

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

THE NAVAJO NATION,
Plaintiff,

No. SR-CV-014-2020

v.

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

**ORDER GRANTING PLAINTIFF'S
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

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

1. This matter came before the Court for hearing on Plaintiff Navajo Nation's Motion for Temporary Restraining Order and Preliminary Injunction. Plaintiff seeks the immediate issuance of a temporary restraining order and a preliminary injunction enjoining Defendants from growing, producing, manufacturing, transporting, licensing, or selling industrial hemp within the exterior boundaries of the Navajo Nation. Defendants oppose the motion and argue, if issued, a temporary restraining order or preliminary injunction would "destroy [Defendants'] entire crop [of hemp] for 2020[]" and that Plaintiff has shown no harm to balance against this "devastating damage." *Defendants' Response* at 2.
2. On September 17 & 18, 2020 the Court held a hearing on Plaintiff's motion. Both Plaintiff and Defendants appeared for the hearing through their respective legal counsels. The parties were given the opportunity to be heard and were given the chance to present evidence and testimony in support of their claims.

I. Preliminary Injunction.

3. Nav. R. Civ. P. 65(c) provides requirements for a preliminary injunction. Under Rule 65(c) the moving party has the duty to present evidence sufficient for the Court to find all of the following: (1) That the moving party has or is claiming a protectable right or interest and has a high likelihood of success on the merits; (2) That irreparable injury, loss, or damage to that right or interest is likely to occur unless the preliminary injunction is issued; (3) That the threatened injury, loss or damage is substantial in nature or character; and (4) That the moving party does not have an adequate remedy at law.
4. Regarding the 1st requirement under Rule 65(c), the Court finds Defendant Dineh Benally is engaged in the growing of hemp on several farm plots in and around the area of Shiprock, New Mexico, which is located on the Navajo reservation. This finding is based on the testimony of witnesses confirming the existence of Defendant Benally's hemp farms in the Shiprock area, including hemp farms near the homes of witnesses Beatrice Redfeather and Loretta Bennett; a hemp farm near the farm plot of witness Bertha Etsitty, and the farm plot of witness Farley Blueeyes where hemp is being grown. Further, Defendant's Security Officer Duane Billy testified to the fact that hemp is grown on Defendant Benally's farms.
5. There are valuable and tangible assets which produce wealth; they provide food, income, and the support of the Navajo People. *Tome v. The Navajo Nation*, 4 Nav. R. 159, 161 (Nav. Ct. App. 1983). The most valuable tangible asset of the Navajo Nation is its land, without it the Nation does not exist and without it the Navajo People would be caused to disperse. *Id.* The land belongs to the Navajo People, who live on it and depend upon it; it is basic to their survival. *Id.*

6. *Diyin Dine 'é Bitsáádéé Beehz 'áanii* – Diné Customary Law, declares and teaches that it is the right and freedom of the Navajo People that every child and every elder be respected, honored and protected with a healthy physical and mental environment, free from all abuse. 1 N.N.C. § 204(E).
7. *Nahsdzáán dóó Yádilhil Bits 'áádéé Beehaz 'áanii* – Diné Natural Law, declares and teaches that the four sacred elements of life, air, light/fire, water and earth/pollen in all their forms must be respected, honored and protected for they sustain life; The rights and freedoms of the people to the use of the sacred elements of life and to the use of land, natural resources, sacred sites and other living beings must be accomplished through the proper protocol of respect and offering and these practices must be protected and preserved for they are the foundation of our spiritual ceremonies and the Diné life way. 1 N.N.C. § 205.
8. Upon review of the record, testimony provided at the hearing, and in consideration of Diné Customary and Natural Law, the Court finds Plaintiff, The Navajo Nation has a protectable right and interest in the lands of the Navajo reservation and Plaintiff also has an interest in protecting the health, safety, and wellbeing of the Navajo People. Based on the pleadings, arguments, testimony and exhibits presented, the Court finds Plaintiff has a high likelihood of success on the merits; therefore, the Court finds Plaintiff has satisfied the 1st Requirement for a preliminary injunction.
9. Regarding the 2nd Requirement, upon review of the record and testimony provided at the hearing the Court finds that irreparable injury, loss, or damage to Plaintiff's rights and interests are likely to occur unless a preliminary injunction is issued. This finding is based on testimony from Oliver Waley, Executive Director of the Navajo Nation Environmental Protection Agency (NNEPA). Executive Director Waley testified that on September 2020 during an

