IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

ULTRACLEAN FUEL (TRANSMIX), LLC,

Plaintiff,

v. **No. 1:25-cv-00410-JFR-KK**

LDC ENERGY, LLC,

Defendant.

MOTION TO DISMISS FOR FAILURE TO EXHAUST TRIBAL REMEDIES AND MEMORANDUM IN SUPPORT

Defendant LDC Energy, LLC, by and through its counsel, moves the Court to dismiss Plaintiff's claims, on the ground that Plaintiff has failed to exhaust tribal remedies. Plaintiff's failure to exhaust tribal remedies renders the Complaint unripe, and therefore subject to dismissal under Fed. R. Civ. P. 12(b)(1). The Declaration of Gary Murrey ("Murrey Dec.") is submitted in support of this motion and memorandum.

FACTUAL BACKGROUND

Defendant is a wholly owned subsidiary of Laguna Development Corporation ("LDC"), a federally chartered corporation wholly owned by the Pueblo of Laguna. Comp. ¶¶ 2, 4. Murrey Dec. ¶ 2. The Pueblo of Laguna (the "Pueblo") is a federally recognized tribe. *See* Indian Entities Recognized by and Entitled to Receive Services from the United States Bureau of Indian Affairs, 89 Fed.Reg. 944, 946 (Jan. 8, 2024).

In 2003, the Pueblo granted a land assignment for a parcel of tribal land (the "Site") to LDC for the purpose of constructing and operating a transmix facility, but the Site has always

remained Pueblo land. Comp. ¶¶ 7, 9. In 2011, Ultraclean Fuel Pty. [Proprietary] Limited ("UCFP") and LDC entered into a Supply Agreement ("Agreement") whereby UCFP was to install a transmix processing unit (termed the Laguna Ultrex Unit, or "Unit") on the Site. Comp. ¶ 12. The Unit was supposed to reach specific processing thresholds with respect to the production of marketable diesel fuel from transmix (an event termed "commissioned" or "commissioning" in certain contracts entered into by and between the parties; *see* Comp. ¶¶ 22-23) before certain Agreement provisions came into effect. Comp. ¶¶ 14, 16. In 2017, LDC assigned its rights and obligations under the Agreement to Defendant LDC Energy, LLC ("Defendant"). Comp. ¶ 17.

Transmix (which, according to the Complaint, is a subsidiary of UCFP; Comp. ¶ 11) contends that the Unit achieved commissioning in 2018, and that various obligations became imposed on Defendant as a result. Comp. ¶¶ 24-28. In the course of the Unit's operations, spills occurred at the Site, and subsequently Defendant effectively terminated the arrangement between it and Transmix (or UCFP). Comp. ¶¶ 37-48. Transmix's Complaint alleges that it is entitled to unspecified damages as a result of that termination.

INTRODUCTION

Fed. R. Civ. P. 12(b) allows a party to move to dismiss a complaint for lack of jurisdiction. A court's jurisdiction establishes its power to hear specific cases. *Lightfoot v. Cendant Mortg. Corp*., 580 U.S. 82 (2017). When a federal court lacks jurisdiction over the claims being made, dismissal is proper. A party may move for dismissal pursuant to a lack of jurisdiction either by way of a facial attack entirely on the sufficiency of the pleadings or by way of a factual attack on the substance of the allegations by relying upon additional evidence. *New Mexicans for Bill Richardson v. Gonzales*, 64 F.3d 1495, 1499 (10th Cir. 1995). In considering a

motion to dismiss under Fed. R. Civ. P. 12(b)(1), a court is not limited to the facts pleaded in the complaint, but can and should weigh evidence and determine facts in order to satisfy itself as to its power to hear the case. *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987).

Additionally, "[t]he Article III case or controversy requirement limits federal courts' subject matter jurisdiction by requiring, *inter alia*, . . . that claims be 'ripe' for adjudication." *Chandler v. State Farm Mut. Auto Ins. Co*., 598 F.3d 1115, 1121-22 (9th Cir. 20210) (citing *Allen v. Wright*, 468 U.S. 737, 750 (1984)). As such, a defense on the ground of ripeness is properly raised in a Rule 12(b)(1) motion to dismiss. *Carjiano v. Occidental Petroleum Corporation*, 643 F.3d 1216, 1227 (9th Cir. 2011) (citing *Chandler*, 598 F.3d at 1122). Whether a plaintiff must exhaust tribal court remedies is a question of ripeness. *See, e.g., Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1229 n.18 (9th Cir. 1989); *LaVallie v. Turtle Mountain Tribal Ct.,* No. 4:06-CV-77, 2006 WL 3498559, at *4 (D.N.D. Dec. 1, 2006) (finding that a habeas corpus petition was not ripe for review where the movant was simultaneously seeking review from a tribal court of appeals). As will be shown, numerous Supreme Court and lower federal court cases hold that claims such as those pleaded in the Complaint must first be presented to the tribal court of the tribe within whose land the cause of action arose.

