

**IN THE DISTRICT COURT OF THE NAVAJO NATION
JUDICIAL DISTRICT OF SHIPROCK, NAVAJO NATION (NEW MEXICO)**

THE NAVAJO NATION,
Plaintiff,

No. SR-CV-14-2020

v.

DINEH BENALLY, NATIVE AMERICAN
AGRICULTURAL COMPANY, and
NAVAJO GOLD COMPANY,
Defendants.

**ORDER DENYING
DEFENDANTS'
MOTION TO DISMISS**

This matter comes before the Court on Defendants' motion. The Court being fully informed of the record before it FINDS:

1. On July 6, 2020 Defendants Dineh Benally, Native American Agricultural Company, and Navajo Gold Company ("Defendants"), through legal counsel, filed a Motion to Dismiss Plaintiff Navajo Nation's ("Plaintiff") Complaint in this matter. On July 22, 2020 Plaintiff, through legal counsel, filed a brief opposing Defendants' motion.
2. On August 10, 2020 the Court held a hearing on Defendants' motion. Both Plaintiff and Defendants appeared for the hearing through their respective legal counsels. The parties were given the opportunity to be heard and to present evidence and testimony in support of their respective claims. Both parties, through legal counsel, presented oral argument regarding the motion but neither party introduced documents or testimony into the record as evidence.
- I. **Defendants' Motion to Dismiss for Lack for Jurisdiction – Nav. R. Civ. P. 12(b)(1).**
3. At the August 10th hearing and in a subsequent brief, Defendants raised a jurisdictional argument that was not made in their underlying motion. Defendants argue 3 N.N.C. § 65(A)(5) "divides up the jurisdiction of the Court versus the jurisdiction of the farm board" and only the San Juan Regional Farm Board ("SJRFb") has the authority to 'mediate' the dispute in this

case, the decision from which is only appealable to the Office of Hearings and Appeals. *Defendants' Brief* at 1. Defendants assert that nothing in the statute gives the Court jurisdiction to hear this case because 3 N.N.C. § 65(A)(5) limits the Court's jurisdiction to only those agricultural matters that involve divorce, separation, or probate. Thus, Defendants argue the Court lacks subject matter jurisdiction in this matter and the case should be dismissed pursuant to Nav. R. Civ. P. 12(b)(1).

4. To hear a case, a court must have subject matter jurisdiction. *Navajo Transport Services v. Schroeder*, 9 Nav. R. 103, 104 (Nav. Sup. Ct. 2007). If the court does not have jurisdiction, it must dismiss the case. *Dale Nicholson Trust v. Chavez*, 8 Nav. R. 417, 424 (Nav. Sup. Ct. 2004). Jurisdiction can be challenged under Rule 12(b)(1) in two ways, under a "facial" challenge or a "factual" challenge; the court has different responsibilities under each. *Id.*
5. In a "facial" challenge the defendant attacks the complaint itself as lacking facts necessary to establish jurisdiction. *Id.* In a facial challenge the court assumes the facts in the complaint to be true, with all reasonable inferences made in favor of the plaintiff. *Id.*
6. In a "factual" challenge a defendant disputes the factual allegations in a complaint that establish jurisdiction by presenting contradictory evidence. *Id.* In a factual challenge, where contradictory evidence is presented, the court weighs the evidence on both sides and makes findings of fact as it would in the merits phase of the case and the plaintiff must prove the necessary facts for jurisdiction by a preponderance of the evidence. *Id.* Absent any contradictory evidence presented in the case, the court is restricted to reviewing the complaint for sufficiency and must take all factual allegations as true and make all reasonable inferences in favor of the plaintiff. *Id.* at 425. If the plaintiff makes sufficient factual allegations, the

defendant does not dispute them, and no contradictory evidence is presented, the court must take them as true and find jurisdiction. *Id.*

