. (See Mot. [Docket No. 13]; Mem. [Docket No. 15]).[3] Plaintiff opposes Defendant Roy's Motion to Stay. (See Plf.'s Mem. [Docket No. 33]).

On October 11, 2024, Plaintiff filed a Motion for Preliminary Injunction seeking an Order of this Federal Court enjoining Defendants "from taking further action in the" Tribal Court Action "pending a final resolution of Plaintiff's subject matter jurisdiction objections in this [Federal Court] action." (Proposed Order [Docket No. 30]; see Plaintiff's Mem. [Docket No. 24]). Defendants oppose Plaintiff's Motion for Preliminary Injunction. (Defs' Responses [Docket Nos.

[2] Montana v. United States, 450 U.S. 544 (1981).
[3] Although Defendant DeGroat did not formally join Defendant Roy's Motion to Stay, Defendant DeGroat nonetheless submitted a memorandum arguing that Defendant Roy's Motion to Stay should be granted because Plaintiff's claim may not proceed in this Court until he has exhausted all remedies in the Tribal Court Action. (Def. DeGroat [Docket No. 21]).

37, 42]). Plaintiff's Motion for Preliminary Injunction is currently pending before the District Court Judge presiding over the present case, the Honorable Katherine M. Menendez, District of Minnesota.

II. Defendant Roy's Motion to Stay. [Docket No. 13].

As noted above, Defendant Roy seeks an Order of this Court staying all proceedings in the present Federal Court action pending Plaintiff's exhaustion of his remedies in the Tribal Court Action, including a full adjudication of the entire Tribal Court Action and tribal appellate court proceedings. (See Mot. [Docket No. 13]; Mem. [Docket No. 15]).

A. Standard of Review

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Cottrell v. Duke, 737 F.3d 1238, 1248 (8th Cir. 2013) (quoting Landis v. N. Am. Co., 299 U.S. 248, 254 (1936)); Kemp v. Tyson Seafood Group, Inc., 19 F. Supp. 2d 961, 964 (D. Minn. 1998); TE Connectivity Networks Inc. v. All Systems Broadband, Inc., No. 13-cv-1356 (ADM/FLN), 2013 WL 4487505, at *1 (D. Minn. Aug. 20, 2013). The District Court enjoys broad discretion in staying proceedings when doing so is an appropriate measure in managing the Court's docket. Sierra Club v. U.S. Army Corps. of Eng'rs, 446 F.3d 808, 816 (8th Cir. 2006) (citing Clinton v. Jones, 520 U.S. 681, 706 (1997)).

There is, however, a presumption in favor of denying a motion to stay which seeks to stay a proceeding in its entirety. See, e.g., Vivorte, Inc. v. Gill, No. 24-cv-1040 (DWF/DLM), 2024 WL 4164233, at *3 (D. Minn. Sept. 12, 2024); Busch v. Bluestem Brands, Inc., No. 16-cv-644 (WMW/HB), 2017 WL 5054391, at *1 (D. Minn. Feb. 22, 2017); Marden's Ark, Inc. v. UnitedHealth Grp., Inc., No. 19-cv-1653 (PJS/DTS), 2020 WL 13002517, at *5 (D. Minn. Aug.

20, 2020); ASI, Inc. v. Aquawood, LLC, No. 19-cv-0763 (JRT/HB), 2020 WL 13519442, at *3 (D. Minn. Jan. 6, 2020). This presumption places a heavy burden on the proponent of such an all encompassing stay to demonstrate the need for the stay. Kreditverein der Bank Austria v. Nejezchleba, 477 F.3d 942, 945 n.3 (8th Cir. 2007) (citing Clinton v. Jones, 520 U.S. 681, 708 (1997)); see Vivorte, 2024 WL 4164233, at *3. To meet this heavy burden, the proponent of the stay must demonstrate a specific hardship or inequity which would result if the proponent were required to proceed in the action. See Vivorte, 2024 WL 4164233, at *3; Roehrs v. Walstrom, No. 23-cv-1885 (SRN/DLM), 2024 WL 22089, at *6 (D. Minn. Jan. 2, 2024).