ARGUMENT

I. THIS COURT SHOULD DISMISS PLAINTIFF'S SUIT DUE TO THE PLAINTIFF'S FAILURE TO EXHAUST TRIBAL REMEDIES

A. Indian Tribes Retain Inherent Civil Jurisdiction Over the Conduct of Non-Indians Within their Reservation Unless Congress Expressly Divests the Tribe of Such Jurisdiction.

The United States Supreme Court has consistently guarded the authority of tribal governments over matters arising within their reservations that affect the tribe, its members or

tribal entities. *See Williams v. Lee*, 358 U.S. 217, 223 (1959). Indian tribes remain a separate people with power to regulate internal and social relations. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 54 (1978). This includes claims and transactions involving non-Indians conducting business within reservation boundaries. *Williams*, 358 U.S. at 223. Tribal authority over the activities of non-Indians on reservation lands is an important part of tribal sovereignty. *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 18 (1987). Unless affirmatively limited by a specific treaty provision or federal statute, jurisdiction over civil matters arising within Indian country presumptively lies with the tribe. *Id*.

The Supreme Court requires that before a federal court may entertain an action against a tribe or tribal member or entity, the tribal court must be given the opportunity to consider the issue of its own jurisdiction first, with the federal court action being dismissed or stayed pending the exhaustion of tribal court remedies. *Id*. at 16 (citing *National Farmers Union v. Crow Tribe of Indians*, 471 U.S. 845, 855 (1985)). Moreover, should the case return to federal court, and the court finds that the "tribal court has properly defined its own jurisdiction, respect for the tribal court system will bar the relitigation of merits-related issues that were presented to and decided by that court." *Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth*., 207 F.3d 21, 35 (1st Cir. 2000) (citing *Iowa Mutual*, 480 U.S. at 19); *see also* David H. Getches et al., FEDERAL INDIAN LAW 528 (4th ed. 1998) ("The federal court should not be tempted beyond the jurisdictional question, even by a tribal court's decision on the merits that it finds questionable.").

Thus, where a party brings in federal court a civil cause of action concerning a dispute that arises on the lands of a federally recognized tribe, involving a voluntary transaction or other consensual relationship between that party and a tribal member, tribe or tribal entity, the federal

court must dismiss the federal suit until the plaintiff has exhausted its tribal remedies—so long as there exists colorable tribal court jurisdiction over the claims pled under *Williams*.[1] *See National Farmers Union*, 471 U.S. at 856-57; *Iowa Mutual*, 480 U.S. at 16-17; *Fine Consulting, et al. v. George Rivera*, 915 F.Supp.2d 1212, 1229-30 (D.N.M. 2013) (since tribal court had colorable jurisdiction under *Williams* and *Montana* tests, suit involving dispute by non-Indian party against tribal defendants involving contracts to be performed by non-Indian on the reservation must be dismissed due to plaintiff's failure to exhaust tribal remedies). In this case, the tribal entity sued is a tribal business entity organized to serve the economic interests of the Pueblo and all actions complained of occurred on tribal land, which triggers tribal court jurisdiction under *Williams*. Murrey Dec. ¶¶ 2-4.

In *Strate v. A-1 Contractors*, 520 U.S. 438, 448-51 (1997), the Court reaffirmed the exhaustion of tribal remedies requirements of *National Farmers Union* and *Iowa Mutual* where there exists at least a colorable claim that the federal requirements for exercise of tribal jurisdiction over a non-Indian party—either as plaintiff or as defendant—are met. This exhaustion requirement has been reaffirmed many times since. *See e.g., Ninigret Development*, 207 F.3d at 31 ("The tribal exhaustion doctrine holds that when a colorable claim of tribal court jurisdiction has been asserted, a federal court may (and ordinarily should) give the tribal court