7. Upon review, the Court finds the language of 3 N.N.C. § 65(A)(5) cited by Defendants in their oral argument and brief was amended by the Navajo Nation Council on December 31, 2014 via Resolution No. CD-76-14 which enacted several amendments to the Navajo Nation Plan of Operation Act of 2014, 3 N.N.C. §§ 61 *et seq.* Upon review the Court also finds Defendants did not present any evidence showing the pre-amendment language of Section 65 applies to their claims. The Court therefore considers Defendants' motion under the amended language of the Act.
8. It is a basic principle in Navajo courts that a statute should be read as a harmonious whole, with its separate parts being interpreted within their broader statutory context in a manner that furthers a clearly expressed statutory purpose. *Iiná Bá, Inc. v. Navajo Business Regulatory*, No. SC-CV-60-10, slip op. at 8 (Nav. Sup. Ct. May 15, 2014). Where a provision is part of a larger scheme, the whole of that scheme necessarily figures in the interpretation of that provision. *Id.* If the language of a statute is clear, a court applies the meaning the Council clearly intended. *Yazzie v. Nez*, No. SC-CV-47-18, slip op. at 4 (Nav. Sup. Ct. October 24, 2018). A court must not interpret a statute to produce an absurd result. *McCabe v. Walters*, 5 Nav. R. 43, 45 (Nav. Ct. App. 1985).
9. Navajo courts follow the general principle of statutory construction that a statute must be construed on its face. *Pioche v. Navajo Board of Election Supervisors*, 6 Nav. R. 360, 363 (Nav. Sup. Ct. 1991). The Court looks first to the plain meaning of the statute. *Francis v. Betsuie*, 9 Nav. R. 548, 551 (Nav. Sup. Ct. 2011).

10. Upon review, the Court finds the powers of the SJRFB under 3 N.N.C. § 65 are “subject to applicable laws,” and are therefore limited. Further, the Court finds pursuant to the plain meaning of 3 N.N.C. § 65(D) the SJRFB’s authority to mediate disputes under 3 N.N.C. § 65(E) is further limited “[t]o mediate and maintain official written records of *disputes which may arise among agricultural land use permit holders*. (emphasis added)” Defendants presented no evidence to support a finding that Plaintiff is an ‘agricultural land use permit holder’ within the plain meaning of the Act. The Court also finds Defendants did not present evidence showing the SJRFB’s limited mediation authority applies to Plaintiff’s Complaint for injunctive relief in compliance with applicable Navajo law.
11. Navajo Nation laws must be read comprehensively and in combination, not piñon picked for provisions that support a given position. *Navajo Housing Authority v. Navajo Nation Labor Commission*, No. SC-CV-31-14, slip op. at 7 (Nav. Sup. Ct. May 15, 2015).
12. Upon review, the Court finds the Office of Hearings and Appeals is an administrative quasi-judicial hearing body whose authority must be granted by statute. *See Francis v. Betsuie* at 552, *supra*. The Court finds the SJRFB is an administrative body established pursuant to 3 N.N.C. § 61. Navajo Nation administrative bodies have their jurisdiction and authority sharply delineated by statute, and no statute presently grants them the equitable authority to grant injunctive relief. *The Navajo Nation v. RJN Construction Management, Inc.*, 9 Nav. R. 556, 562 (Nav. Sup. Ct. 2012). Injunctive relief is afforded by the district courts. *Id.* The Navajo Nation must have full access to the courts of the Navajo Nation when seeking non-monetary remedies or redress in any matter relating to governmental functions. *Shirley v. Morgan*, 9 Nav. R. 325, 328 (Nav. Sup. Ct. 2010). Government entities must have access to Navajo courts

without undue restraint and on the same terms as any individual seeking relief for private disputes through the courts. *Id.*