B. Discussion

In support of his Motion to Stay, Defendant Roy asserts that this Court is required to stay the present action until Plaintiff exhausts his administrative remedies in the Tribal Court Action because the United States Supreme Court has repeatedly held that a non-Indian who challenges the tribal court's jurisdiction over said non-Indian must first exhaust their jurisdictional challenge in the tribal court before the federal courts may address the jurisdictional challenge. (Def. Roy's Mem. [Docket No. 15] at 13–18). Defendant Roy argues that "the exhaustion rule unquestionably controls here," and he further contends that no exception to the exhaustion rule applies here. (Id. at 13–32). In making these arguments, Defendant Roy argues the underlying merits of the present case. (See Id.). The arguments Defendant Roy makes in support of his Motion to Stay are the same arguments he makes in opposition to Plaintiff's pending Motion for Preliminary Injunction. (Compare Def. Roy's Mem. in Support [Docket No. 15] at 28–31 with Def. Roy. Mem. in Opposition [Docket No. 42] at 17–23 (discussing the case law which, according to Defendant Roy, demonstrates that the Tribal Court maintains jurisdiction to adjudicate Plaintiff's jurisdictional challenge; that the exhaustion doctrine requires this Federal Court to abstain from considering the

jurisdictional question until after Plaintiff exhaust his remedies in the Tribal Court Action; and that no exception to the exhaustion doctrine applies in the present case)).

In opposition to the present Motion to Stay, Plaintiff also argues the underlying merits of his tribal court jurisdictional challenge such that Defendant Roy's Motion to Stay should be denied because Plaintiff is not required to exhaust his remedies in the Tribal Court Action because the Tribal Court "plainly lacks jurisdiction over him" since Defendants cannot satisfy any of the Montana exceptions; because the White Earth Ordinance is invalid as to him thereby divesting the Tribal Court of jurisdiction over the underlying lawsuit; because this Court can "reject requiring exhaustion when a tribe seeks to regulate nonmember conduct on nonmember fee lands"; and because the State of Minnesota is a necessary party which cannot be added to the Tribal Court Action. (See Plf.'s Mem. [Docket No. 33] at 9–28). These are the same arguments upon which Plaintiff relies in support of his pending Motion for Preliminary Injunction. (Compare Id. with Plf.'s Mem. in Support [Docket No. 24] at 11–21).

In short, the parties, in opposition and support of the present Motion to Stay, argue the overall merits of the claims underlying this case.

In making these arguments, however, the parties misunderstand the actual issue now before the Court on the Motion to Stay. Both parties present arguments regarding whether the Tribal Court or this Federal Court maintains the initial jurisdiction to adjudicate Plaintiff's tribal court jurisdictional challenge: Plaintiff argues this Court has exclusive jurisdiction to decide his underlying jurisdiction challenge, and Defendants argue that the Tribal Court has the requisite jurisdiction to, in the first instance, adjudicate Plaintiff's jurisdictional challenge. But this is not the issue before the undersigned in the present Motion to Stay nor is it even the issue underlying Plaintiff's Motion for Preliminary Injunction. Instead, the sole, narrow issue in Plaintiff's Motion

for Preliminary Injunction is whether this Federal Court or the Tribal Court should be the one to address Plaintiff's underlying jurisdictional challenge in the first instance. Neither this Motion to Stay nor Plaintiff's Motion for Preliminary Injunction will determine the underlying substantive issue of whether the White Earth Tribal Ordinance and the Tribal Court have jurisdiction over Plaintiff. Even if Judge Menendez were to grant the Plaintiff's Motion for Preliminary Injunction of the lower Tribal Court proceedings, the ultimate issue of whether the Plaintiff was subject to the jurisdiction of the White Earth Tribal Court and the White Earth Water Resource Ordinance pursuant to Montana v. United States, 450 U.S. 544 (1981), would remain for further litigation proceedings.

The parties also overlooked other key matters. For example, neither party addresses the fact that Defendant Roy's Motion to stay the entirety of these Federal Court proceedings effectively asks the underlying United States Magistrate Judge to preclude United States District Judge Menendez from even presiding over Plaintiff's Motion for Preliminary Injunction. Neither party addresses whether the Court's inherent power to stay the cases pending before it vests the undersigned with the authority to stay action on Plaintiff's pending Motion for Preliminary Injunction. Moreover, neither Defendants nor Plaintiff address whether the parties' ability to object to the undersigned's Order on the present Motion to Stay alters the analysis of whether or not a stay of the present proceedings actually conserves party and judicial resources.

These overlooked concerns are relevant to the only question presently before the undersigned in this Motion to Stay: Whether the undersigned (in the present nondispositive Motion to Stay) or Judge Menendez (in the pending dispositive Motion for Preliminary Injunction) should decide whether the Tribal Court or this Federal Court should address Plaintiff's underlying Tribal Court jurisdictional challenge in the first instance? It is through this lens which the undersigned

now considers Defendant Roy's request to stay the entirety of the present Federal Court proceedings.

