UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, - vs - ALEX WHITE PLUME, PERCY WHITE PLUME, Defendants.	CIV.NO. 02-~~5051~~ 5071

ANSWER AND COUNTERCLAIM

ANSWER

The Defendants answer the Complaint as follows:

1. They deny all allegations contained in Counts I through III of the Complaint except those specifically admitted herein.

AFFIRMATIVE DEFENSES

As and for Affirmative Defenses:

2. The Defendants' cultivation of industrial hemp (and not the drug "marijuana"), being an agricultural economic development effort by a Lakota family on Lakota land, is a protected activity within "Indian Country" by agreement between the United States and the sovereign Lakota Nation under the Fort Laramie Treaty of 1868. Article 6 of the Treaty expressly provides:

> If any individual belongs to said tribes of Indians...being the head of a family shall desire to commence farming, he shall have the privilege to select...a tract of land within said reservation...so long as he or they ("family") may continue to cultivate it.

A copy of the Treaty is attached hereto as Exhibit A.

Rather than attempt to restrain Defendants and their Family from cultivating industrial hemp, Plaintiff's pursuit of an injunction violates Article 8 of the Treaty which obligates to the contrary: the United States "shall" provide a head of the family which "intends in good faith to commence cultivating the soil for a living...seeds and agricultural implements" for up to four years.

3. The agricultural provisions of the Fort Laramie Treaty of 1868 continue in effect as Article 1 of the Treaty establishes its terms as: "From this day forward...".

4. The agricultural provisions of the Fort Laramie Treaty of 1868, as interpreted by the Oglala Sioux Tribe as including "industrial hemp", were not abrogated by the passage of the Controlled Substances Act. Congress did not intend to abrogate the agricultural provisions of the Treaty by this Act and the Act by its statutory language does not abrogate such Treaty provisions. Unless expressly abrogated by Congress, Treaties or provisions thereof, constitutionally remain the Supreme Law of the Land.

5. 18 U.S.C. 823 reflects the intent of Congress to allow for the cultivation and distribution of even the drug-marijuana under some circumstances. 21 U.S.C. 823 states that the Attorney General "shall" register and thereby authorize the manufacture and distribution of a "controlled substance", when it is "consistent...with United States **obligations** under **international treaties**...in effect on May 1, 1971". (Emphasis added).

6. The Defendants' cultivation of industrial hemp on their allotted family land within the boundaries of the Pine Ridge Indian

Reservation is an agricultural economic development effort expressly authorized and under the regulation of the Oglala Sioux Tribe as the Indian Organization Act government of the Oglala Lakota, a band of the sovereign Lakota Nation, in assertion of the agricultural provisions of the Ft. Laramie Treaty of 1868. See, Ordinance No. 98-27 and Resolution No. 01-123. See, also, Resolution SPO-01-150 of the National Congress of American Indians. A copy of the Ordinance and the Resolutions are attached as Exhibit B.

7. The Defendants' cultivation of industrial hemp exclusively for industrial or horticultural purposes is exempt from application of the Controlled Substances Act under Article 28 of the international 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol.

8. The Court lacks subject-matter jurisdiction under 21 U.S.C. 882(a) since the actions of the Defendants in growing industrial hemp, and not "marijuana", for sale as fiber, oil, and cake, do not constitute a violation of the Controlled Substances Act:

a. The industrial hemp in issue cannot be properly classified as a Schedule I substance under 21 U.S.C. 812, since it contains no or insufficient THC to create a hallucinogenic "high" and therefore cannot have a high or any substantive potential for abuse.

b. The cultivation and distribution of industrial hemp cannot therefore reasonably be the subject of Title 21 of the U.S.

Code entitled "**Drug Abuse** Prevention and Control". (Emphasis added).

c. The legislative history of the Controlled Substances Act of 1970 is clear that Congress meant to outlaw marijuana plants which would provide drug users with the hallucinogenic or euphoric effect of THC. United States v.Walton, 514 F.2d 201, 202, 204 (D.C. Cir. 1975).

d. The fibers of the now mature stalks of the hemp in issue, furthermore, can be used to make cloth which can readily substituted for its cotton equivalent for standard medical use as dressing.