13. An administrative tribunal may not act outside the scope of its statutory authority and duly promulgated rules. *Wauneka v. Yazzie*, No. SC-CV-64-12, slip op. at 8 (Nav. Sup. Ct. January 4, 2013). The discretion of an administrative tribunal is limited to existing statutes and rules, unlike Navajo courts which have broad discretion “to issue any writs or orders necessary and proper to the complete exercise of their jurisdiction” under 7 N.N.C. § 255. *Id.* at 9.
14. Based on the foregoing the Court finds Defendants did not provide any evidence showing the SJRFB has the authority to hear this dispute, nor did Defendants prove that 3 N.N.C. § 65(A)(5) divests the Court of jurisdiction over Plaintiff’s complaint for injunctive relief. The Court also finds Defendants did not provide evidence showing a decision of the SJRFB adverse to Plaintiff is appealable only to the Office of Hearings and Appeals pursuant to 3 N.N.C. § 65(A)(5).
15. Based on the foregoing, the Court finds 3 N.N.C. §§ 61 *et seq.* does not grant the SJRFB exclusive jurisdiction to hear this civil action for injunctive relief under its limited power to mediate disputes; power the Court finds is subject to Navajo law and restricted to disputes between agricultural land use permit holders. The Court also finds 3 N.N.C. §§ 61 *et seq.* does not establish the Office of Hearings and Appeals as the exclusive forum for resolving contested decisions of the SJRFB regarding civil actions for injunctive relief. Further, the Court finds 3 N.N.C. §§ 61 *et seq.* does not divest the Court of its jurisdiction to hear this civil action for injunctive relief. To determine otherwise would be contradictory to established Navajo law and would produce an absurd result prohibited by *McCabe, supra*.

16. Upon review, the Court finds Defendants did not present any evidence to contradict Plaintiff's claim in its Complaint that the Court's jurisdiction over this case is proper pursuant to 7 N.N.C §§ 253(A) and 254(A), despite having the opportunity to do so at the August 10th hearing on their motion.
17. Absent contradictory evidence proffered by Defendants and upon review of Plaintiff's Complaint, the Court takes the following factual allegations from Plaintiff's Complaint as true for purposes of Defendants' motion: Plaintiff the Navajo Nation is a sovereign, self-governing, federally-recognized Indian tribe with a reservation located in northeastern Arizona, northwestern New Mexico, and southeastern Utah. *Complaint* at 2. Defendant Native American Agricultural Company (NAAC) is a corporation organized and existing under the laws of the State of New Mexico, having its principal place of business and registered agent at Mesa Farm Road, 5th Lane, Shiprock, NM, 87420. *Id.* On information and belief, NAAC is not registered to conduct business on the Navajo Nation. *Id.* Defendant Navajo Gold Company is a "wellness" company that makes, markets, and sells a variety of cannabis products with a retail location at Corner of Hwy 491 & Hwy 64, Shiprock, NM, 87420. *Id.* On information and belief, Defendant Navajo Gold Company has not been incorporated or registered under the laws of any state or the Navajo Nation. *Id.* Defendant Dineh Benally is a citizen of the Navajo Nation and resides on the Navajo Nation. *Id.* Defendant Benally is the founder, president, and owner of NAAC, and has exerted a substantial amount of control over significant aspects of the company's day-to-day operations in Shiprock, NM, and surrounding areas during all relevant time periods. *Id.* Except for an authorized hemp pilot research project, the cultivation, growth, possession, development or propagation of industrial hemp is prohibited on the Navajo Nation pursuant to Council Resolution until the Navajo Nation creates a regulatory system and

obtains necessary permits for industrial hemp cultivation and production; that the Navajo Nation has not adopted a regulatory system for industrial hemp and has not authorized the growth, possession, development or propagation of industrial hemp on the Navajo Nation; that farmers on the Navajo Nation are warned that industrial hemp remains unauthorized on the Navajo Nation and that growing a banned or unauthorized crop such as hemp could place their farm permits in jeopardy. *Id.* at 4. All industrial hemp is prohibited on the Navajo Reservation, and, in addition, any person found in possession or producing, delivering, or selling industrial hemp that contains an amount equal to or more than 0.3 percent of THC is subject to the criminal penalties imposed by the Navajo Nation Code. *Id.* at 5. The Navajo Nation has issued two land use permits to Defendant Dineh Benally located in the Hogback Irrigation Project: the first plot is 14.6 acres and the Plot Number is Area 1, Unit 6 and the second plot is 9.5 acres and the Plot Number is 274. *Id.* at 6. Defendant Dineh Benally has been growing and cultivating industrial hemp, and employs members of the Navajo Nation and non-Native workers to grow and cultivate industrial hemp, on the two land plots [described above]. *Id.* On information and belief, Defendant Dineh Benally has been operating under NAAC to cultivate, grow, develop, and propagate industrial hemp on the Navajo Reservation. *Id.* On information and belief, Defendants Dineh Benally and NAAC distribute, furnish, and supply industrial hemp to Defendant Navajo Gold Company to distribute, transfer, and sell industrial hemp at Navajo Gold's retail location in Shiprock, New Mexico, which is located within the exterior boundaries of the Navajo Reservation. *Id.* Defendant Navajo Gold Company is currently selling CBD Tincture, CMD Capsules, Hemp Relief Cream, and Hemp Powder, and is working to expand and provide more locally sourced products. *Id.* at 7. Defendant Navajo Gold Company's website indicates that it is "NOW OPEN" and selling hemp products at a retail

