

**WHITE EARTH BAND OF OJIBWE
IN TRIBAL COURT**

MANOOMIN, et al.

Court File No. GC21-0428
Hon. David DeGroat

Plaintiffs,

vs.

**MOTION TO FOR STAY OF
PROCEEDINGS**

MINNESOTA DEPARTMENT OF
NATURAL RESOURCES, et al.

Defendants.

Defendants Minnesota Department of Natural Resources, Commissioner Sarah Strommen, Barb Naramore, Randall Doneen, and ten unnamed John Doe conservation officers move to stay further proceedings in this Court pending final resolution of any interlocutory appeals or federal litigation concerning this Court's subject matter jurisdiction.

BACKGROUND

Plaintiffs filed this suit on August 5, seeking injunctive and declaratory relief against the defendants. The defendants moved to dismiss, arguing that this Court lacks subject matter jurisdiction because they have sovereign immunity from suit, and because the Court lacks subject matter jurisdiction over non-members for conduct occurring off the reservation. After expedited briefing and hearing, this Court denied the motion on August 18. On August 19, the defendants filed a suit in federal court challenging this Court's subject matter jurisdiction. The defendants are presently reviewing their options for an interlocutory appeal to the White Earth Band of Ojibwe

Court of Appeals, and for motion practice in federal court to obtain a declaration on whether this Court has subject matter jurisdiction.

ARGUMENT

As the Court recognized in its order denying the defendants' motion to dismiss, the issues related to subject matter jurisdiction presented by this case are, at minimum, ones of first impression in this Court. In general, Courts also recognize that where there are serious questions concerning the immunity of a defendant from suit, that issue should be adjudicated to a final resolution before there are substantive proceedings in a case. *See, e.g., Parton v. Ashcroft*, 16 F.3d 226, 228 (8th Cir. 1994); *McSurely v. McClellan*, 697 F.2d 309, 317 (D.C. Cir. 1982); *Briggs v. Goodwin*, 569 F.2d 10, 60 (D.C. Cir. 1977). This recognition is based on a sound policy holding that a loss of immunity is in and of itself an irreparable harm, irrespective of the potential outcomes of the litigation, because the litigation brings harm even if the defendants are successful. *Id.*

The defendants are presently considering their options to achieve a final resolution of this Court's subject matter jurisdiction. Its options are to file an interlocutory appeal with the tribal court, pursue a declaratory judgment in federal court, or both. The interlocutory appeal is not guaranteed as of right, though the applicable rule of appellate procedure clearly favors allowing an interlocutory appeal here. The Court's order denying defendants' motion to dismiss raises legal issues that meet all criteria for interlocutory review. A final resolution of this Court's subject matter jurisdiction in favor of the defendants will: (1) materially advance the termination of the litigation; (2) protect the defendants from the substantial irreparable harm of litigating the merits of claims for which they assert immunity; and (3) resolve an issue of general importance in the administration of justice. *See* WECA Rule of Appellate Procedure 5(b).

Both parties have also recognized that the federal courts will be the ultimate arbiter of this Court's subject matter jurisdiction – because irrespective of any decision against the defendants

they have a right to seek a *de novo* review of the issue in federal court. *Nord v. Kelly*, 520 F.3d 848, 852 (8th Cir. 2008) (“Determining the extent to which an Indian tribe has the power to compel a non-Indian to submit to the civil jurisdiction of a tribal court is a question of federal law, and we review the issue *de novo*.”). Ultimately, both parties would be advantaged to seek an early determination of subject matter jurisdiction from the federal court before any substantive proceedings in this Court.

For these reasons, the Court should enter an order staying further proceedings in this Court pending the outcome of appellate and federal litigation concerning this Court’s subject matter jurisdiction.

CONCLUSION

The defendants request the Court enter an order staying further proceedings in this matter pending appeals and federal litigation.

Dated: August 19, 2021

Respectfully submitted,

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