

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

ULTRACLEAN FUEL (TRANSMIX), LLC,

Plaintiff,

v.

Case No. 1:25-cv-00410-JFR-KK

LDC ENERGY, LLC,

Defendant.

**ULTRACLEAN FUEL (TRANSMIX), LLC’S RESPONSE IN OPPOSITION TO
DEFENDANT’S MOTION TO DISMISS FOR FAILURE TO EXHAUST TRIBAL
REMEDIES AND MEMORANDUM IN SUPPORT**

Defendant Ultraclean Fuel (Transmix), LLC (hereinafter “UCF Transmix”) through its attorneys Ray | Peña | McChristian, PC (Jeremy I. Schmehl and Kim Cuong Nguyen) hereby files this Response in Opposition to Defendant’s Motion to Dismiss for Failure to Exhaust Tribal Remedies and Memorandum in Support that Defendant’s Motion is not well taken and should be denied.

FACTUAL BACKGROUND

UCF Transmix filed its Complaint for Breach of Contract and Breach of Good Faith and Fair Dealing (“Complaint”) after LDC Energy, LLC (“LDC Energy”) terminated a suite of agreements governing the processing of transmix into saleable diesel fuel leaving numerous contractual obligations unfulfilled resulting in damages to UCF Transmix. Through this lawsuit, UCF Transmix seeks recovery of damages resultant from LDC Energy’s breach, which occurred after LDC Energy began paying fuel processing fees to Ultraclean. Compl. ¶ 30 [Doc. 1]. Prior to commissioning, LDC Energy benefited from the “testing phase” of the Ultrex® unit during which it paid no processing fees for transmix that was converted into saleable diesel fuel. Compl. ¶¶ 14-

15 [Doc. 1]. UCF Transmix also incurred consequential damages from LDC Energy's breach of contract as these fuel processing services were to be provided for ten (10) years after the initial Ultrex® unit became operational. Compl. ¶ 16 [Doc. 1]. Other damages flowed from LDC Energy's breach of several contracts between the parties.

Ultraclean is a Delaware limited liability company with its principal place of business in Wilmington, Delaware. Compl. ¶ 1 [Doc. 1]. Ultraclean Fuel Pty Limited ("UCF") is an Australian corporation with subsidiaries that developed the patented Ultrex® solution. Compl. ¶ 10 [Doc. 1]. LDC Energy is a New Mexico limited liability company wholly owned subsidiary of Laguna Development Corporation ("LDC"). Compl. ¶ 2 [Doc. 1]. LDC Energy's principal place of business is Albuquerque, New Mexico. *Id.* LDC is a wholly owned subsidiary of Pueblo of Laguna and federally chartered under Section 17 of the 1934 Indian Reorganization Act. In 2011, UCF and LDC entered into a Supply Agreement where UCF was to install the Laguna Ultrex® unit at the Site to reduce sulfur levels in transmix provided to it by LDC. Compl. ¶ 12 [Doc. 1]. The Site is on Laguna land near Interstate 40 Exit 131. Compl. ¶ 9 [Doc. 1].

The initial agreement between the parties was the Supply Agreement which addressed the parties' expectations regarding the testing of the Ultrex® unit to process transmix into saleable diesel. Compl. ¶13 [Doc. 1]; *see also* Supply Agreement between Laguna Development Corp. and Ultraclean Fuel Pty. Ltd., September 11, 2011, attached as Exhibit B to Plaintiff's Compl. at pg. 2 [Doc. 1]. In 2017, the parties entered into a subsequent Fuel Processing Agreement ("Laguna FPA") which included many of the initial terms of the Supply Agreement and bound UCF Transmix and LDC Energy to performance under a suite of agreements. Compl. ¶ 17 [Doc. 1]. The Laguna FPA includes a provision specifying governing law and jurisdiction of any future dispute, specifically stating that:

- (a) This Agreement is governed by and construed in accordance with tribal laws, the laws of the United States of America and the laws of New Mexico, in that order.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the United States of America and New Mexico and courts of appeal from them with respect to any proceedings relating to this Agreement.
- (c) Each Party irrevocably waives any right it may now or in the future have to object to any action relating to this Agreement being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts have no jurisdiction.