location on the Corner of Hwy 491 & Hwy 64 in Shiprock, New Mexico. *Id.* On information and belief, Defendant Navajo Gold Company employs members of the Navajo Nation to sell and distribute industrial hemp products on its behalf. *Id.* On information and belief, Defendants are selling hemp products to members of the Navajo Nation and profiting from violating the laws of the Navajo Nation that ban industrial hemp. *Id.* On information and belief, the SJRFB empowered Defendant NAAC to accept and issue hemp and cannabis business applications on behalf of the Navajo Nation. *Id.* The SJRFB's website links to Defendant NAAC's website which states "We are now accepting Hemp and Cannabis License Applications to own and operate a business on the Navajo Nation" for "cultivation (indoor/outdoor/greenhouse), processing/handler, manufacturing, wholesale & distribution, retail, [and] lab testing." *Id.* at 7-8. Defendant NAAC's website encourages applicants to contact a representative of NAAC through companies identified as Aqueous International Corp., located at 3800 Howard Hughes Parkway, Suite 1270, Las Vegas, NV, 89169, and Net Zero Group Corp., located in Canada at 5255 Yonge Street, Suite 1200, Toronto, ON M2N 4PN. *Id.* at 8. Defendant NAAC is violating Navajo laws by unlawfully accepting and/or issuing permits or land use applications for hemp on the Navajo reservation and unjustly enriching itself and the other Defendants. *Id.* Plaintiff has the right to exclusively govern, regulate, and enforce its own laws within the exterior boundaries of the Navajo Reservation; that Plaintiff prohibits and does not permit the cultivation, growth, possession, development, and propagation of industrial hemp within the exterior borders of the Navajo Reservation, except for certain exceptions that do not apply to this matter. *Id.* at 9. Defendants Dineh Benally, NAAC, and Navajo Gold Company have violated, and are violating, the laws of the Navajo Nation by distributing and selling industrial hemp within the exterior borders of the Navajo Reservation. *Id.* Plaintiff has directly suffered

and continues to suffer significant and irreparable harm as a result of Defendants' continuing violation of the Navajo Nation's laws prohibiting industrial hemp within its borders, therefore Plaintiff is entitled to an injunction enjoining Defendants Dineh Benally, NAAC, and Navajo Gold Company from violating Plaintiff's laws prohibiting all types of industrial hemp within the exterior borders of the Navajo Reservation. *Id.* Plaintiff has not delegated any authority to the SJRFB, Defendant Dineh Benally, or Defendant NAAC to legalize, authorize, or issue hemp licenses and permits. *Id.* at 10. Defendants Dineh Benally and NAAC have violated and are violating the laws of the Navajo Nation by issuing licenses and permits for industrial hemp for entities to cultivate, grow, possess, develop, or propagate industrial hemp within the exterior borders of the Navajo Reservation. *Id.* Plaintiff has directly suffered, and is continuing to suffer, significant and irreparable harm as a result of Defendants' continuing violations of Navajo laws prohibiting industrial hemp within its borders and by unlawfully representing and issuing hemp licenses and permits on Plaintiff's behalf. *Id.* Plaintiff is entitled to an injunction enjoining Defendant Dineh Benally and Defendant NAAC from unlawfully representing and issuing or processing hemp licenses, land use applications and permits on Plaintiff's behalf. *Id.*

18. Based on the foregoing the Court finds good cause to deny Defendants' motion to dismiss under Nav. R. Civ. P. 12(b)(1). Further, absent any contradicting evidence proffered by Defendants the Court finds jurisdiction over this civil action for injunctive relief under the above stated facts from Plaintiff's Complaint taken as true and pursuant to the Court's authority under *RJN, supra*; and 7 N.N.C §§ 253(A) and 254(A) based on facts showing Defendant Dineh Benally is a resident of Navajo Indian Country and that Defendant Dineh Benally, Defendant Native American Agricultural Company, and Defendant Navajo Gold Company

have caused an action or injury to occur within the territorial jurisdiction of the Navajo Nation in Shiprock, New Mexico and the surrounding areas.

