

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION**

AVOYELLES WATER COMMISSION	*	CASE NO: _____
	*	
Plaintiff,	*	
	*	
VERSUS	*	JUDGE _____
	*	
WARD 3, AVOYELLES WATER WORKS DISTRICT	*	MAG. JUDGE _____
	*	
Defendants	*	

NOTICE OF REMOVAL

Defendants (and Plaintiffs in Reconvention), Ward 3 Avoyelles Waterworks District (“Ward 3”) hereby give notice of the removal of this action from the Tribal Court for the Tunica Biloxi Tribe to the United States District Court for the Western District of Louisiana. In support of this Notice of Intent to Remove, Ward 3 specifically asserts:

1. This matter was brought in the Tunica Biloxi Tribal Court by Avoyelles Water Commission against Ward 3 Avoyelles Waterworks District.
2. Ward 3 Avoyelles Waterworks District answered the initial complaint and filed a reconventional demand against Avoyelles Water Commission and a Third-Party Demand against the City of Marksville.
3. The Tunica Biloxi Tribe was not a party to this lawsuit.
4. Ward 3 affirmatively disputed the Tribal Court’s subject matter jurisdiction in their answer, pre-trial memorandum, and post-trial memorandum.

5. A hearing on this matter was conducted in the Tribal Court on December 6, 2023, wherein ownership rights to a certain 12-inch water pipeline originating outside of the geographical jurisdiction of the tribe is owned by Avoyelles Water Commission or Ward 3.
6. The Court issuing an opinion on May 22, 2024, now asserts that the Tunica Biloxi Tribe owns the 12-inch water line that is the subject of these proceedings.
7. The Court makes the assertion that the Tunica Biloxi Tribe owns this water line with no evidence to support this opinion, only conjecture that the Court questions the demeanor of the witnesses' testimony.
8. The Court having issued this opinion has now inserted the Tunica Biloxi Tribe into the dispute of non-Indian parties over the ownership of property situated outside of tribal fee lands and outside of tribal trust lands.
9. Ward 3 now removes this matter to the U.S. District Court for the Western District of Louisiana because the Tribal Court did not have jurisdiction over the subject matter of this dispute, and through the trial held in this matter the Tribal Court has inserted itself into the dispute to infringe upon the ownership rights of Ward 3 with respect to property located outside of the Tunica Biloxi Tribe's Territorial Jurisdiction.
10. Federal Courts have jurisdiction to determine, as a matter arising under federal law, the limits of a tribal court's jurisdiction, even if the plaintiff's claims are not premised on federal law. *National Farmer's Union Insurance Co. v. Crow Tribe of Indians*, 471 U.S. 845, 105 S.Ct. 2447, 85 L.Ed.2d 818 (1985).
11. 42 U.S.C. §1331 encompasses the federal question whether a tribal court has exceeded the lawful limits of its jurisdiction. *National Farmer's Union Insurance Co. v. Crow Tribe of Indians*, 471 U.S. 845, 105 S.Ct. 2447, 85 L.Ed.2d 818 (1985).

12. The question whether an Indian tribe retains the power to compel a non-Indian property owner to submit to the civil jurisdiction of a tribal court is one that must be answered by reference to federal law and is a federal question under §1331. *National Farmer's Union Insurance Co. v. Crow Tribe of Indians*, 471 U.S. 845, 105 S.Ct. 2447, 85 L.Ed.2d 818 (1985).
13. However, exhaustion of tribal court remedies is required before a claim may be entertained by a federal court. *National Farmer's Union Insurance Co. v. Crow Tribe of Indians*, 471 U.S. 845, 105 S.Ct. 2447, 85 L.Ed.2d 818 (1985).
14. However, three exceptions exist where a federal court need not stay its hand: 1) where an assertion of tribal jurisdiction is motivated by a desire to harass or is conducted in bad faith; 2) where the action is patently violative of express jurisdictional prohibitions; or 3) where exhaustion would be futile because of the lack of adequate opportunity to challenge the court's jurisdiction. *National Farmer's Union Insurance Co. v. Crow Tribe of Indians*, 471 U.S. 845, 105 S.Ct. 2447, 85 L.Ed.2d 818 (1985).
15. "Where non-members are concerned, the 'exercise of triable power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation.'" *Nevada v. Hicks*, 533 U.S. 353, 121 S.Ct. 2304, 150 L.Ed.2d. 398 (2001).
16. The above entitled matter involves "non-members", the Tunica Biloxi Tribe is not a party to this matter, the Tunica Biloxi Tribe has not intervened in this matter, and the Tribal Court attempts to assert Tribal ownership of property that is located outside of the jurisdictional boundaries of the Tunica Biloxi Tribe with no evidence to support such a claim; therefore, this action does not fall within the Tribal Court's Jurisdiction and exhaustion of tribal court remedies would only serve to delay this matter.