See Exhibit A to Plaintiff's Compl. at p. 3, 3(b) and (c) [Doc. 1].

LEGAL STANDARD

The appropriate legal standard to apply when analyzing LDC Energy's motion which involves a request to apply the tribal exhaustion doctrine is the legal framework set forth for a Rule 12(b)(6) rather than a 12(b)(1) motion. *See World Fuel Services Inc. v. Nambe Pueblo Development Co.*, 362 F.Supp.3d 1021, 1087 (D.N.M. 2019).

Although LDC Energy brought a Rule 12(b)(1) motion for lack of subject matter jurisdiction to address the tribal exhaustion doctrine, this Court should analyze this motion as a Rule 12(b)(6) because the tribal exhaustion doctrine is a matter of comity not a jurisdictional issue. *Id.* For purposes of a Rule 12(b)(6) motion, the Court must look only to the "sufficiency of the allegations within the four corners of the complaint after taking those allegations as true." *Mobley v. McCormick*, 40 F.3d 337, 340 (10th Cir. 1994).

Documents that the Complaint refers to may be considered only if "their adequacy is central to the plaintiffs' claims and their authenticity is unquestioned." *World Fuel Services Inc.*, 362 F.Supp.3d at 1055 (citing *Armstrong v. N.M. Disability Det. Servs.*, 278 F.Supp.3d 1193, 1201 n.3 (D.N.M. 2017)). The Court must "accept as true all well-pleaded factual allegations in a complaint and view these allegations in the light most favorable to the plaintiff." *Smith v. United*

States, 561 F.3d 1090, 1098 (10th Cir. 2009), 130 S. Ct. 1142 (2010).

ARGUMENT

It is recognized that “tribal courts have limited jurisdiction over non-Indians.” *QEP Field Services Co. v. Ute Indian Tribe of the Uintah and Ouray Reservation*, 740 F.Supp.2d 1274, 1279 (D. Utah 2010). When tribal court jurisdiction is “colorable”, the tribal exhaustion doctrine is invoked. *See World Fuel Services Inc.*, 362 F.Supp.3d at 1097 (citing *Thlopthlocco Tribal Town v. Stidham*, 762 F.3d at 1240).

The tribal exhaustion doctrine requires petitioners to have “exhausted the remedies available to them in the Tribal Court system” before a federal court may consider any relief. *National Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845, 857, 105 S.Ct. 2447, 2454 (1985). An exhaustion of tribal remedies means “that tribal appellate courts must have the opportunity to review lower tribal court determinations.” *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9 (1987). The tribal exhaustion doctrine is inapposite when one of the exceptions apply. *See World Fuel Services*, 362 F.Supp.3d at 1096. The exceptions to the tribal exhaustion doctrine are:

(1) where an assertion of tribal jurisdiction is motivated by a desire to harass or is conducted in bad faith; (2) where the Tribal Court action is patently violative of express jurisdictional prohibitions; (3) where exhaustion would be futile because of the lack of an adequate opportunity to challenge the Tribal Court’s jurisdiction; (4) where it is plain that no federal grant provides for tribal governance of nonmembers’ conduct on land covered by the main rule established in *Montana v. United States*, 450 U.S. 544, 101, S.Ct. 1245, 67 L.Ed2d 493 (1981); or (5) it is otherwise clear that the Tribal Court lacks jurisdiction so that the exhaustion requirement would serve no purpose other than delay.

Id.

Tribal Court lacks jurisdiction over this matter because the terms of the forum-selection clause in the Laguna FPA provide a clear and unambiguous waiver of tribal court jurisdiction. Therefore, litigating in Tribal Court infringes on and reforms the contractual agreement between UCF Transmix and LDC Energy. While Defendant ignores the language found in the Laguna FPA,

and the exceptions to tribal exhaustion, it is apparent that Tribal Court does not have jurisdiction. Application of the tribal exhaustion rule here “would serve no purpose other than delay.” *Id.*

A. Defendant expressed a clear and irrevocable intention that this Court would have jurisdiction of any disputes arising from the Laguna FPA.