II. Defendants' Motion to Dismiss for Failure to Exhaust Administrative Remedies.

19. In their brief Defendants invoke the doctrines of primary jurisdiction and exhaustion of administrative remedies. Defendants essentially argue the Court should dismiss this case in order for the “statutory procedure set up by the [Navajo Nation] Council” to take place and allow the SJRFB to “play its statutory role” to mediate the subject dispute under 3 N.N.C. § 65(A)(5). *Defendants' Brief* at 4. The Court finds Defendants presented no evidence in support of these arguments.

20. Based on the Court’s findings and absent any evidence proffered by Defendants, the Court determines Defendants’ exhaustion argument is without merit. Navajo law shows neither the SJRFB, an administrative body with limited power to mediate disputes between agricultural land use permit holders, nor the Office of Hearings and Appeals, an administrative quasi-judicial hearing body, have the authority to grant injunctive relief, which is sought by Plaintiff in this case. *See Francis, supra*; 3 N.N.C. § 61; *RJN, supra*; and *Wauneka, supra*. Further, the Navajo Nation must have full access to Navajo courts, as only the courts have jurisdiction to grant injunctive relief. *See Shirley, supra*; and *RJN, supra*.

21. Based on the foregoing the Court finds good cause to deny Defendants’ motion to dismiss for failure to exhaust administrative remedies.

III. Defendants' Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted – Nav. R. Civ. P. 12(b)(6).

22. Defendants seek dismissal of Defendants Native American Agricultural Company and Navajo Gold Company pursuant to Nav. R. Civ. P. 12(b)(6). Defendants argue these “corporate defendants” should be dismissed from this case on the grounds that they do not exist. *Motion*

at 1. The Court finds Defendants did not proffer any evidence to support this allegation. Plaintiff opposes the motion and argues Defendant Benally's assertion that Defendants Native American Agricultural Company and Navajo Gold Company do not exist "is highly misleading and counter to his own prior claims[;]" that Defendant Benally "is illegally operating these two entities without proper business licenses from the Nation or any other jurisdiction." *Plaintiff's Brief* at 1-2.

23. For the purposes of determining whether a motion to dismiss, made on the grounds that the plaintiff has failed to state a claim upon which relief can be granted, should be granted, all well-pleaded facts in the complaint are considered to be true. *Secatero v. Navajo Board of Election Supervisors*, 6 Nav. R. 385, 389 (Nav. Sup. Ct. 1991). A motion to dismiss will be granted where, even assuming plaintiff's allegations comprise the true and total picture of the situation, plaintiff has failed to state a claim for which the court has the power to prescribe a remedy. *Id.*

24. Upon review of Plaintiff's Complaint, the Court takes the following well-pleaded facts in Plaintiff's Complaint as true pursuant to *Secatero*: Defendant Native American Agricultural Company (NAAC) is a corporation organized and existing under the laws of the State of New Mexico, having its principal place of business and registered agent at Mesa Farm Road, 5th Lane, Shiprock, NM, 87420. *Complaint* at 2. On information and belief, NAAC is not registered to conduct business on the Navajo Nation. *Id.* Defendant Navajo Gold Company is a "wellness" company that makes, markets, and sells a variety of cannabis products with a retail location at Corner of Hwy 491 & Hwy 64, Shiprock, NM, 87420. *Id.* On information and belief, Defendant Navajo Gold Company has not been incorporated or registered under the laws of any state or the Navajo Nation. *Id.* On information and belief, Defendant Dineh Benally