17. Additionally, the Tunica-Biloxi Tribal Court without any evidence or even an allegation, attempts to assert Tunica Biloxi Tribe ownership of the 12-inch water pipe that is the subject of this matter to fashion a remedy favoring a third-party that is not involved in this matter, the Tunica Biloxi Tribe; therefore, it is clear that the Tribal Court's assertion of tribal jurisdiction is motivated by a desire to harass and is conducted in bad faith.
18. This matter involves a 12-inch water line that is located outside of the geographical boundaries of property controlled by, or within the jurisdiction of, the Tunica Biloxi Tribe and involved a dispute between parties that are not members of the Tunica Biloxi Tribe.
19. Additionally, the 12-inch water line is owned and operated by Ward 3 within Ward 3's jurisdiction which is protected by the anti-curtailment provisions of 7 U.S.C. § 1926, which means that the actions the Tunica-Biloxi Tribal Court has taken violates federal law outside of the geographical boundaries of property controlled by, or within the jurisdiction of, the Tunica Biloxi Tribe.
20. Indians' sovereign rights as a nation within the United States have necessarily been limited to no longer include the right to determine their external relations and they involve only the relations among members of a tribe which limits the exercise of tribal power to that which is necessary to protect tribal self-government or to control internal relations. *Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.493 (1981).
21. Further, the sovereign rights of Indian Tribes does not allow for the violation of federal law outside of the geographical boundaries of property controlled by, or within the jurisdiction of, the Tunica Biloxi Tribe; specifically, the Tunica-Biloxi Tribal Court cannot issue orders that violates federal laws such as 7 U.S.C. § 1926.

22. The Court expressed two exceptions to the limitation of tribal power: 1) a tribe may regulate activities of non-members on fee lands who enter a consensual relation with the tribe through commercial dealing; and 2) the tribe may civilly regulate where the conduct of non-Indians on fee lands threatens or has some direct effect on the political integrity, economic security, or the health or welfare of the tribe.
23. The assertion by this Honorable Court that it has jurisdiction over this matter due to the *Montana* exception over nonmembers consensual relationships with the tribe does not apply outside of the reservation or the tribal fee lands. 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.493 (1981). This exception only applies to conduct inside the reservation and not contests between non-members. *Plains Commerce Bank v. Long Family Land and Cattle Co., Inc.*, 554 U.S. 316, 128 S.Ct. 2709, 171 L.Ed.2d 457 (2008) see also *Strate v. A-1 Contractors*, 520 U.S. 438, 117 S.Ct. 1404, 137 L.Ed.2d 661 (1997).
24. Additionally, the assertion by the Court that it has jurisdiction due to the *Montana* exception over the regulation of non-Indians for actions that threaten or have some direct effect on the political integrity, economic security, or the health or welfare of the tribe is also misplaced because this exception also requires the action to be on fee lands. 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.493 (1981).
25. Here the 12-inch water line that is the subject of the dispute herein is located outside of the Tunica Biloxi fee land geographical boundaries and outside of the geographical boundaries of the Tunica Biloxi trust land; therefore, the Tribal Court's assertion of jurisdiction over this matter is patently violative of express jurisdictional prohibitions.
26. Additionally, the 12-inch water line that is the subject of the dispute herein is owned and operated by Ward 3, who has a U.S.D.A loan funding the operations of a rural water district and

are therefore subject to the anti-curtailment provisions of 7 U.S.C. § 1926; therefore, the Tribal Court's order and judgment in this matter expressly violate federal law by infringing upon the protections afforded to Ward 3 by the federal law, 7 U.S.C. § 1926.