9. Since industrial hemp is not properly listed as a controlled substance and can be a staple crop for the agricultural development of Lakota farmers specifically, and the economically struggling family farmers in South Dakota generally, enjoining such activity is not in the public interest. See, White Paper, "Industrial Hemp as an Alternative Crop in North Dakota", Institute of Natural Resources and Economic Development, North Dakota State University, attached hereto as Exhibit C.

10. Pursuant to 25 CFR 309, the Plaintiff recognizes and specifically protects Indian Art and Craftsmanship made from "hemp".

11. As a non-drug agricultural product whose fibers and oils have an existing and legal national and international market, and Defendants having entered into a contractual arrangement with Madison Hemp & Flax Company, a Kentucky corporation, and a previous

and on-going contract with Tierra Madre, a Delaware corporation, for the sale of the fiber from their industrial hemp crop, a balancing of equities weighs heavily against Plaintiff and in favor of Defendants. Plaintiff suffers no irreparable injury if its request for injunctive relief is denied.

COUNTERCLAIM

12. The Defendants/Cross-Plaintiffs hereby incorporate by reference the above paragraphs 1-11 and attached Exhibits.

13. Plaintiff/Cross-Defendant has in 2000 and 2001 interfered with, seized, and destroyed the Defendants'/Cross-Plaintiffs' industrial hemp crop, including stalks and seeds, and thereby prevented them from fulfilling contracts and potential contracts for hemp fiber.

14. Plaintiff/Cross-Defendant threatens to do so with the hemp crop still in the ground and in the future threatens irreparable harm to Defendant/Cross-Plaintiff unless enjoined by this Court. There is no harm to the Plaintiff/Cross-Defendant in the granting of such injunctive relief since the industrial hemp in issue is not a drug but a non-drug fiber, oil, and cake producing agricultural product.

15. The seizure and destruction of the industrial hemp crop by Plaintiff/Cross-Defendant has and continues to threaten irreparable harm by inhibiting the ability of the Defendants/Cross-Plaintiffs to strive for agricultural economic development by the production and sale of mature hemp stalks and seed, and therefore

fiber, oil or cake made therefrom in violation of the rights of the Lakota and obligations of the United States under the provisions of the Ft. Laramie Treaty of 1868.

16. The issuance of an injunction against the United States would be in the public interest of promoting sustainable and viable agricultural development by members of the Lakota Nation.

PRAYER FOR RELIEF

WHEREFORE, Defendants/Cross-Plaintiffs respectfully pray this Court enter judgment against the Plaintiff/Cross-Defendant, as follows:

(1) a lifting of the Temporary Restraining Order and denial of a Preliminary and Permanent Injunction against the Defendants;

(2) a Declaratory Judgment that the agricultural provisions of the Ft. Laramie Treaty of 1868 have not been abrogated by the Controlled Substances Act;

(3) a Declaratory Judgment that the agricultural development provisions of the Ft. Laramie Treaty of 1868, together with the applicable Ordinances of the Oglala Sioux Tribe, authorize the Defendants to cultivate "industrial hemp", and commercially sell and distribute the products thereof;

(4) a Declaratory Judgment that "industrial hemp" is not "marijuana" as defined by the Controlled Substances Act, since it does not have a high or any real potential for abuse and there are medically accepted uses of the harvested product;

(5) a granting of a Preliminary and Permanent Injunction against the United States from interfering with the

Defendants'/Cross-Plaintiffs' cultivation of "industrial hemp" on their allotted Family lands and the commercial sale and distribution of the fibers and oils derived from the resulting mature stalks and seeds;

(6) a granting of an Order instructing the Attorney General to register Defendants as authorized manufacturers and distributors of industrial hemp plants and immediate products of mature stalks and seeds on their Family lands within the boundaries of the Pine Ridge Indian Reservation, irrespective of any payment of fees or monies, or existence of an application by the Defendants;

(7) for costs of this action and reasonable attorney's fees; and

(8) for such other relief as this Court may deem just.

Dated this 30th day of August, 2002.

Respectfully submitted,

Bruce E. Ellison by M. L. Woods

BRUCE ELLISON
P.O. Box 2508
Rapid City, S.D. 57709

Attorney for Mr. Defendants
/Cross-Plaintiffs

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Claimant's Answer and Counter-Claim was mailed, U.S. postage paid, to: John Holmes and Mark Vargo, U.S. Attorneys Office, 226 Federal Building, 515 9th Street, Rapid City, S.D. 57701.

Dated this 30th day of August, 2002.

M. L. Woods