[1] Several exceptions exist as to the requirement to exhaust tribal remedies. *See National Farmers Union* at 856 n.21 ("We do not suggest that exhaustion would be required where an assertion of tribal jurisdiction 'is motivated by a desire to harass or is conducted in bad faith,' *cf. Juidice v. Vail*, 430 U.S. 327, 338, 51 L. Ed.2d 376, 98 S. Ct. 1211 (1977), or where the action is patently violative of express jurisdictional prohibitions, or where exhaustion would be futile because of the lack of an adequate opportunity to challenge the court's jurisdiction."); *El Paso Natural Gas Company v. Neztsosie*, 526 U.S. 473 (1999) (exhaustion of tribal remedies not required where Congress has clearly expressed an intent that a particular federal claim be heard only in a federal forum); *Nevada v. Hicks*, 533 U.S. 353, 369 (2001) (exhaustion of tribal remedies is not required where there is not even a colorable basis for exercise of tribal jurisdiction). None of those exceptions apply here.

precedence and afford it a full and fair opportunity to determine the extent of its own jurisdiction over a particular claim or set of claims."); *Duncan Energy Co. v. Three Affiliated Tribes*, 27 F.3d 1294, 1300 (8th Cir. 1994) (reaffirming Eighth Circuit's previous interpretation that "*National Farmers Union* and *Iowa Mutual* . . . require exhaustion of tribal court remedies before a case may be considered by a federal district court"); *Smith v. Moffett*, 947 F.2d 442, 445 (10th Cir. 1991) (characterizing *Iowa Mutual* and *National Farmers Union* as establishing "an inflexible bar to considering the merits . . . when it appears that there has been a failure to exhaust tribal remedies"); *Crawford v. Genuine Parts Co*., 947 F.2d 1405, 1407 (9th Cir. 1991) ("The requirement of exhaustion of tribal remedies is not discretionary; it is mandatory. If deference is called for, the district court may not relieve the parties from exhausting tribal remedies"); *Norton v. Ute Indian Tribe of the Uintah and Ouray Reservation*, 862 F.3d 1236, 1251-52 (10th Cir. 2017) (district court erred in failing to enforce plaintiff's duty to exhaust tribal remedies in suit against tribal officers and tribal business committee in dispute over role of county officers on reservation lands); *Crowe & Dunlevy, P.C., v. Stidham*, 640 F.3d 1140, 1149 (10th Cir. 2011) (absent exceptional circumstances, federal courts are to abstain from hearing cases that challenge tribal court authority until tribal remedies, including tribal appellate review, are exhausted); *Fine Consulting,* 915 F.Supp.2d at 1230 (dismissing non-Indian plaintiff's tort and contract claims for failure to exhaust tribal remedies); *World Fuel Servs., Inc. v. Nambe Pueblo Devel. Corp.*, 362 F.Supp.3d 1021, 1096 (D.N.M. 2019) (even if the court otherwise has subject matter jurisdiction and the tribal entity has waived sovereign immunity, the court must dismiss the suit for failure to exhaust tribal remedies).

Defendant is wholly owned by LDC, a Pueblo of Laguna federally chartered corporation. Plaintiff does not dispute that the Pueblo of Laguna, a federally recognized tribe, owns the land

where the Site is located, and that Plaintiff's business arrangement was a consensually entered into business arrangement with a tribal corporation. Prior to determining the merits of the Complaint, this Court must establish jurisdiction to hear the matter. The tribal exhaustion doctrine is mandatory on the Court, and an "inflexible bar," thus the Complaint must be dismissed or stayed until the Pueblo of Laguna Court has determined whether it has jurisdiction over the matter, and tribal appellate review has concluded.

B. <u>The Determination of Jurisdiction in this Dispute Must First be Made by the Pueblo of Laguna Court.</u>

A tribal court's initial evaluation of its own jurisdiction "serves several important functions, such as assisting in the orderly administration of justice, providing federal courts with the benefit of tribal expertise, and clarifying the factual and legal issues that are under dispute and relevant for any jurisdictional evaluation." *DISH Network Serv., LLC v. Laducer*, 725 F.3d 877, 882 (8th Cir. 2013). Consistent with these principles, "considerations of comity direct that tribal remedies be exhausted before a federal court can exercise jurisdiction over a challenge to tribal jurisdiction." *Id*. (citations and internal quotation marks omitted). Exhaustion of tribal court remedies is "mandatory . . . when a case fits within the policy." *Gaming World Int'l, Ltd. v. White Earth Band of Chippewa Indians*, 317 F.3d 840, 849 (8th Cir. 2003). The exhaustion doctrine provides that a federal court should "stay[] its hand until after the Tribal Court has had a full opportunity to determine its own jurisdiction." *National Farmers Union*, 471 U.S. at 857. "At a minimum, exhaustion of tribal remedies means that tribal appellate courts must have the opportunity to review the determinations of the lower tribal courts." *Iowa Mutual*, 480 U.S. at 16-17; *National Farmers Union*, 471 U.S. at 857.