27. The Court cites *Freemanville Water System, Inc. v. Poarch Band of Creek Indians*, 563 F.3d 1205 (11th Cir. 2009) as being instructive in this matter; however, the Court's assertion is again misplaced because in *Freemanville*, the Indian Tribe was expanding their own water system across Freemanville Water System's protected jurisdiction and the Court ruled that the Indian Tribe could connect the Indian water system on noncontiguous fee lands.

28. Conversely, in this matter, the City of Marksville and/or Avoyelles Water Commission attempts to infringe upon Ward 3's federally protected jurisdiction. The only way *Freemanville* is applicable is if the Tribal Court's inappropriate assertion of ownership of the 12-inch water line is upheld, but even still, it does not give the City of Marksville the right to sell water to the Tunica Biloxi Tribe. Arguably, the Tunica Biloxi Tribe would need to buy water at wholesale from Avoyelles Water Commission and operate their own water system for *Freemanville* to be applicable.

29. The Tunica Biloxi Tribe is not a party to this lawsuit and as such no assertions that the Tunica Biloxi Tribe intends to operate its own water system is in the record of this matter, additionally, only the Court, not the Tunica Biloxi Tribe, has asserted that the Tunica Biloxi Tribe owns the 12-inch pipe that is the subject of this litigation, and the Tunica Biloxi Tribe is not a party to this litigation nor have they asserted any claims to ownership of this 12-inch pipe in this litigation.

30. Moreover, on or about August 27, 2024, Ward 3 received a certified copy of the Judgment rendered by the Tunica-Biloxi Tribal Court. On this same date, August 27, 2024, Ward 3 filed

a *Motion to Reconsider* and a *Motion to Appeal*, on which the Tunica-Biloxi Tribal Court has not taken any action.

31. Upon information and belief developed through communications with the Tunica-Biloxi Tribal Court, Ward 3 believes that the Tunica-Biloxi Tribe has the “framework” for a Tribal Appeals Court, but there are not enough judges appointed to the Tribal Appeals Court for it to be functional.
32. As such, Ward 3 has exhausted all Tribal remedies in this matter and this matter is now ripe for removal to the United States District Court for the Western District of Louisiana to consider the federal question of Tribal Court Subject Matter Jurisdiction in this case.
33. Further, the Tribal Exhaustion Doctrine, or as it may also be known the Tribal Abstention Doctrine, does not apply in this matter because all tribal court remedies available to Ward 3 have been exhausted because the Tunica-Biloxi Tribe does not have a functional Tribal Appeals Court and the Tunica-Biloxi Tribal Court has failed to address Ward 3’s *Motion for Reconsideration* and *Motion and Order for Appeal* filed on August 27, 2024.
34. For the reasons stated herein, removal of this matter to the U.S. District Court for the Western District of Louisiana is proper and necessary.
35. The Removing Defendant has attached all available copies of the filings, process, pleadings, and orders in the underlying suit¹; however, a complete record of the suit was not available because Ward 3 requested copies of the entire record from the Tribal Court on June 7, 2024, and as of the date of this filing, the Tunica-Biloxi Tribal Court has failed to provide a complete copy of the record of the underlying suit.

¹ See Addendum “A”.

36. Consistent with the provisions of 28 U.S.C. § 1446(d), no further proceedings shall occur in the Tunica-Biloxi Tribal Court.
37. Pursuant to Rule 11 of the Federal Rules of Civil Procedure, undersigned counsel certifies reading the foregoing Notice of Removal, that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose.
38. By filing this Notice of Removal, the Removing Defendants do not waive, and hereby reserve all defenses and objections to the Plaintiff's petition for Injunction filed in the Tunica-Biloxi Tribal Court.

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Prayer, Signature, and Certificate to follow

WHEREFORE, Defendant, Ward 3 Avoyelles Water Works District respectfully requests that this Court assume full jurisdiction over the cause herein provide by law inasmuch as this Court has jurisdiction over the dispute because the matter derives from and implicates enforcement and application of federal statutory and constitutional law and the jurisdictional requirements have been met.

Respectfully submitted,

S/ Kirk P. LaCour

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*Attorney for Ward 3 Avoyelles Waterworks
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above and foregoing has been served this day upon all known counsel of record through electronic mail transmission, and copy of the above and foregoing has also been sent to the Tunica-Biloxi Tribal Court.

Bunkie, Louisiana, this 12th day of October, 2024.

S/ Kirk P. LaCour

Kirk P. LaCour