attempted inspection of the Blueeyes hemp farm he observed Violations of the Navajo Nation Pesticide Act. He testified that the NNEPA did not have any records of licenses for these pesticides. He testified that septic tanks were installed on the hemp farm; that no construction permits or operating permits had been issued for the tanks; that they were not maintained and were leaking sewage which poses a threat to contamination of land, surface and ground water. Mr. Waley testified that the farm was operating an illegal cesspool, the leakage from which would impact surface water and the San Juan River. Mr. Waley witnessed clear and explicit violations of the safe drinking water act; that wells had been drilled and drinking infrastructure was installed, again with no permits to construct or operate these structures. Mr. Waley testified that sand bags were installed at the farm to divert water from the San Juan River, an action that is under investigation by the U.S. Army Corp. Mr. Waley testified to seeing clear and explicit proof that trash was being illegally dumped on the farm lands. Mr. Waley testified that of these known violations, he was concerned over the risk of contamination to land, surface water, and ground water resources; specifically, the discharge of waste water, which may contaminate ground water and surface water and pesticides that may spread in water and the air. Mr. Waley also testified to seeing on-site generators attached to large water hauling tanks, which he suspected contain gasoline to power the generators. He again testified to his concerns over leakage and contamination of ground and water if gasoline were to leak from these tanks. He testified these violations are major and require a response from all departments of the NNEPA. Finally, Mr. Waley testified that when he first contacted Defendant Dineh Benally, Mr. Benally acknowledged violations on the hemp farm, including the septic tanks, and Mr. Benally admitted that he did not get the proper permits.

10. The Court also finds the testimony of Plaintiff's other witnesses establish grounds that irreparable injury, loss, or damage to Plaintiff's rights and interests are likely to occur unless a preliminary injunction is issued. Beatrice Redfeather testified to the strong smell of Defendant's hemp farm, located near her residence in Shiprock. She testified that the smell of the hemp from the farm burns her nose, throat, and causes her headaches. Bertha Etsitty, a 71-year-old Navajo elder who lives traditionally, testified that a crop of her corn was ruined by dust and dirt created by a grader being used on a nearby hemp farm; that because the grader ruined her corn crop she was not able to use the corn to make corn pollen to provide to medicine men, use it as an offering to the holy people, use it as part of our Diné medicine, nor could the pollen be used to facilitate the use of other Diné medicines, like mountain tobacco.
11. Ms. Etsitty also testified to the smell of the hemp from the farms; that she considers it harmful to the health of her family, including her grandkids whom have asthma and that she already has to deal with the health risks of the COVID-19 pandemic. Loretta Bennett also testified to the smell of Defendant Benally's hemp farms, stating the hemp produces a bad odor that is not good for her and her family; that they can't stand the smell of the hemp, as it gets into their vehicles, their house, that they are always breathing it. Mrs. Bennett testified that she and her family cannot sit outside of their own home to enjoy fresh air. Mrs. Bennett also testified that employees of Defendant Benally's hemp farm modified ditches and irrigation that caused her farmland to flood; that her alfalfa field was flooded, which prevented her family from cutting hay. Mrs. Bennett also testified that she cannot let her kids ride their bikes down the road near their house over concerns for their safety. She testified that hemp farm workers are sometimes out while intoxicated, that they do not wear masks, and she has concerns about her kids getting exposed to COVID-19. These types of damages cannot be adequately remedied in a Court of

law and this constitutes irreparable injury. *Boyd v. Tso*, 7 Nav. R. 458, 463 (Nav. Dist. Ct. SR 1994), citing to *Injunctions*, 42 Am. Jur. 2d Sec. 49.

12. In balancing the hardships in this matter, the Court finds Plaintiff will suffer irreparable harm by way of damage to natural resources and harm to Navajo Nation members, while Defendant will purportedly only suffer the loss of Defendant Benally's crop of hemp for the year 2020. At hearing Defendants argued such a loss of a crop, in the case of Bertha Etsitty's corn, could be compensated monetarily, in her case by a payment of \$5,000. However, the Court finds the substantial harm visited upon Ms. Etsitty is not the loss of her crop of corn for purposes of produce to be sold at market. Rather, it is the substantial harm that resulted from her inability to use the corn she grew to make corn pollen, which the Court takes judicial notice is a central component to the practice of Diné beliefs, including the use of corn pollen as an offering to the holy people and to facilitate the use of other Diné medicines. The Court finds Defendant's crop, on the other hand, does not have the same use and recognition in traditional Diné beliefs and practice, as shown by the uncontroverted testimony of Ms. Etsitty, who explained that hemp has no place in traditional Diné ceremony or as a traditional Diné medicine.
13. Regarding the 3rd Requirement, the Court finds that the threatened injury, loss or damage is substantial in nature or character based on the testimony of Plaintiff's witnesses which establish numerous threats of injury, loss, and damage, including contamination of Navajo reservation land, surface, and ground water; threats of injury and damage to the health and well-being of members of the Navajo Nation, including harms impacting personal health like those testified to by Ms. Redfeather, and the genuine concerns expressed by most of Plaintiff's witnesses regarding the strong odor of the hemp farms which testimony shows has negatively

impacted the ability of witnesses and their families to enjoy use of the air and land in and around their homes and farms.

