

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION**

FLANDREAU SANTEE SIOUX TRIBE, a
Federally-recognized Indian tribe,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE,

HON. SONNY PERDUE, in his official
capacity,
SECRETARY OF AGRICULTURE,

Defendants.

**FLANDREAU SANTEE SIOUX TRIBE'S
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

(Fed. R. Civ. P. 65(a)-(b))

(ORAL ARGUMENT REQUESTED)

Civil Action No. 19-cv-4094-KES

Plaintiff Flandreau Santee Sioux Tribe (“Tribe”) hereby moves pursuant to Fed. R. Civ. P. 65(a)-(b) for a declaration that the Tribe’s hemp production, in accordance with its submitted plan, may lawfully proceed in accordance with subtitle G of the Agricultural Marketing Act of 1946 (as added by section 10113 of the 2018 Farm Bill), and enjoining USDA from any action that interferes with such production, while the case is pending. The Tribe’s motion is supported by the accompanying Memorandum of Law, declarations, and proposed order, all documents in the Court’s file on this matter, and such argument as may be offered by counsel at a hearing on this motion.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(C), the Tribe respectfully requests that the Court order oral argument.

Dated: May 24, 2019

Respectfully submitted,

FLANDREAU SANTEE SIOUX TRIBE

By: /s/ Seth Pearman
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**CERTIFICATION BY BEN FENNER IN SUPPORT OF APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION
PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 65(b)(1)**

Pursuant to Federal Rules of Civil Procedure 65(b)(1)(B), I, Ben Fenner, hereby certify that I have provided actual notice of the time of making this motion for a temporary restraining order and preliminary injunction (“Motion”) to the adverse party and have provided copies of all pleadings filed in this action to date to the adverse party.

1. The Tribe participated in a 2018 Farm Bill listening session on March 13, 2019. On that call, the Tribe highlighted and placed onto the record the harms it will face if USDA does not comply with the AMA and timely move the Tribe’s hemp production plan forward.

2. The Tribe met with USDA on March 19, 2019. During that meeting, the Tribe and USDA discussed the Tribe’s hemp production plan and the need of the Tribe to move forward under that plan.

3. On May 13, 2019, the Tribe again met with USDA. Among those present at that meeting were Diane Cullo, Advisor to the Secretary & Director, Office of Partnerships & Public Engagement, and Mai T. Dinh, Assistant General Counsel, Marketing, Regulatory, & Food Safety Programs. During that meeting, the Tribe and USDA discussed this matter and the pressing need of the Tribe to implement its plan on its territory.

4. The Tribe has subsequently and on multiple occasions communicated with USDA, including with Ms. Cullo, regarding this matter.

5. On May 23, 2019, Seth Pearman, attorney for the Flandreau Santee Sioux Tribe, spoke with Ronald A. Parsons, Jr., United States Attorney for the District of South Dakota, to discuss this matter and provide notice of this filing to occur at on the afternoon jof May 23, 2019. I have provided to Mr. Parsons copies of all papers filed in this action to date.

6. On the morning of May 23, 2019, at approximately 10:30 AM eastern time, I spoke by telephone with Ms. Cullo to discuss this matter and provide notice of this filing to occur on the afternoon of May 23, 2019.

7. On the morning of May 23, 2019, at approximately 10:45 AM eastern time, I spoke by telephone with Ms. Dinh to provide notice of this filing to occur on the afternoon of May 23, 2019. I have provided to Ms. Dinh copies of all papers filed in this action to date.

Dated: May 23, 2019

Respectfully submitted,

A handwritten signature in blue ink that reads "Ben Fenner". The signature is written in a cursive style and is positioned above a horizontal line.

Ben Fenner
Counsel for Plaintiff

Copies to:

Mai T. Dinh (via email)
Ronald A. Parsons, Jr. (via email)