has been operating under NAAC to cultivate, grow, develop, and propagate industrial hemp on the Navajo Reservation. *Id.* at 6. On information and belief, Defendants Dinah Benally and NAAC distribute, furnish, and supply industrial hemp to Defendant Navajo Gold Company to distribute, transfer, and sell industrial hemp at Navajo Gold's retail location in Shiprock, New Mexico, which is located within the exterior boundaries of the Navajo Reservation. *Id.* Defendant Navajo Gold Company is currently selling CBD Tincture, CMD Capsules, Hemp Relief Cream, and Hemp Powder, and is working to expand and provide more products. *Id.* at 7. Defendant Navajo Gold Company's website indicates that it is "NOW OPEN" and selling hemp products at a retail location on the Corner of Hwy 491 & Hwy 64 in Shiprock, New Mexico. *Id.* On information and belief, Defendant Navajo Gold Company employs members of the Navajo Nation to sell and distribute industrial hemp products on its behalf. *Id.* On information and belief, Defendants are selling hemp products to members of the Navajo Nation and profiting from violating the laws of the Navajo Nation that ban industrial hemp. *Id.* On information and belief, the SJRFB empowered Defendant NAAC to accept and issue hemp and cannabis business applications on behalf of the Navajo Nation. *Id.* The SJRFB's website links to Defendant NAAC's website which states "We are now accepting Hemp and Cannabis License Applications to own and operate a business on the Navajo Nation" for "cultivation (indoor/outdoor/greenhouse), processing/handler, manufacturing, wholesale & distribution, retail, [and] lab testing." *Id.* at 7-8. Defendant NAAC's website encourages applicants to contact a representative of NAAC through companies identified as Aqueous International Corp., located at 3800 Howard Hughes Parkway, Suite 1270, Las Vegas, NV, 89169, and Net Zero Group Corp., located in Canada at 5255 Yonge Street, Suite 1200, Toronto, ON M2N 4PN. *Id.* at 8. Defendant NAAC is violating Navajo laws by unlawfully accepting and/or

issuing permits or land use applications for hemp on the Navajo reservation and unjustly enriching itself and the other Defendants. *Id.* Plaintiff has the right to exclusively govern, regulate, and enforce its own laws within the exterior boundaries of the Navajo Reservation; that Plaintiff prohibits and does not permit the cultivation, growth, possession, development, and propagation of industrial hemp within the exterior borders of the Navajo Reservation, except for certain exceptions that do not apply to this matter. *Id.* at 9. Defendants Dineh Benally, NAAC, and Navajo Gold Company have violated, and are violating, the laws of the Navajo Nation by distributing and selling industrial hemp within the exterior borders of the Navajo Reservation. *Id.* Plaintiff has directly suffered and continues to suffer significant and irreparable harm as a result of Defendants' continuing violation of the Navajo Nation's laws prohibiting industrial hemp within its borders, therefore Plaintiff is entitled to an injunction enjoining Defendants Dineh Benally, NAAC, and Navajo Gold Company from violating Plaintiff's laws prohibiting all types of industrial hemp within the exterior borders of the Navajo Reservation. *Id.* Plaintiff has not delegated any authority to the SJRFB, Defendant Dineh Benally, or Defendant NAAC to legalize, authorize, or issue hemp licenses and permits. *Id.* at 10. Defendants Dineh Benally and NAAC have violated and are violating the laws of the Navajo Nation by issuing licenses and permits for industrial hemp for entities to cultivate, grow, possess, develop, or propagate industrial hemp within the exterior borders of the Navajo Reservation. *Id.* Plaintiff has directly suffered, and is continuing to suffer, significant and irreparable harm as a result of Defendants' continuing violations of Navajo laws prohibiting industrial hemp within its borders and by unlawfully representing and issuing hemp licenses and permits on Plaintiff's behalf. *Id.* Plaintiff is entitled to an injunction enjoining Defendant

Dineh Benally and Defendant NAAC from unlawfully representing and issuing or processing hemp licenses, land use applications and permits on Plaintiff's behalf. *Id.*

25. Based on a lack of evidence proffered by Defendants and the well-pleaded facts made by Plaintiff in its Complaint taken as true for purposes of Defendants' motion, the Court finds Defendants Native American Agricultural Company and Navajo Gold Company are entities in existence and are proper parties to this matter. Therefore, the Court finds good cause to deny Defendants' motion to dismiss them from this action. The Court also finds Defendants have failed to show the Court is unable to prescribe a remedy for Plaintiff's claims. Rather, the Court finds it does have the power to prescribe a remedy in this case, injunctive relief, provided Plaintiff satisfies all requirements under Navajo law for such relief. *See RJN, supra; Shirley, supra; and Nav. R. Civ. P. 65.* Therefore, the Court finds good cause to deny Defendants' Motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Nav. R. Civ. P. 12(b)(6).