Further, the Supreme Court recognized in *Santa Clara*, 436 U.S. at 71, that respect for tribal courts is particularly important since resolution of issues arising under tribal laws will

"frequently depend on questions of tribal tradition and custom which tribal forums may be in a better position to evaluate than federal courts." Only if it is "plain" that tribal jurisdiction does not exist and the assertion of tribal jurisdiction is for "no purpose other than delay," exhaustion of tribal remedies is not required. *DISH Network Services*, 725 F.3d at 883 (quoting *Strate*, 520 U.S. at 459 n.14).

This Court may not issue any ruling in this case until Plaintiff first exhausts its remedies in the Laguna Court and appellate review of that decision is complete. Should the Laguna Courts conclude that they do have jurisdiction, moreover, and proceed to decide the merits of Plaintiff's claims, Plaintiff may thereafter challenge the jurisdictional determination in this Court, but "[u]nless a federal court determines that the Tribal Court lacked jurisdiction, . . . proper deference to the tribal court system precludes relitigation of [Plaintiff's claims] resolved in the Tribal Courts." *Iowa Mutual*, 480 U.S. at 19.

II. THIS COURT MUST DISMISS BECAUSE THE MATTER HAS BEEN PREMATURELY BROUGHT IN THE FEDERAL COURT AND IS NOT RIPE FOR REVIEW

A. The Complaint is Not Ripe for Adjudication Under Either 28 USC § 1332 or 28 USC § 1331, Because Plaintiff has Not Exhausted Tribal Court Remedies, and Therefore Fed. R. Civ. P. 12(b)(1) Demands Case Dismissal.[2]

In *Stock West, Inc.*, the Court characterized the question regarding whether or not the Court had jurisdiction to hear the matter prior to the Plaintiff having exhausted tribal remedies as a "ripeness problem." 873 F.2d at 1229 n.18. Tribal court exhaustion is properly characterized as

[2] Oddly, Transmix's Complaint does not actually allege any federal statute that purports to grant jurisdiction over its claims, but only cites a claimed forum selection clause in one or more contracts allegedly entered into by the parties. Comp. ¶ 3. There is clearly no federal question presented by the Complaint, but Defendant would concede that, but for its failure to exhaust tribal remedies, Transmix could probably satisfy the requirement of diversity jurisdiction, under 28 U.S.C. § 1332.

an Article III limitation on judicial power because its application by the Court is mandatory, not discretionary. *See Bateman v. City of W. Bountiful*, 89 F.3d 704, 706 (10th Cir. 1996) ("The issue whether a claim is ripe for review bears on the court's subject matter jurisdiction under Article III of the Constitution. Accordingly, a ripeness challenge, like most other challenges to a court's subject matter jurisdiction, is treated as a motion to dismiss under Fed. R. Civ. P. 12(b)(1).") (citing *New Mexicans for Bill Richardson*, 64 F.3d at 1498-99). The ripeness inquiry requires the Court to evaluate "the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Id*. (citing *Abbott Labs. v. Gardner*, 387 U.S. 136, 149, 87 S.Ct. 1507, 1515, 18 L.Ed.2d 681 (1967)). The ripeness doctrine is "concerned with whether a case has been brought prematurely." *N. Mill St., LLC v. City of Aspen*, 6 F.4th 1216, 1224-25 (10th Cir. 2021). A district court "has *no discretion* to relieve a litigant from the duty to exhaust tribal remedies prior to proceeding in federal court." *Allstate Indemnity Co. v. Stump*, 191 F.3d 1071, 1073 (9th Cir. 1999), *amended*, 197 F. 3d 1031 (9th Cir. 1999) (emphasis added). Even where a waiver of sovereign immunity has occurred, "the tribal court must have the first opportunity to address all issues within its jurisdiction." *Marceau v. Blackfeet Housing Authority*, 540 F.3d 916, 921 (9th Cir. 2008); *see also World Fuel Services*, 362 F.Supp.3d at 1096.