The Court finds that Defendant Roy has failed to demonstrate the need to stay the entirety of the present Federal proceedings. Given the procedural posture and circumstances of the present case, it would not conserve either judicial or party resources to stay the entirety of the present Federal Court action at this time.

The practical effects of the Court's discussion above illustrate the lack of efficiency in staying the entirety of the present proceedings at this time. For example, the undersigned's review of the law suggest that it is the Tribal Court which should decide Plaintiff's jurisdictional challenge in the first instance. See, e.g., Nat'l Farmers Union Ins. Companies v. Crow Tribe of Indians, 471 U.S. 845, 856 (1985); Nevada v. Hicks, 533 U.S. 353, 369 (2001); WPX Energy Williston, LLC v. Jones, 72 F.4th 834, 837 (8th Cir. 2023); Kodiak Oil & Gas (USA) Inc. v. Burr, 932 F.3d 1125, 1133 (8th Cir. 2019).[4]

However, if the undersigned were to definitively decide the jurisdictional issue and stay the entirety of the present Federal proceeding pending Plaintiff's exhaustion of his remedies in Tribal Court, it would lead to the further expenditure of party and judicial resources given the procedural and administrative posture of the present case because Plaintiff could object to such an

[4] In opposition to the present Motion to Stay and in opposition to the Tribal Court's assertion of jurisdiction over him, Plaintiff relies heavily on his argument that the second Montana exception cannot be satisfied because the proposed location for his high-capacity pump "is entirely downstream from all of the White Earth-owned land on the Reservation and downstream from the baitfishing and wild rice gathering operations of tribal members." (Plf.'s Mem. [Docket No. 33] at 11, 12–15 (emphasis removed); see Plf.'s Mem. [Docket No. 24] at 13–17). Although Plaintiff appears to acknowledge that Courts have universally recognized the inherent authority of tribes to regulate the conduct of non-members within a reservation when the conduct directly effects the tribe's water rights, see Colville Confederated Tribes v. Walton, 647 F.2d 42, 52 (9th Cir. 1981), Plaintiff nevertheless argues that this authority does not apply to his high-capacity pump withdrawing water from the Wild Rice River because the proposed location of his high-capacity pump is downstream from the locations where he perceives the relevant water-related activities of the White Earth Band to take place. However, it is not disputed that the proposed location for Plaintiff's high-capacity pump is in fact entirely within the boundaries of the White Earth Reservation. Plaintiff fails to highlight any case in which a Court determined that a tribe's inherent authority did not extend to regulate the water-rights-effecting conduct of a non-member within the boundaries of the reservation.

Order and Judge Menendez would still have to consider the issue. See Local Rule 72.2. Moreover, given the de facto dispositive nature of such a stay, it is likely that such a review by Judge Menendez would be a de novo review rather than a review pursuant to a clearly erroneous standard thus requiring the expenditure of even more resources by the parties and this Federal Court. Likewise, if the undersigned were to definitively conclude that Plaintiff is not required to exhaust his remedies in Tribal Court and deny the Motion to Stay in its entirety, it would also lead to the increased expenditure of resources because Defendants could also object to such an Order which would also lead to Judge Menendez nevertheless having to still consider the same issue de novo anyway.

The Court, therefore, concludes that the best course of action to ensure the just, speedy, and inexpensive determination of this action is for the undersigned, in ruling on the Motion to Stay, to abstain from addressing the question of whether this Federal Court or the Tribal Court should decide Plaintiff's Tribal Court jurisdictional challenge in the first instance. That threshold question is best and most efficiently resolved by Judge Menendez in presiding over Plaintiff's pending Motion for Preliminary Injunction.

The Court does, however, find that it will conserve party and judicial resources to stay the remainder of any deadlines in this Federal litigation pending Judge Menendez's resolution of Plaintiff's Motion for Preliminary Injunction. Such a stay avoids the unnecessary expenditure of resources in this Federal Court action.

III. Conclusion

Therefore, for the foregoing reasons, and based on all the files, records, and proceedings herein, **IT IS HEREBY ORDERED THAT**:

1. Defendant Roy's Motion to Stay, [Docket No. 13], is **GRANTED in part** and **DENIED in part**, as set forth herein; and
2. Except for the resolution of Plaintiff's pending Motion for Preliminary Injunction, [Docket No. 22], the present action is **STAYED** until the resolution of Plaintiff's Motion for Preliminary Injunction.

Dated: November 25, 2024

s/Leo I. Brisbois
Hon. Leo I. Brisbois
U.S. MAGISTRATE JUDGE