The terms of the Laguna FPA between LDC Energy and UCF Transmix express a clear intention that Tribal Court lacks jurisdiction to adjudicate any dispute arising from this agreement between the parties. This waiver of jurisdiction by LDC Energy, as a wholly owned corporate entity of the Pueblo of Laguna makes it inapposite for the Court to apply the tribal exhaustion doctrine here. Tribal exhaustion is not applicable when it is “clear that the Tribal Court lacks jurisdiction so that the exhaustion requirement would serve no purpose other than delay.” *Id.*

Defendant’s Motion fails to even consider the application of the forum-selection clause as a basis not to apply the tribal exhaustion doctrine to this claim. However, there is authority interpreting the application of a forum-selection clause between a tribal entity and a non-Indian as a basis to avoid tribal jurisdiction and the application of the tribal exhaustion doctrine. In *QEP Field Services Co. v. Ute Indian Tribe of the Uintah and Ouray Reservation*, the federal court exercised its jurisdiction without tribal remedies being exhausted given the existence of a forum-selection clause that was clear and unequivocal by indicating that Tribal Court did not have jurisdiction. *See QEP Field Services Co.*, 740 F.Supp.2d at 1276,1280.

In *QEP Field Services Co.* (“QEP”), an oil and gas company, and the Ute Indian Tribe of the Uintah and Ouray Reservation (“Tribe”) were parties to an Agreement specifying QEP’s right of access to certain aspects of tribal land. *Id.* at 1276. The parties agreed that “they shall have as a first recourse for the enforcement of this Article 17 to the United States District Court for the District of Utah and appellate courts therefrom.” *Id.* at 1277 (internal quotations and citations omitted). A dispute between the parties ensued and the Tribe filed a temporary restraining order in

Tribal Court which QEP argued lacked jurisdiction to enter such an order. *Id.* at 1279. QEP's jurisdictional argument was unsuccessful in Tribal Court and an injunction was ordered. *Id.* QEP filed an action in United States District Court for the District of Utah instead of appealing in the tribal system. *Id.* QEP sought a preliminary injunction to enjoin the Tribe from limiting access to the processing plant, expansion project, and construction work on tribal land in federal court. *Id.* at 1275. The Court held that "there was a clear and unambiguous waiver of Tribal Court jurisdiction in the Agreement, the litigation in Tribal Court is patently violative of the parties' written agreement and exhaustion is unnecessary". *Id.* at 1280.

This case is factually analogous to *QEP Field Services Co.* Ultraclean brought this suit against LDC Energy in federal court without first exhausting tribal remedies on grounds that this court has subject matter jurisdiction and that Tribal Court lacks jurisdiction pursuant to a forum-selection clause. UCF Transmix and LDC Energy entered into a voluntary contractual agreement (the Laguna FPA) detailing that *any disputes* arising therefrom were to be litigated in either New Mexico State or Federal District Court. Compl. ¶17 [Doc. 1]. Much like the forum-selection clause in *QEP Field Services Co.*, the forum-selection clause in the Laguna FPA is a "clear and unambiguous waiver of Tribal Court jurisdiction." *QEP Field Services Co.*, 740 F.Supp.2d at 1280.

The Laguna FPA forum-selection clause states that: "[e]ach Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the United States of America and New Mexico and courts of appeal from them with respect to any proceedings relating to this Agreement" and "[e]ach Party irrevocably waives any right it may now or in the future have to object to any action relating to this Agreement being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts have no jurisdiction." *See* Exhibit A to Plaintiff's Compl. at pg. 3 [Doc. 1].

Nowhere in the forum selection clause does it specify that the parties submit to the jurisdiction of tribal court. *Id.* In fact, the forum-selection clause only contemplates litigation in the “courts of the United States of America and New Mexico and courts of appeal from them”. *Id.* That reference, taken under its plain meaning, unambiguously and clearly dictates that jurisdiction for “any proceedings” relating to the Laguna FPA is proper in either Federal or New Mexico State Court. *Id.* Moreover, the forum-selection clause contains irrevocable waiver language that “[e]ach Party irrevocably waives any right it may now or in the future have to object to any action relating to this Agreement being brought in those courts.” Such language evinces a clear waiver by Defendant (and the Pueblo of Laguna) of Tribal Court jurisdiction. *See* Exhibit A to Plaintiff’s Complaint at p. 3 [Doc. 1].