14. Regarding the 4th Requirement, based on the evidence and testimony presented the Court finds Plaintiff has no adequate remedy at law. The Court finds a Preliminary Injunction prohibiting Defendants from operating hemp farms on the Navajo Nation in Shiprock, NM is the only means to prevent irreparable harm to the Nation's natural resources and to prevent harm to the health, safety, and well-being of the Navajo people.
15. Based on the foregoing the Court finds Plaintiff has satisfied all requirements for injunctive relief pursuant to Nav. R. Civ. P. 65(C) and good cause exists to grant Plaintiff's motion for preliminary injunction.
16. Regarding the requirement for security under Nav. R. Civ. P. 65(h), upon review of the record the Court deems proper that security in the amount of \$0.00 be given on the grounds that neither Plaintiff nor Defendant asserted the issue of damages at the hearing, nor did Defendants provide evidence showing costs or damages they may incur or suffer in the event they are wrongfully enjoined or restrained. The Court also finds good cause regarding this security amount on the grounds that the subject crop at issue in this matter, hemp, is claimed by Plaintiff to be illegal under Navajo law. Defendant asserts that hemp farms such as his on the Navajo Nation were made legal via resolution, however Defendant did not provide evidence of such a resolution, despite having the opportunity to do so.

II. Temporary Restraining Order.

17. A temporary restraining order is a drastic remedy which will not usually be granted without a very strong showing there will be an injury which cannot later be healed. *Tome, supra* at 161. Any party asking for a temporary restraining order must show the court: 1. There will be

immediate and irreparable injury if an Order is not granted; 2. There is a probability the applicant will be successful on the merits of the suit (i.e. he or she will win in the end); and 3. There is a harm to the applicant which outweighs any harm to the opposing side and to the public. *Id.*

18. Regarding the 1st requirement, the Court finds good cause to grant a temporary restraining order to Plaintiff upon the uncontroverted testimony of NNEPA Executive Director Oliver Waley whose testimony shows violations occurring on Defendant Benally's hemp farm that pose a serious risk of contamination to Plaintiff's land, surface water, and ground water resources, specifically the discharge of waste water, the spraying of pesticides, and potential leakage of tanks containing gasoline.
19. Regarding the 2nd requirement, the Court finds good cause to grant a temporary restraining order to Plaintiff upon review of the record, testimony provided at the hearing, and in consideration of Diné Customary and Natural Law, the Court finds Plaintiff, The Navajo Nation has a protectable right and interest in the lands of the Navajo reservation and Plaintiff also has an interest in protecting the health, safety, and wellbeing of the Navajo People. Based on the pleadings, arguments, testimony and exhibits presented, the Court finds Plaintiff has a high likelihood of success on the merits.
20. Regarding the 3rd requirement, the Court finds good cause to grant a temporary restraining order to Plaintiff upon a finding there is harm to Plaintiff, including the high risk of contamination of Navajo reservation land, surface, and ground water resources, and a high risk to the personal health and well-being of Navajo Nation members, which outweighs the potential loss of Defendants' hemp crop. Upon review the Court finds Defendants provided no

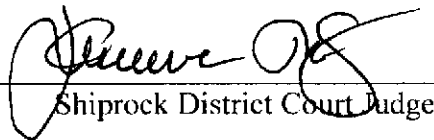
evidence showing Defendants' crop would in fact be lost upon issuance of a restraining order or injunction.

21. The Court shall set this matter for hearing on Plaintiff's Complaint.
22. The court maintains original jurisdiction over this matter and issues this Order pursuant to 7 N.N.C. § 255.

ORDER

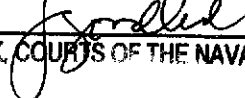
- A. IT IS ORDERED THAT Plaintiff Navajo Nation is hereby GRANTED a Preliminary Injunction against Defendants Dineh Benally, Native American Agricultural Company, and Navajo Gold Company to enjoin them, their officers, agents, servants, employees and those persons in active concert or participation with them from growing or otherwise cultivating hemp on the Navajo Nation in Shiprock, New Mexico and the surrounding areas. Defendants are enjoined from acts that include, but are not limited to growing, producing, manufacturing, or transporting hemp on the Navajo Nation.
- B. IT IS ORDERED that Plaintiff Navajo Nation's Motion for Temporary Protection Order is GRANTED.
- C. IT IS ORDERED this matter shall be set for a final hearing on Plaintiff's Complaint. The Court shall issue a separate notice of hearing to the parties confirming the date and time of said hearing.

SO ORDERED this 18th day of September, 2020.



Shiprock District Court Judge

I HEREBY CERTIFY THAT THIS IS A
TRUE AND CORRECT COPY OF THE
INSTRUMENT ON FILE IN THE
COURTS OF THE NAVAJO NATION.



CLERK, COURTS OF THE NAVAJO NATION