Like standing, ripeness is a "prudential" jurisdiction requirement, meant to prevent the courts, through avoiding premature adjudication, from entangling themselves in abstract disagreements prior to a concrete issue being at stake. *See Abbott Laboratories*, 387 U.S. at 148-49, *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99, 97 S. Ct. 980, 51 L. Ed. 2d 192 (1977). As the Supreme Court noted in *Abbot Laboratories*, there is a twofold inquiry regarding ripeness: requiring courts to "evaluate both the fitness of the issues for judicial

decision and the hardship to the parties of withholding court consideration." *Id*.; *see also OverDrive Inc. v. Open E-Book F*., 986 F.3d 954, 957 (6th Cir. 2021) (the standard, two-question ripeness inquiry asks (1) "[d]oes the claim arise in a concrete factual context and concern a dispute that is likely to come to pass?" and (2) "[w]hat is the hardship to the parties of withholding court consideration?").

In *Valenzuela v. Silversmith*, the Tenth Circuit stated that "[t]he tribal exhaustion rule is based on 'principles of comity'. . . . . It applies '[r]egardless of the basis for [federal] jurisdiction.'" *Valenzuela v. Silversmith*, 699 F.3d 1199, 1206 (10th Cir. 2012) (quoting *Burrell v. Armijo*, 456 F.3d 1159, 1168 (10th Cir. 2006) and *Iowa Mutual*, 480 U.S. at 16). Tribal court exhaustion applies regardless of the court having subject matter jurisdiction over the case under 28 USC § 1332 or 28 USC § 1331. However, if a plaintiff has not exhausted its tribal court remedies, the case has been brought in federal court prematurely, which is a ripeness issue, and the court should prudentially decline to hear the matter unless one of the exceptions applies.[3] Finally, the Tenth Circuit has made clear: "[u]nder the tribal exhaustion rule, '[u]ntil petitioners have exhausted the remedies *available to them in the Tribal Court system*, it [is] premature for a federal court to consider any relief.'" *Valenzuela*, 699 F.3d at 1207 (quoting *National Farmers Union*, 471 U.S. at 857) (emphasis in original).

This case has been prematurely brought in this Court because Plaintiff has not exhausted its tribal remedies. Tribal exhaustion serves the orderly administration of justice in the federal court, "by allowing a full record to be developed in the Tribal Court before either the merits or any question concerning appropriate relief is addressed." *National Farmers Union.*, 471 U.S. at 856. The federal court should thus "stay its hand until after the Tribal Court has had a full

[3] None of those circumstances apply here. *See supra* footnote 1.

opportunity to determine its own jurisdiction." *Id*. at 856-57. Additionally, tribal exhaustion "will encourage tribal courts to explain to the parties the precise basis for accepting jurisdiction, and will also provide other courts with the benefit of their expertise in such matters in the event of further judicial review." *Id*. at 857. Therefore, "[a] federal court must give the tribal court a full opportunity to determine its own jurisdiction, which includes exhausting opportunities for appellate review in tribal courts." *Boozer v. Wilder*, 381 F.3d 931, 935 (9th Cir. 2004) (citing *Iowa Mutual*, 480 U.S. at 16-17).

Although Plaintiff claims that jurisdiction is proper in the federal court, it willfully ignores longstanding established precedent that dictates it must first exhaust all remedies in the tribal court, including allowing the Pueblo Court to determine its own jurisdiction in the matter. Tribal court jurisdiction over this dispute is unquestionably colorable: Defendant is a Pueblo entity which conducts business on Pueblo land, key events and circumstances in this matter occurred on Pueblo land, Murrey Dec. ¶¶ 3-4, and there are no exceptions that apply (no indication of bad faith, harassment, intent to delay, or jurisdictional prohibition). Thus, the application of the tribal court exhaustion doctrine applies, this matter has been prematurely brought in federal court, and the Court has no discretion but to dismiss. Further, comity and deference must be given to the Pueblo of Laguna Court to develop a full record in this case. And, if the Laguna Court has properly defined its own jurisdiction, relitigation of any of the merits raised in and decided by the Pueblo Court will be barred in this Court. Given the early stage of this proceeding in the federal court, there is no prejudice to Plaintiff in this action being dismissed. Not dismissing this case under the tribal exhaustion doctrine would undermine the sovereignty of the Pueblo, as the Tenth Circuit and the Supreme Court have consistently held, and would violate the Article III limitations on this Court's jurisdiction.

CONCLUSION

Defendant LDC Energy, LLC, therefore urges that this Court dismiss the Complaint herein due to Plaintiff's failure to exhaust tribal court remedies and because this Court thus lacks jurisdiction to hear this matter as set forth above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of June, 2025, I caused the foregoing pleading to be filed electronically with CM/ECF which caused all counsel of record to be served as reflected on the notice of service.

/s/ *Richard W. Hughes*
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