Therefore, the forum-selection clause in the Laguna FPA contains “clear language showing that jurisdiction is appropriate only in the designated forum,” making this provision mandatory and enforceable by this Court. *Excell, Inc. v. Sterling Boiler & Mechanical, Inc.*, 106 F.3d 318, 321 (10th Cir. 1997)(citing *Thomspson v. Gounders Group Intern.*, 20 Kan.App.2d 261, 886 P.2d 904, 910 (1994))(quotations omitted). It is clear and plain that Tribal Court does not have jurisdiction over this matter because of the mandatory forum-selection clause, so the tribal exhaustion doctrine is inapplicable in this context.

B. United States District Court, District of New Mexico has subject matter jurisdiction over this case.

Given that tribal exhaustion does not apply to this case, this Court also has jurisdiction notwithstanding the arguments of Defendant and based on the existence of subject matter jurisdiction. Defendant’s sole reasoning why this Court does not have jurisdiction over this proceeding is rooted in its argument (which ignores the forum-selection clause entirely) that the tribal exhaustion doctrine must apply to this claim. Defendant’s jurisdictional arguments should

fail for the following reasons: (1) it is well-recognized that the tribal exhaustion doctrine is governed by comity as opposed to jurisdictional issues; and (2) this Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332.

Under 28 U.S.C. §1332(a)(1), a Court has subject matter jurisdiction when “the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs” and is “between citizens of different States.” 28 U.S.C. §1332(a)(1). A corporation is a citizen of the State it is incorporated in and has a principal place of business. *Id.* As for a tribal corporation chartered under the Indian Reorganization Act, 25 U.S.C. § 477, it is “considered a citizen of the state of its principal place of business for diversity jurisdiction purposes.” *Gaines v. Ski Apache*, 8 F.3d 726, 729 (10th Cir. 1993).

Here, the amount in controversy exceeds \$75,000 and there is complete diversity among the parties. LDC is a tribal corporation with its principal office in Pueblo of Laguna, Cibola County, State of New Mexico. Compl. ¶ 2 [Doc. 1]. LDC Energy is a wholly owned subsidiary of LDC. Therefore, LDC Energy is a citizen of New Mexico. Ultraclean Transmix is a Delaware limited liability company with its principal place of business in Delaware, therefore, Ultraclean is a citizen of Delaware. Compl. ¶ 1 [Doc. 1]. Since Ultraclean Transmix and LDC Energy are citizens of different States, complete diversity exists, and this Court has subject matter jurisdiction over the proceedings in this case.

Defendant’s argument that the tribal exhaustion doctrine must apply here ignores the exception that Defendant (and therefore the Laguna of Pueblo) expressly waived litigation of claims arising from the Laguna FPA through the forum-selection clause. The language in this provision is clear, unambiguous and irrevocable. While Defendant cites to authority standing for the proposition that tribal exhaustion is an absolute requisite before a non-tribal entity may bring

suit in a non-tribal court, this should not be so when jurisdiction is expressly called for in federal district court. Defendant should not be permitted to avoid its agreement that this Court has jurisdiction of this claim to the prejudice of UCF Transmix. To do so would encourage tribal entities to enter into arms-length business arrangements with non-Indian entities, only to pull the rug out from under them through unanticipated and forced litigation of disputes in tribal court.

CONCLUSION

WHEREFORE, LDC Energy waived tribal court jurisdiction in the Laguna FPA in a clear and irrevocable way thereby obviating any requirement to exhaust tribal remedies such that this claim can be litigated in New Mexico Federal District Court. Furthermore, this Court has subject matter jurisdiction over this case on grounds of complete diversity with an amount in controversy over \$75,000. *See* 28 U.S.C. §1332(a)(1). UCF Transmix respectfully requests this Court deny LDC Energy's Motion and for such further and other relief as this Court deems just and proper.

Respectfully submitted,

RAY | PEÑA | MCCHRISTIAN, PC

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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2025, the foregoing pleading was submitted to the Court's Odyssey system for e-filing and service upon all counsel of record.

/s/ Jeramy I. Schmehl