IV. Defendants' Motion to Dismiss for Failure to Join a Party Under Rule 19 – Nav. R. Civ. P. 12(b)(7).

26. Defendants seek dismissal of Plaintiff's Complaint pursuant to Nav. R. Civ. P. 12(b)(7), and 19. Defendants argue the Complaint should be dismissed because the SJRFB is an indispensable party; that "[SJRFB] claim[s] an interest in the litigation and should be able to protect that interest[;]" that "[a]s a party, complete relief cannot be given without adding the SJRFB[;] [t]he SJRFB would not be bound by any ruling that the Court entered, because it would violate due process to alter the Navajo Nation's contract rights without giving it notice and an opportunity to be heard." *Motion* at 2-3. Plaintiff disagrees, stating in its Brief the SJRFB "never created, and never could have created, a property right for Defendant Benally, and is therefore not an indispensable party." *Id.* at 3.

27. If feasible, a person must be made a party in an action if complete relief cannot be given to those already parties unless such person is made a party; or the person claims an interest relating to the subject of the action and disposition of the action without the party may impair or impede his ability to protect that interest; or leave any of the parties subject to a substantial risk of multiple or inconsistent liability by reason of the claimed interest. Nav. R. Civ. P. 19(a).
28. In support of their motion Defendants argue the SJRFB “has the right and power to implement and regulate hemp rules.” *Motion* at 1. Defendants further claim that hemp “is not a banned product on the Navajo Nation.” *Id.* at 2. Upon review the Court finds Defendants did not proffer any evidence to prove either of these claims, despite having the opportunity to do so. The Court finds Defendants’ arguments are without merit on its prior determination that the SJRFB’s powers are “subject to applicable laws,” under 3 N.N.C. § 65 and are therefore limited, along with Plaintiff’s well pled facts in its Complaint taken as true that the cultivation, growth, possession, development or propagation of industrial hemp is prohibited on the Navajo Nation pursuant to Council Resolution. *Complaint* at 4. Further, that Plaintiff has not delegated any authority to the SJRFB to legalize, authorize, or issue hemp licenses and permits. *Id.* at 10.
29. Defendants argue Plaintiff’s Complaint should be dismissed because the SJRFB is an indispensable party that claims an interest in this litigation and should be able to protect that interest. In support of this claim Defendants assert that at the time that the SJRFB approved Defendant Dineh Benally’s hemp farm, the Navajo Nation specifically allowed for a hemp farm and the SJRFB created a property right for Defendant based on the law at the time that cannot be taken away without violating *ex post facto* laws; that because Defendant Dineh Benally is specifically working a farm based upon vested property rights approved by the SJRFB, the SJRFB is a necessary party for purposes of this litigation. *Motion* at 2. Upon review

the Court once again finds Defendants did not proffer any evidence to prove any of these claims, therefore these claims are without merit. Defendants did not provide any evidence to support their claim that ‘hemp farms’ have ever been legally allowed by the Navajo Nation, or that the SJRFB has even been granted authority to approve such ‘hemp farms.’ Defendants provide no evidence showing ‘the law at the time,’ that granted the SJRFB the authority to create a property right for Defendant Dineh Benally purportedly allowing him to legally establish a hemp farm on the Navajo Nation. Further, Defendants did not provide evidence showing the alleged ‘vested property rights’ granted by the SJRFB to Defendant Benally that make the SJRFB a necessary party to this case.

30. Defendants also argue the SJRFB should be deemed an indispensable party in this case because this case “seeks to void land right recognized and protected by the SJRFB, a homesite lease¹, between Defendant and the Navajo Nation Land Department[:]” that the SJRFB “claim[s] an interest in the litigation and should be able to protect that interest.” *Motion* at 2-3. The Court finds Defendants’ claim that this case ‘seeks to void land right’ is without merit. Upon review of Plaintiff’s Complaint it is clear that Plaintiff is not seeking the cancellation or revocation of any permit held by Defendants. Rather, it is clear from the Complaint that Plaintiff seeks to enjoin Defendants from cultivating, growing, developing, and propagating industrial hemp on the Navajo Reservation in violation of Navajo laws. Further, the Court finds Defendants did not proffer any evidence establishing the SJRFB’s purported interest in this case.

31. Defendants argue that complete relief in this matter cannot be given without adding the SJRFB as a party; that the SJRFB “would not be bound by any ruling that the Court entered, because

¹ The Court notes at the August 10th hearing Defendants’ legal counsel admitted this was a “typo” and ‘land use permit’ should have been pleaded instead. The Court finds Defendants did not attempt to amend their motion to correct this error.

it would violate due process to alter the Navajo Nation's contract rights without giving notice and an opportunity to be heard.” *Motion* at 3. The Court finds this argument is clearly without merit because in Defendants’ own words, the ‘contract rights’ Defendants attempt to invoke in support of their argument belong to the Navajo Nation, the Plaintiff in this matter. It is obvious the Navajo Nation is aware of this action, as they are the Plaintiff, and they have been afforded due process. Defendants presented no evidence showing their authority to invoke the rights of the party adverse to them in this action.

32. Defendants argue if the SJRFB is not joined, “multiple litigations may occur, and it may lead to multiple inconsistent rulings[,]” as “Defendant believes, and does allege, that other farmers are growing hemp based on land rights extended by the SJRFB.” *Id.* The Court finds Defendants have presented no evidence to support their allegation that ‘other farmers’ are growing hemp on the Navajo Nation. Further, the Court finds Defendants’ claim regarding ‘multiple litigations’ leading to ‘multiple inconsistent rulings’ is speculative and not supported by evidence, therefore the claim is insufficient to justify compulsory joinder under Rule 19(a)(2)(B).

33. Finally, Defendants argue Plaintiff’s Complaint should be dismissed in the event that it is not feasible to add the SJRFB as an indispensable party under Nav. R. Civ. P. 19 on the grounds that “the Court should recognize that this case raises a political question and not a legal question and dismiss under Rule 12(b)(7), Nav.R.Civ.P.” Defendants also argue “[i]f SJRFB can be joined, then they must be, and this case must be stayed until that joinder is accomplished.” *Motion* at 3. Upon review the Court finds Defendants provided no evidence to show why this matter should be considered a political question rather than a legal question and

further, did not articulate sufficient grounds as to why a political question warrants dismissal under Nav. R. Civ. P. 12(b)(7). The Court finds Defendants' argument is without merit.

34. Based on the foregoing the Court finds Defendants have not provided any evidence in support of their claim that the SJRFB is an indispensable party to this action. The Court finds Defendants have failed to show that complete relief cannot be given to the parties unless the SJRFB is made a party. The Court finds Defendants have not shown the SJRFB claims an interest relating to the subject of this action. The Court finds Defendants have not shown disposition of this matter without making SJRFB a party may impair or impede SJRFB's ability to protect a claimed interest or leave parties subject to a substantial risk of multiple or inconsistent liabilities based on the claimed interest. For these reasons the Court finds insufficient grounds for the compulsory joinder of the SJRFB under Nav. R. Civ. P. 19(a). Therefore, the Court finds good cause to deny Defendants' Motion to dismiss for failure to join a party under Rule 19 pursuant to Nav. R. Civ. P. 12(b)(7).

V. Conclusion

35. Based on the foregoing the Court finds good cause to deny Defendants' Motion to Dismiss.

36. The Court finds good cause to set this matter for a hearing on Plaintiff's pending Motion for Temporary Restraining Order and Preliminary Injunction.

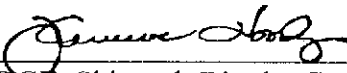
37. The court maintains original jurisdiction over this civil action for injunctive relief and issues this Order pursuant to 7 N.N.C. § 255.

ORDER

A. It is ORDERED that Defendants' Motion to Dismiss is hereby DENIED.

B. It is ORDERED this matter shall be set for hearing on Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction. The Court shall issue a separate Notice of Hearing to the parties confirming the date and time for said hearing.

SO ORDERED this 10th day of September, 2020.



JUDGE, Shiprock District Court